

**CONTRACT FOR CONSULTANT/CONSULTANT SERVICES**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
(Calendar day) (Month)

by and between the following parties:

\_\_\_\_\_, hereinafter called the CONSULTANT;  
(Name of Successful Offeror)

and \_\_\_\_\_, acting herein by \_\_\_\_\_,  
(Name of City/County) (Name of Mayor/County Judge)

herein duly authorized, hereinafter called the OWNER;

WHEREAS, the OWNER has received authorization to incur costs, or has received grant funds under provisions of the HOME Investment Partnerships Program; and

WHEREAS, the OWNER has negotiated with the CONSULTANT to render selected services concerning the administration of the grant project, NOW THEREFORE, the parties do agree as follows:

**I. GENERAL SCOPE OF SERVICES PROVIDED BY CONSULTANT**

The CONSULTANT shall perform all of the necessary services provided under this agreement in connection with the administration of the HOME project.

- A. The **Scope of Services** performed by the Consultant shall include, but not be limited to:
  - 1. Procurement
  - 2. Environmental Review
  - 3. Fair Housing/Equal Opportunity
  - 4. Financial Management
  - 5. Acquisition
  - 6. Contract Management
  - 7. Labor Compliance
  - 8. Closeout/Audit
  - 9. Housing Rehabilitation/Construction Management
  - 10. Long-term Compliance/Affordability Period

**II. GENERAL SCOPE OF SERVICES PROVIDED BY OWNER**

The OWNER, as consideration for the agreement by the CONSULTANT to assume certain duties described above, agrees to assume the following duties and obligations

- A. To make a final review of all services performed and to authorize same prior to implementation and/or commitment to record
- B. To assume full liability as to any and all claims arising out of the performance by CONSULTANT of the above-defined services
- C. To pay out of allocation and/or local funds all program costs arising out of the above described project which are incurred by the CONSULTANT on behalf of the OWNER and approved by the OWNER and the Arkansas Development Finance Authority (hereinafter designated as "ADFA").
- D. To furnish all information, data, reports, records, and maps as are existing, available and necessary for performing all work outlined in this Agreement
- E. To cooperate with the CONSULTANT in order to facilitate the performance of the work described in this Agreement
- F. To reimburse the CONSULTANT in accordance with the procedures set forth in Section III, COMPENSATION AND METHOD OF PAYMENT

### III. COMPENSATION AND METHOD OF PAYMENT

For services provided under this Agreement, the CONSULTANT shall receive compensation not to exceed \$\_\_\_\_\_. Under no circumstance may the total contract amount be increased without a formal amendment increasing the Scope of Services.

The project shall consist of three (3) stages described as follows:

- Phase 1: Start-up** Start up will end with approval of the plans and specifications by the ADFA, closing of loans, pre-construction conference, and issuance of Notice to Proceed.
- Phase 2: Construction** Construction will end with construction completion as evidenced by the signing of the certificate(s) of substantial completion.
- Phase 3: Closeout** Closeout will end with resolution of all final inspection concerns and findings as evidenced by submission and acceptance of all required materials and all final closeout documents as required by the ADFA HOME Program Policy and Procedures Manual

## **Payment Limits**

Project Delivery Costs shall be defined as those expenses incurred by the Owner or CONSULTANT, which can be directly attributed to a specific HOME-funded Project.

Owner shall provide a detailed budget, acceptable to ADFA, indicating planned usage of all funds in the Project Delivery Budget, including HOME Funds provided under this Agreement.

To request Project Delivery Costs reimbursement, the chief executive officer or chief operating officer of Owner must submit a signed Certification of Costs (ADFA form). The certification must be supported by acceptable documentation as outlined in the HOME Program manual, although the supporting documentation should be maintained by Owner and is not necessarily required to be submitted to ADFA with the certification.

ADFA will reimburse Owner for eligible Project Delivery Costs incurred during Project implementation.

**Note: Owner (City, County or nonprofit) reserves the right to withhold payments based upon satisfactory performance of activities.**

## **IV. INVOICES FOR PAYMENT**

Invoices shall be submitted to the OWNER monthly to cover the amount earned during the preceding month. Invoices must include a description of services for which compensation is being requested including an explanation of requests for partial payments for ongoing services within a phase.

## **V. OTHER RELEVANT ATTACHMENTS**

List here, starting with Attachment 1, any attachments that will be a part of the Agreement.

## **VI. TERMS AND CONDITIONS**

### **A Termination of Contract for Cause**

If, through any cause, the CONSULTANT shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the CONSULTANT shall violate any of the covenants, agreements, or stipulations of this Contract, the OWNER shall thereupon have the right to terminate this contract by giving written notice to the CONSULTANT of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, data, studies, and reports prepared by the CONSULTANT under this contract shall, at the option of the OWNER, become its property, and the CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents. Notwithstanding the above, the CONSULTANT shall not be relieved of liability to the OWNER for damages sustained by the OWNER by virtue of any breach of the contract by the

CONSULTANT, and the OWNER may withhold any payments to the CONSULTANT until such time as the exact amount of damages due the OWNER from the CONSULTANT is determined.

**B. Termination for Convenience of OWNER**

The OWNER may terminate this Contract any time by giving at least a ten (10) day notice in writing from the OWNER to the CONSULTANT. If the Contract is terminated by the OWNER as provided herein, the CONSULTANT will receive equitable compensation under this Contract, less payments of compensation previously made; provided, however, that if less than 60 percent of the services covered by this Contract have been performed upon the effective date of such termination, the CONSULTANT shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by the CONSULTANT during the Contract period which are directly attributable to the uncompleted portion of the service covered by this contract. If this Contract is terminated due to the fault of the CONSULTANT, Section A hereof relative to the termination shall apply.

**C. Changes**

The OWNER may, from time to time, request changes in the scope of the services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONSULTANT'S compensation, which are mutually agreed upon by and between the OWNER and the CONSULTANT, shall be incorporated in written amendments to this Contract for approval by the ADFA prior to the effective date of such amendment(s).

**D. Personnel**

1. The CONSULTANT represents that he/she has, or will secure at his/her own expense, all personnel required in performing the services under this Contract. Personnel shall not be employees of or have any contractual relationship with the OWNER.
2. All the services required hereunder will be performed by the CONSULTANT or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.
3. No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.
4. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the OWNER. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

**E. Assignability**

The CONSULTANT shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the OWNER thereto: Provided, however, that claims for money by the CONSULTANT from the OWNER under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the OWNER.

**F. Reports and Information**

The CONSULTANT, at such times and in such forms as the OWNER may require, shall furnish the OWNER such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

**G. Records and Audits**

The CONSULTANT shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the OWNER to assure proper accounting for all project funds, both Federal and non-Federal shares. These records will be made available for audit purposes to the OWNER or any authorized representative, and will be retained for three years after the expiration of this Contract unless permission to destroy them is granted by the OWNER after consultation with the ADFA.

**H. Findings Confidential**

All of the reports, information, data, etc., prepared or assembled by the CONSULTANT under this Contract are confidential, and the CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of the OWNER.

**I. Copyright**

No reports, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the CONSULTANT.

**J. Compliance with Local Law**

The CONSULTANT shall comply with all applicable laws, ordinances and codes of the State and local governments, and the CONSULTANT shall save the OWNER harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

**K. Civil Rights Act/Equal Employment Opportunity**

During the performance of this Contract, the CONSULTANT agrees as follows:

1. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, sex, color, age, handicap, veteran status or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, age, handicap, veteran status or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the OWNER setting forth the provisions of this non-discrimination clause.
2. The CONSULTANT will, in all solicitation or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, age, handicap, veteran status or national origin.
3. The CONSULTANT will insert the foregoing provisions in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
4. The CONSULTANT will comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented in the Department of Labor regulations 4 CFR 6(D).

**L. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities**

The CONSULTANT covenants that:

1. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development (HUD) through the ADFA and is subject to the requirements of Section 3 of the HUD Act of 1983, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
2. It will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Contract. The CONSULTANT certifies that it is under no contractual or other disability which would prevent it from complying with these requirements.
3. It will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization of workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. It will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant, take appropriate action pursuant to the subcontract upon finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

## **M. Section 503 Handicapped**

### **Affirmative Steps for Handicapped Workers**

1. The CONSULTANT will not discriminate against any employee or applicant for employment because of physical or mental handicap regarding any position that the employee or applicant for employment is qualified. The CONSULTANT agrees to take affirmative steps to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices including: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, pay or other forms of compensation, and selection for training, including apprenticeship.
2. The CONSULTANT agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
3. In the event of the CONSULTANT'S noncompliance with the requirements of this clause, noncompliance actions may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor pursuant to the Act.
4. The CONSULTANT agrees to post notices in conspicuous places, available to employees and applicants for employment. Such notices shall state the CONSULTANT'S obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
5. The CONSULTANT will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract that they are bound by the terms of Section 503 of the Rehabilitation Act of 1973 and are committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
6. The CONSULTANT will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

## **N. Interest of Other Local Public Officials and/or Members of the Locality**

No member of the governing body of the locality, nor officer, employee, or agent of the locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program shall have any direct or indirect personal financial interest in this Contract; and the CONSULTANT shall take appropriate steps to assure compliance.

**O. Interest of CONSULTANT and Employees**

The CONSULTANT covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the project area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The CONSULTANT further covenants that in the performance of this Contract, no person having any such interest shall be employed.

**P. Compliance with HUD and ADFA Patent Rights in Research Regulations**

The CONSULTANT will comply with all requirements and regulations of HUD and the ADFA pertaining to reporting and patent rights involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of this contract. The CONSULTANT will also comply with HUD and ADFA requirements and regulations pertaining to copyrights and rights in data.

**Q. Indemnification**

The CONSULTANT shall comply with the requirements of all applicable laws, rules, and regulations, and shall exonerate, indemnify, and hold harmless the OWNER and its agency members from and against them, and shall assume full responsibility for payments of Federal, State, and local taxes or contributions required under social security, workman's compensation, and income tax laws.

**R. Access to Records**

The OWNER, the ADFA, the Joint Legislative Audit Division of the State of Arkansas, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the CONSULTANT doing work under this Contract which are directly pertinent to the project funded by the HOME Investment Partnerships Program for the purpose of making audit, examination, excerpts, and transcriptions.

**S. Miscellaneous Provisions**

1. This Agreement shall be construed under and in accordance with the laws of the State of Arkansas.
2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, Consultants, legal representatives, successors, and assigns where permitted by this Agreement.
3. In case any provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or enforceability shall not

affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

4. This Agreement may be amended by the mutual agreement of the parties hereto and in writing to be attached to and incorporated into this Agreement.
5. This Agreement shall be null and void, if the Owner fails to successfully enter into agreement with the ADFA.

his execution of the Agreement on behalf of the OWNER has been duly authorized as follows:

A resolution/court order dated \_\_\_\_\_ (Date, authorizing Mayor/County Judge \_\_\_\_\_ (Signature) to act on behalf of the OWNER.

WITNESS our hands and seals on the date herein above written, this Contract for HOME Investment Partnerships Program Administrative Services shall be effective as of \_\_\_\_\_ (Date) until the Scope of Services is completed.

	Owner:	_____
		(Name of City/County/Agency)
Witness:	Name:	_____
		(Typed name of Mayor/Judge/ED)
Name: _____	Signature:	_____
(Typed name of signee)		(Mayor/County Judge/ED)
	Consultant:	_____
		(Name of administrative firm)
Witness:	Name:	_____
		(Typed name of Consultant)
Name: _____	Signature:	_____
(Typed name of signee)		(Consultant)