



G15 Offer to London: Working in partnership with local authorities – potential development management services

This note has been prepared with support from Trowers & Hamlins LLP. It is a strategic note and does not constitute legal advice. It is recommended that any parties intending to place reliance upon this document obtain separate independent legal advice.

1 Context

- 1.1 The G15 are long-term investors in place and quality with a strong track record in developing new and affordable homes. Collectively the G15 employ hundreds of people involved in the development process.
- 1.2 This note sets out one way in which G15 members could support Local Authorities (LAs) in meeting their own ambitions to directly develop new homes. Through the provision of development management services LAs could call upon capacity and expertise from a G15 member (the RP) to supplement or support the LA's own development teams.
- 1.3 This note is intended to inform base considerations for LAs exploring additional support in directly developing homes. The final arrangements reached in any direct relationship will be subject to negotiation. It is envisaged that the offer may be attractive to some, but not all LAs and that the appeal may change over time. There are already some similar arrangements that have commenced.

2 Development Management Service

- 2.1 The scope of the services to be provided will vary between LAs, and potentially from project-to-project. They could range from land acquisition, planning support to on site project delivery. In return for the agreed services, the RP will receive a fee to cover their costs.
- 2.2 The suggested arrangement has benefits for both the LAs and RPs, including:
 - 2.2.1 allows LAs to develop their own housing supply, without having to engage a full team of development staff in house or whilst internal capacity is built-up;



- 2.2.2 RP development management services can be used to supplement existing LA staff, where there are gaps, or for example to cover maternity leave etc;
- 2.2.3 RPs can build closer working relationships with LA partners and keep their development staff fully utilised in periods of slower activity (noting that some RP led development is housing market affected);
- 2.2.4 in a sector where there is a general skills shortage, it allows available talent (i.e. suitably qualified and experienced personnel), to be engaged to maximum benefit;
- 2.2.5 allows LAs to develop staff knowledge and capacity working alongside experienced RP staff, also enabling RP staff to gain greater experience of LA ways of working and decision-making;
- 2.2.6 LAs can pick the services they need, when they need them;
- 2.2.7 the homes could be clearly branded as 'LA homes' with the service provided no more (or less) prominent than services provided by other consultants, ensuring the full credit for development accrues to the LA;
- 2.2.8 the "fee package" to the RP can be flexible, dependent on the level of risk being taken. Whilst a straightforward commissioned arrangement would just cover costs a risk-sharing approach would entail a mix of financial reward and opportunity.

3 **Example Heads of Terms**

- 3.1 Attached to this note as Schedule 1 are some example Heads of Terms for a Development Management Services Agreement (DMSA). These Heads of Terms are indicative only and may need to be adapted to meet the requirements of the LAs and RPs.
- 3.2 Please note that each LA and RP will need to take their own legal and commercial advice on the Heads of Terms, and resulting DMSA, and consider whether it is appropriate for their use. Items such as the scope of services and corresponding fee will, of course, be subject to negotiation.

4 **Procurement**

Each LA and RP will need to take their own advice on the procurement issues as to whether an arrangement requires a full EU procurement process, and this will vary on a case-by-case basis. Consideration may be given as to whether the proposed arrangement may fall outside the scope of the public procurement regime on the basis that it is an



arrangement which establishes or implements co-operation between "contracting authorities". This will depend on fact specific circumstances, and there will need to be an analysis of the relationship (and of the proposed activities) in order to ensure that the arrangement delivers true co-operation between the parties with a view of achieving common objectives.

5 **Next Steps**

Any LA potentially interested in entering into arrangements such as these are encouraged to contact G15 members active in their area for a further discussion. If support is needed in terms of contacts and signposting then please email g15@networkhomes.org.uk.

Published on behalf of the G15

September 2020



Schedule 1 Example Heads of Terms

1 **Parties**

(1) London Borough of [] (the **Local Authority**)

(2) [G15 group organisation] (the **G15 Member**)

2 **Appointment**

The Local Authority intends to appoint the G15 Member to provide various development and project management services in relation to [] (the **Project**).

3 **Services**

[EXAMPLE SET OF SERVICES - The G15 Member shall provide the following services to the Local Authority:

- 3.1 advise as to site feasibility, including recommending surveys, investigations and specialists to be appointed in respect of the use of the site for the Project;
- 3.2 undertake initial due diligence on proposed site acquisitions and prepare and submit offers, subject to contract and the Local Authority's approval and any other appropriate conditions, on suitable site opportunities;
- 3.3 advise in relation to the professional team of consultants to be engaged in respect of the Project (the **Professional Team**) and advising on the most appropriate procurement route for the construction of the Project;
- 3.4 coordinate and work together with the Local Authority on the form, content and timing application for planning permission in respect of the Project;
- 3.5 in conjunction with the Local Authority and the Professional Team, supervise and coordinate the design proposals, construction programme, project cost plan and all other necessary information relating to the Project in relation to the preparation of tender information;
- 3.6 lead on and report to the Local Authority on the tender process for the building contractor(s) to be engaged in respect of the Project, including providing an analysis and appraisal of the tenders;



- 3.7 consult with the Local Authority's solicitors in connection with the preparation, negotiation and agreement of the terms of the appointments of the members of the Professional Team and the building contractor(s);
- 3.8 monitor the progress of the Project by making site visits as and when reasonably necessary (but at least monthly) and making all necessary observations and recommendations to the relevant building contractor(s); and
- 3.9 advise on the award of practical completion and, following such award, monitor progress and take reasonable steps to procure that defects in and omissions from the construction works involved in the Project are promptly remedied.]

(together, the **Services**)

4 **Fees**

The Local Authority shall pay the G15 Member a fee [based on actual costs incurred plus an allowance of [X]% for overheads or [X]% of [Gross Development Value] or other arrangements as may be negotiated] (the **Fee**).

5 **Obligations of the G15 Member**

The principal obligations of the G15 Member are that it shall:

- 5.1 carry out the Services with the level of professional skill and care to be reasonably expected of an experienced development management agent;
- 5.2 take out and maintain professional indemnity insurance at a level of £[] million pounds (£[]) [for each and every claim/in the annual aggregate] until the issue of the relevant notice of making good defects under the build contract;
- 5.3 appoint [] as a key point of contact for the Local Authority for so long as may be necessary in connection with the Project;
- 5.4 grant to the Local Authority an irrevocable, royalty-free, non-exclusive licence to reproduce documents prepared in connection with the Services;
- 5.5 not disclose any confidential information relating to the Project without the prior written consent of the Local Authority, save whether trivial or obvious or may be required to be disclosed by any court, or other competent authority;



- 5.6 comply with the relevant data protection law, equality and anti-corruption/bribery legislation in carrying out its obligations under the development management appointment; and
- 5.7 report to the local authority on a monthly basis, providing an update on progress of the Project, any delays or potential delays to the Project and such further information as the Local Authority may reasonably require.

6 **Obligations of Local Authority**

- 6.1 The principal obligations of the Local Authority are that it shall:
 - 6.1.1 pay the Fee in accordance with the instalments set out in the payment schedule to the development management appointment;
 - 6.1.2 ensure that the G15 Member shall have such authority under the relevant building contracts and professional appointments as may be required to fulfil its obligations under the development management appointment;
 - 6.1.3 instruct any variation to the Services by giving written notice to the G15 Member specifying the circumstances and particulars of the same and agree with the G15 Member any adjustment to the Fee; and
 - 6.1.4 comply with the relevant data protection law(s), equality and anti-corruption/bribery legislation in carrying out its obligations under the development management appointment.
- 6.2 The Local Authority shall have the ability to terminate the development management agreement for material breach.