



2019 Social Housing Municipal - Smart Partnership Template

'SMART PARTNERSHIP' ARRANGEMENTS

INTRODUCTION TO TEMPLATES

Background

The **Social Housing Smart Partnership** contracting arrangement is a systems approach to establish strong mutually beneficial contractual arrangements between a municipality and an accredited non-profit Social Housing Institution (SHI). The intention is to establish a solid basis on which a municipality can work with a Social Housing (SH) Partner to use social housing delivery to achieve important municipal urban restructuring and socio-economic development objectives.

It helps a municipality to structure these partnerships so that it can release assets and resources to be properly used for its intended socio-economic objectives. At the same time, it provides the basis for the SH partner to run a more viable and sustainable SH business ensuring its longer-term ability to deliver on the municipality's intent.

The approach and related templates and tools are prepared in accordance with the national social housing policy and regulations and within the framework of the MFMA. It also recognises that there is a strong national regulatory framework for monitoring performance of SHIs through the Social Housing Regulatory Authority (SHRA).

The approach structures a strong linkage between social housing pipeline management by the municipality, the release of land, buildings and other resources while protecting against misuse, and meeting the conditions of the partnership.

This introduction and related templates and tools for the 'Smart Partnership Approach' are the intellectual property of the National Association of Social Housing Organisations (NASHO) in South Africa and Rooftops Canada. The documents were developed as part of the *Equal Spaces: Social Housing to End Spatial Apartheid Project 2016-2020* funded in part by the Government of Canada through Global Affairs Canada. Please see the "LEGAL NOTICE" on the next page for further details on the allowable use of these documents.



LEGAL NOTICE

This introduction and related templates and tools, referred to as “the document(s)”, for the ‘Smart Partnership Approach’ are the intellectual property of the National Association of Social Housing Organisations in South Africa (NASHO) and Rooftops Canada Foundation Inc. The documents were developed as part of the *Equal Spaces: Social Housing to End Spatial Apartheid Project 2016-2020* funded in part by the Government of Canada through Global Affairs Canada. NASHO and Rooftops Canada are solely responsible for the contents of the documents.

The ‘Smart Partnership Approach’ was developed to help South African municipalities structure their social housing programmes for effective and efficient delivery in line with their socioeconomic and spatial development mandates. The documents are intended for use by South African municipalities, and as appropriate by accredited South Africa SHIs, to guide the preparation of their own smart partnership arrangements.

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LAND AVAILABILITY AGREEMENT

LONG-TERM LEASE TEMPLATE

All sections highlighted (yellow) need to be filled and/or modified

Insert logo of the Municipality

Insert name of the Municipality

and

Insert logo of the Social Housing Institution

Insert name of the Social Housing Institution

Insert name and company registration no

This Agreement Includes:

APPENDIX 1 – Approved Pre-Feasibility and Financial Project Proposal (PFF)

APPENDIX 2 – Land Survey - Cadastral Details

APPENDIX 3 – Time Schedule and Completion Milestones

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1. Interpretation and Definitions

In this Agreement, unless otherwise required or indicated by the context, the singular shall include the plural and vice versa, words indicating any one gender shall include the other genders, words indicating natural persons shall include juristic persons and bodies corporate and vice versa, terms defined elsewhere in this Agreement shall have the meanings respectively assigned to them and the following terms shall have the meanings respectively assigned to them hereunder, namely:

- 1.1 **Agreement** means this agreement contained herein including all annexures thereto;
- 1.2 **Anchor Business Plan** is the contractually agreed project's financial business plan. It includes a working financial model in Excel electronic format. It is based on approved density and buildable gross floor area (GFA) for the entire site and individual buildings as applicable;
- 1.3 **Commencement Date** means the Signature Date as defined in clause 1.17;
- 1.4 **Contract** means this Agreement and any subsequent Land Availability Agreements, Project Agreements and Notarial Deeds read together;
- 1.5 **Land Availability Agreement (LAA)** means an agreement entered into between the Municipality and the Social Housing Partner as it relates to the specific terms and conditions governing the release of municipal land on a long-term lease, freehold or other agreed basis;
- 1.6 **Municipality** means municipality listed on the cover page of this Agreement;
- 1.7 **Municipality Allocation Priority Target** means targeted population beneficiary groups which might come from a geographical area with a corresponding income band that the Municipality desires to prioritise for Housing.
- 1.8 **Parties** means the Municipality and the Social Housing Institution (SHI) Partner;
- 1.9 **Partnership Agreement** means the agreement signed between the Parties that guides their co-operation over time in the provision and management of social housing in the Municipality. It could either be the Smart Partner Agreement or the Social Housing Conditional Partner Agreement;
- 1.10 **Pre-Feasibility and Financial Project Proposal (PFF)** is the project's initial development concept and preliminary financial viability model as presented by the Partner to the Municipality in response to the Municipality's Request for

Proposals (RFP) on the Land. It has to be negotiated and approved by the Municipality prior to consideration and inclusion in the Land Availability Agreement;

- 1.11 **Programme Manager** means an employee of the Municipality, or any person nominated in writing by the Municipality, responsible for the co-ordination of the Municipality's Social Housing Programme;
- 1.12 **Project** means the development and management of immovable property for a specific affordable housing development taken on by the Social Housing Partner in accordance with the Project Agreements concluded between the Parties;
- 1.13 **Project Agreement (PA)** means an agreement entered into between the Municipality and the Social Housing Partner as it relates to project-specific implementation;
- 1.14 **Project Manager** means an employee of the Municipality, or such other person as may be nominated in writing by the Municipality to be its representative for purposes of this Agreement.
- 1.15 **Property Development Plan** means the detailed physical design of the sites and the proposed structures, buildings, landscaped areas on it including elemental specifications and costing of the Project to be built on the land;
- 1.16 **Signature Date** means the date on which this Agreement is signed by the last signing of the Parties hereto;
- 1.17 **Social Housing Institution (SHI)** means an institution accredited or provisionally accredited under the Social Housing Act 16 of 2008 which carries or intends to carry on the business of providing rental housing options for low to medium income households on an affordable basis;
- 1.18 **Social Housing (SH) Partner** means the Social Housing Institution listed on the cover page of this Agreement duly represented;
- 1.19 **Social Housing Programme** refers to the development of affordable rental stock for low-moderate income households in terms of the Social Housing policy, legislation and regulations;
- 1.20 **Social Housing Regulatory Authority (SHRA)** is the authority established by the Social Housing Act 16 of 2008.

2. Recordal

- 2.1 The Municipality wishes to use the Social Housing Programme investment to create well-located and well-managed affordable rental housing schemes on land and or buildings made available by the Municipality either solely for social housing or a mixture of social and affordable rental housing, and other developments.
- 2.2 The Partner namely [REDACTED] is a full or conditionally accredited institution by the SHRA.
- 2.3 The Municipality wishes to agree on the transfer of the Land and or Buildings identified in this Agreement to the SH Partner based on an Approved Pre-Feasibility and Financial Project Proposal (PFF) that meets the conditions outlined in this Agreement, or any changes thereto agreed by Parties in the process of the planning linked to this Agreement and its subsequent Project Agreement (PA).
- 2.4 The terms for the lease of the land or buildings are detailed in Section 6.
- 2.5 The Parties wish to conclude this Agreement in writing.

3. Agreement

- 3.1 The Municipality and the SH Partner hereby agree that the terms and conditions of this Agreement shall link contractually to the Partnership Agreement signed between the Parties, together with any future PA that governs their relationship in respect of any and all services provided by the SH Partner currently, or at any time in the future, in respect of social and affordable rental housing units for beneficiaries in terms of this Agreement.

4. Objectives

The objectives of this Agreement are as follows:

- 4.1 To provide the guarantee that the identified land and/or buildings will be transferred through a long-term lease to the SH Partner, provided they meet the development conditions outlined in this Agreement and any others agreed by the Partners in the course of the planning of the development of this site.

- 4.2 To provide the opportunity for SHRA-accredited SHIs which have entered into a Social Housing Partnership Agreement with the Municipality and have become a Municipal Partner, to obtain and develop land from the Municipality within a framework that protects the Municipality's investment of land and other resources to achieve their socio-economic housing programme objectives.
- 4.3 Within this framework Agreement, the Parties will conclude linked PAs. The PA will identify specific projects to be built on the land defining the related products and services which the SH Partner shall be required to render and the provision of resources by each Partner.

5. Commencement Date

- 5.1 Notwithstanding the Signature Date hereof, this Agreement shall commence on the Commencement Date, and, subject to such earlier action for next performance, as provided for in clause 13, it shall continue in force and effect for **three (3)** years with a potential maximum **two-year** extension unless terminated by either Party. The extension term will be negotiated at least **six (6)** months prior to the expiry of the initial term.
- 5.2 The Commencement Date is: **[REDACTED]**.

6. Land and/or Building for Development Transaction Terms

The land is be offered by the Municipality to the SH Partner on:

- 6.1 A long-term lease agreement for a term of transaction terms/ years under the following:
- a) **Price:** Nominal Value of **R [REDACTED]**;
 - b) **Payment:** Paid annually over the duration of the Long-Term Lease period;
 - c) Land parcels transfer to follow the details and conditions outlined in the Appendices to the Project Agreement: Appendix 5, Phasing Plan, Time Schedule and Appendix 6, Performance Management Completions.
 - d) The long-term lease agreement will have an option to renew subject to the Municipality's evaluation of the SH Partner's operational performance in the Social Housing Project. The terms of option to renew will be

negotiated with the SH Partner one year prior to lease-term expiry.

7. Property Description of Land and/or Building for Development

The property subject of this Agreement is defined as follows

Land:

Erf/Erven numbers:

Street Address:

Co-ordinates:

Area/extent m²

The Land Survey - cadastral details are contained in **Appendix 2** of this Agreement.

Building (If applicable):

Name/description of building:

Erf/Erven nos:

Street Address:

Gross Floor Area (GFA) m²:

8. Conditions for the Development of the Land and/or Buildings

The following general conditions apply for the development of this site and/or building:

- 8.1 Developing affordable rental units that will provide access to low-moderate income households to good basic housing in well-located urban environments.
- 8.2 Providing property management services that will develop social and economic integration at a neighbourhood level and with the rest of the municipal area.
- 8.3 Improving access of tenant households to the socio-economic amenities of the Municipality.
- 8.4 If the development includes buildings refurbishment it must aim to address elements of heritage value preservation in accordance with the relevant

Heritage Resource Authority.

- 8.5 The primary use of the site is to achieve the Municipality's affordable rental housing development targets with any complementary mix of market residential and other non-residential uses (if applicable), to achieve an integrated neighbourhood and a clear financial cross subsidisation of the affordable housing component in densified building forms.
- 8.6 In order to achieve this the SH Partner will work within the Social Housing funding model but can use the site planning framework and real estate market opportunities to develop market products that can cross-subsidise and maximise the number of Affordable Rental Housing and/or the Social Housing units where this is appropriate.
- 8.7 The Municipality can also, as part of the planning process, decide to make available additional incentives to enable the achievement of its socio-economic and urban restructuring objectives.
- 8.8 The following specific conditions describe the economic and development vision for the site and are set by the Municipality:
- 8.8.1 Densification target of: [REDACTED] du/ha;
 - 8.8.2 Minimum number of Social Housing units: [REDACTED];
 - 8.8.3 Desirable building forms: [REDACTED];
 - 8.8.4 Minimum building heights: [REDACTED] floors; and
 - 8.8.5 Where appropriate, complementary commercial and retail uses on the ground floor of buildings fronting main streets are desirable for the purpose of street activation, achieving mixed-use and supporting financial viability through cross-subsidisation.

9. Smart Partnership Agreement Incentives

- 9.1 As part of this Partnership Agreement, the Municipality will consider a menu of capital and operational incentives packaged to promote investment and reduce the risk of developing densified Social Housing developments in well-located inner-city precincts. Allocation of incentives will be negotiated in the PA stage subject to review and agreement on the Project financial plan. Only residential development that promotes a gross residential density greater than the targets in Clause 8.8.1 will qualify to benefit from these incentives offered.
- 9.2 The negotiation of each of these incentives is subject to detailed financial

assessment of their leverage:

- 9.2.1 Rates exemptions or rebates applicable only to Social Housing Units;
- 9.2.2 Reduced or minimal parking ratio requirements;
- 9.2.3 Urban Settlements Development Grant (USDG) contributions for upgrading bulk infrastructure if required;
- 9.2.4 Facilitated faster processing of planning applications and building plan approvals;
- 9.2.5 Either grant a waiver or charge a reduced rate for Municipal development charges for Social Housing units;
- 9.2.6 Support implementing targeted application of its indigence benefit to eligible Social Housing households;
- 9.2.7 The Municipality may package the land offer including conducting and providing the SH Partner with some studies and reports that will reduce the Project's capital costs. The following specialised studies may be undertaken by the Municipality:
 - a) Environment Impact Assessment study
 - b) Topographical Survey
 - c) Geotechnical study
 - d) Heritage study
 - e) Demolition
 - f) Traffic Impact Assessment

10. Output of the Land Availability Agreement (LAA) must be reflected in the Project Agreement

The terms and conditions and the project planning process undertaken during the Land Availability Agreement period should result in a Property Development Plan with an Anchor Business Plan agreed by both Partners that will guide the development of the land and/or building. The output of the LAA will conclude with the execution of a linked Project Agreement (PA). The PA at a minimum, will cover the following:

- 10.1 The specific terms and conditions for the project development, property management development process and post construction property management details contained in the agreed Property Development Plan;
- 10.2 The Anchor Business Plan;

- 10.3 The development schedule with development time-frame and milestones;
- 10.4 The phasing plan of the Project and performance management completion;
- 10.5 Material contribution of the Partners;
- 10.6 The Municipality's Allocation Priority Target Plan: the Municipality will provide the SH Partner with a list of potential applications at least **six (6) months** in advance before the tenanting qualification process is started by the SH Partner;
- 10.7 Collaboration with the SHRA on the system and procedures of monitoring the Agreement in accordance with the SHRA mandatory reporting and performance-monitoring procedures;
- 10.8 Indicators of performance in line with the Agreement.

11. Overall Roles of the Parties

11.1 The Municipality undertakes to:

- 11.1.1 Guarantee to provide the lease agreement for the land/building to the SH Partner if its Project development proposal meets the Municipal vision articulated in this Agreement;
- 11.1.2 Provide access to available site information to the Municipality that can assist in property development planning and construction, right through to tenanting and property management phase;
- 11.1.3 Actively participate in discussions with the SH Partner at different stages in the Project planning process;
- 11.1.4 Give due consideration to additional incentives where there is a proven leverage to achieve the socio-economic and urban development vision.

11.2 The SH Partner undertakes to:

- 11.2.1 Carry out the planning process for the development of the site and or building in accordance with the LAA and the subsequent PA to be executed with the Municipality;
- 11.2.2 Provide the proper opportunities to engage with the Municipality in a time-expedient manner on progress and content throughout the planning process in accordance with an agreed timetable.

12. Conduct of Services and Time-Table for Delivery

- 12.1 The SH Partner shall provide those services as per the agreed Time Schedule and Completion Milestones outlined in Appendix 3 of this Agreement and subsequently as per the PA.
- 12.2 Any variations in this time schedule or any completion milestone changes will be agreed by both Parties prior to the original Contract expiry.

13. Action for Non-Performance in terms of the Contract

- 13.1 In the event that the SH Partner does not complete the work within the time schedule, or any agreed variations on this, the Municipality has the right to rescind this Agreement and withdraw the SH Partner's rights to the land.
- 13.2 In order to implement the condition in 13.1 the Municipality must show that it has timeously undertaken its responsibilities in terms of this Agreement.
- 13.3 In the event that the Municipality does terminate the Contract for non-performance, the Municipality has:
 - 13.3.1 No responsibility to reimburse the SH Partner for any work done to date, unless there is a previous agreement to do this in order to use for further work on the site;
 - 13.3.2 The right to recover all costs, losses or damages incurred or suffered by the Municipality as a result of non-performance of the SH Partner;
 - 13.3.3 The right to report the SH Partner on the Municipality's and Province's SHI/Developer database, advocating a restriction on the SH Partner to obtain Social Housing business from the Municipality, the Province and the SHRA;
 - 13.3.4 The right to report non-compliance of the SH Partner to SHRA to proceed with corrective procedures.

14. Manner of Rendering Services

- 14.1 All products developed and services performed by the SH Partner shall be of a standard and quality consistent with the Social Housing Programme standards, as required by the SHRA. The SH Partner shall further exercise all reasonable skill, care and diligence in the performance of any such services

and shall carry out all its responsibilities and duties in accordance with the recognised professional standards and in any manner and of a standard acceptable to the Municipality.

14.2 The SH Partner shall liaise with the Project Manager on a regular basis for the duration of any Project and shall specifically keep such person informed on:

14.2.1 The progress being made by the SH Partner in respect of the work assigned to him in terms of the PA;

14.2.2 Any problems being experienced by the SH Partner;

14.2.3 Any other matters relevant to the Project as a whole, as well as any other matters which may affect the proper and timeous completion of any other portion of the Project.

15. Confidentiality

The SH Partner shall not, without the prior written consent of the Municipality, disclose to any third party, any information of any nature disclosed to it, or acquired by the SH Partner or its employees, or developed during the course of the services rendered, in accordance with this Agreement, without the prior written consent of the Municipality having been obtained.

16. Breach

In the event that either Party (the defaulting party) to this Agreement breaches any material terms of this Agreement and fails to remedy such breach within **thirty (30)** days of the date of receipt of a written notice from the other Party (the aggrieved party) requiring such breach to be remedied, the aggrieved party will be entitled immediately to cancel this Agreement by written notice to the defaulting party, which cancellation will be without prejudice to any other rights which the aggrieved party may at law enjoy arising out of such breach and/or cancellation. In any case, prior to the expiry of the notice period, the Parties to this Agreement can agree in writing to extend the period to remedy any such breach, particularly, but not exclusively, in the case that more time is needed due to the nature of the breach, or because the breach is not completely under the control of the Party.

17. Arbitration

- 17.1 Any dispute, question or difference arising at any time between any of the Parties with regard to any matter arising out of, or with regard to the rights and duties of any of them under, or with regard to the interpretation of, or the termination of, or any matter arising out of the termination of, or with regard to the rectification of, this Agreement shall, upon the request of any Party made to the others of them, be submitted to, and be decided by way of arbitration held in terms of this clause.
- 17.2 The arbitration shall be held in [REDACTED] (place) in accordance with the provisions of the Arbitration Act, No. 42 of 1965 (as amended or replaced from time to time) save that:
- 17.2.1 The arbitration shall be informal; and
- 17.2.2 The Arbitrator shall have the discretion to determine the procedure to be adopted for the filing of all documentation and statements of case, the narrowing of the issue in dispute and the procedure generally in respect of evidence and discovery and the procedure at the arbitral hearing.
- 17.3 The Arbitrator shall be, if the issue in dispute is:
- 17.3.1 Primarily an accounting matter, an independent practising Chartered Accountant;
- 17.3.2 Primarily a legal matter, a practising Advocate or Attorney;
- 17.3.3 Any other matter, an independent and suitably qualified person, as may be agreed upon between the Parties.
- 17.4 If agreement cannot, within 7 (seven) days after the arbitration having been requested, be reached as to whether the issue in dispute falls under clauses 17.3.1, 17.3.2 or 17.3.3 or as to the choice of a particular arbitrator under clause 17.3, then the President at the time of the [REDACTED], failing whom, the chief executive officer or officers of the Legal Practice Council of South Africa shall, upon the request of any Party:
- 17.4.1 Determine whether the issue in dispute falls under clauses, 17.3.1, 17.3.2 or 17.3.3; and/or
- 17.4.2 Nominate the arbitrator in terms of the relevant clause as soon as possible after he shall have been requested to do so.
- 17.5 Each of the Parties irrevocably consents to the arbitral provisions of this clause and none of them shall be entitled to withdraw herefrom or to claim at

any arbitration proceedings that he is not bound by the provisions of this clause.

- 17.6 The Parties acknowledge and agree that the provisions of this clause shall not preclude any of them from proceeding against any of the other of them in any court of competent jurisdiction where relief is being sought on an urgent and interim basis.

18. Domicilium and Notices

- 18.1 The Parties hereto choose *domicilia citandi et executandi* for all purposes of and in connection with this Agreement as follows:

The Municipal Manager

City Hall/Civic Centre

Insert Address

Insert Municipality

Insert code

Facsimile No. _____

Electronic Mail Address. **Insert**

The SH Partner **Insert details**

Facsimile No. _____

Electronic Mail Address. _____

-
- 18.2 Any Party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a street address and any such change shall only be effective upon receipt of notice in writing by the other Parties of such change.

- 18.3 Any notice given by or to either party in terms of this Agreement shall be given in writing and shall be delivered by hand to a responsible person

present at or sent by prepaid registered post or facsimile transmission to the *domicilium* chosen by the addressee in terms of this Agreement.

18.4 A notice sent by one Party to another Party shall be deemed to be received:

18.4.1 On the date of delivery, if delivered by hand;

18.4.2 On the fourth day after posting, if sent by pre-paid registered mail;

18.4.3 On the date sent, if forwarded by facsimile transmission; or

18.4.4 On the date sent or forwarded by email

18.5 Notwithstanding anything to the contrary herein contained, a written notice or communication received by a Party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

19. Whole Agreement

This Agreement constitutes the entire Agreement between the Parties regarding the subject matter hereof. No agreements, guarantees or representations, whether verbal or in writing, have been concluded, issued or made, upon which either party is relying in concluding this Agreement, save to the extent set out herein.

20. No Waiver

No waiver or indulgence of whatsoever nature shall be of any force or effect, including a waiver or indulgence in respect of this clause 20, unless it is reduced to writing and signed by and on behalf of the Parties.

21. No Indulgence

No indulgence, leniency or extension of time which a party (the grantor) may grant or show to the other, will in any way prejudice the grantor or preclude the grantor from exercising any of his rights in the future.

22. Severability

If any particular provision and/or term of this Agreement is found to be defective or

unenforceable or is cancelled for any reason (whether by any competent Court or otherwise) then the remaining provisions and/or terms shall continue to be of full force and effect. Each provision and/or term of this Agreement shall accordingly be construed as entirely separate and separately enforceable in the widest sense from the other provisions and/or terms hereof.

23. No Cession or Assignment

Neither party hereto shall be entitled to cede or assign any of its rights, or delegate any of its obligations hereunder without the prior written consent of the other first being obtained.

24. No Variation

No variation of, or addition or agreed cancellation to this Agreement shall be of any force or effect unless it is reduced to writing and signed by or on behalf of the Parties.

SIGNED on behalf of the _____ **Municipality** at _____ on the _____ day of _____ 20__ in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____ for: **INSERT MUNICIPALITY NAME**

2. _____
Director, who warrants that he is duly authorised

SIGNED on behalf of the **SH PARTNER** at _____ on the _____ day of _____ 20__ in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____ for: **INSERT COMPANY NAME**

2.

Director, who warrants that he is duly authorised

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