

## SERVICE CONTRACT (CR#

AGREEMENT is made this \_\_\_\_\_ day of May, 2012, by the COUNTY OF WASHTENAW, a municipal corporation, with offices located in the County Administration Building, 220 North Main Street, Ann Arbor, Michigan 48107("County") and **City of Ann Arbor** located at **301 E. Huron, Ann Arbor, MI 48104** ("Contractor").

In consideration of the promises below, the parties mutually agree as follows:

### ARTICLE I - SCOPE OF SERVICES

This Contract is a component to the Washtenaw County HUD Office of Sustainable Community Challenge Cooperative Agreement (CCPMI0057-11).

The Contractor will develop and conduct a planning process to improve the energy efficiency of rental housing throughout the urbanized area of Washtenaw County. The Contractor will gather stakeholders from public, private and institutional sectors to guide and develop measures to improve to reduce adverse environmental impacts and reduce consumption.

This work will be conducted consistent with the approved Work Plan provided in Exhibit A, which may be amended, and will also be consistent with all applicable program guidelines, including:

- FY 2011 HUD Office of Sustainable Housing and Communities Community Challenge Planning Grant Notice of Funding Availability (FR-5500-N-33).
- HUD Office of Sustainable Housing and Communities Program Policy Guidance.
- OMB Circulars A-187, A-133 and A-102, which is incorporated into 24 CFR Part 85.
- Approved HUD Logic Model
- All other HUD Community Challenge Planning Grant Terms and Conditions.
- Some Terms and Condition excerpts are summarized here as they may be particularly applicable to this Contract:
  - HUD's Office of Sustainable Housing and Communities Substantial Involvement which includes, but is not limited to:
    - Review of potential amendment recommendations to the study/process design and/or workplan
    - Review and recommendations in response to semi-annual progress reports (e.g. amendments to the study/process and/or work plan based on preliminary results)
    - Review and provide recommendations on the final report/study, including final interpretation of results.
    - Review and approval of one stage of work before another can begin.
    - Monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects.
    - Implementing HUD requirements which limit recipient discretion.
  - HUD and Washtenaw County reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others use the copyright in any work developed under this contract.
  - These Federal Funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant at a rate more than the equivalent General Schedule 15, Step 10 Base Pay Rate.
  - Interim and final reports may not be published for a period of sixty days after acceptance of the deliverables by HUD and shall include prescribed disclaimer and acknowledgement.
  - Social media releases must be coordinated with HUD.

## ARTICLE II - COMPENSATION

The County will pay the City up to \$256,000.00 for completion of the Scope of Services in this Agreement. The City shall submit invoices monthly. Payment shall be made within 30 days of receipt of invoice.

The Contractor agrees to provide documented match funds to this project in an amount no less than \$370,000. Match funds can be comprised of cash contributions or in-kind services.

## ARTICLE III - REPORTING OF CONTRACTOR

Section 1 - The Contractor is to report to the Washtenaw County Office of Community and Economic Development Director or designee and will cooperate and confer with him/her as necessary to insure satisfactory work progress.

Section 2 - All reports, estimates, memoranda and documents submitted by the Contractor must be dated and bear the Contractor's name.

Section 3 - All reports made in connection with these services are subject to review and final approval by the County Administrator.

Section 4 - The County may review and inspect the Contractor's activities during the term of this contract.

Section 5 - When applicable, the Contractor will submit a final, written report to the County Administrator.

Section 6 - After reasonable notice to the Contractor, the County may review any of the Contractor's internal records, reports, or insurance policies.

## ARTICLE IV - TERM

This contract begins on **February 1, 2012** and ends on **January 30, 2015**.

## ARTICLE V - PERSONNEL

Section 1 - The contractor will provide the required services and will not subcontract or assign the services without the County's written approval.

Section 2 - The Contractor will not hire any County employee for any of the required services without the County's written approval.

Section 3 - The parties agree that the Contractor is neither an employee nor an agent of the County for any purpose.

Section 4 - The parties agree that all work done under this contract shall be completed in the United States and that none of the work will be partially or fully completed by either an offshore subcontractor or offshore business interest either owned or affiliated with the contractor. For purposes of this contract, the term, "offshore" refers to any area outside the contiguous United States, Alaska or Hawaii.

## ARTICLE VI - INDEMNIFICATION AGREEMENT

To the extent allowed by law, the Contractor will protect, defend and indemnify Washtenaw County, its officers, agents, servants, volunteers and employees from any and all liabilities, claims, liens, fines, demands and costs, including legal fees, of whatsoever kind and nature which may result in injury or death to any persons, including the Contractor's own employees, and for loss or damage to any property, including property owned or in the care, custody or control of Washtenaw County in connection with or in any way incident to or arising out of the occupancy, use, service, operations, performance or non-performance of work in connection with this contract resulting in whole or in part from negligent acts or omissions of contractor, any sub-contractor, or any employee, agent or representative of the contractor or any sub-contractor.

To the extent allowed by law, the County will protect, defend and indemnify Contractor, its officers, agents, servants, volunteers and employees from any and all liabilities, claims, liens, fines, demands and costs, including legal fees, of whatsoever kind and nature which may result in injury or death to any persons, including the County's own employees, and for loss or damage to any property, including property owned or in the care, custody or control of City in connection with or in any way incident to or arising out of the occupancy, use, service, operations, performance or non-performance of work in connection with this contract resulting in whole or in part from negligent acts or omissions of County, any sub-contractor, or any employee, agent or representative of the County or any sub-contractor.

This section is not intended, and shall not be construed, to waive or limit any immunity defense which the Contractor may have including, but not limited to, governmental immunity.

## ARTICLE VII - INSURANCE REQUIREMENTS

The parties acknowledge that each party is insured or self-insured. Each party agrees to maintain insurance or self-insurance reserves or excess insurance policies at its own expense during the term of this Agreement in the type and amounts below:

1. Workers' Compensation Insurance with Michigan statutory limits and Employers Liability Insurance with a minimum limit of \$100,000 each accident for any employee.
2. Commercial General Liability Insurance with a combined single limit of \$1,000,000 each occurrence for bodily injury and property damage. The County shall be added as "additional insured" on general liability policy with respect to the services provided under this contract.
3. Automobile Liability Insurance covering all owned, hired and nonowned vehicles with Personal Protection Insurance and Property Protection Insurance to comply with the provisions of the Michigan No Fault Insurance Law, including residual liability insurance with a minimum combined single limit of \$1,000,000 each accident for bodily injury and property damage.

Insurance companies, named insureds and policy forms may be subject to the approval of the Washtenaw County Administrator, if requested by the County Administrator. Such approval shall not be unreasonably withheld. Insurance policies shall not contain endorsements or policy conditions which reduce coverage provided to Washtenaw County. Contractor shall be responsible to Washtenaw County or insurance companies insuring Washtenaw County for all costs resulting from both financially unsound insurance companies selected by Contractor and their inadequate insurance coverage. Contractor shall furnish the other party with a letter of self-insurance and/or satisfactory certificates of insurance or a certified copy of the policy, if requested by the County Administrator.

If requested, Contractor shall furnish the County Administrator's Office with certification of insurance evidencing such coverage and endorsements at least ten (10) working days prior to commencement of services under this contract. Certificates shall be addressed to the Washtenaw County c/o: Office of Community and Economic Development & CR#\_\_\_\_\_, P. O. Box 8645, Ann Arbor, MI, 48107.

#### ARTICLE VIII - COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor will comply with all federal, state and local regulations, including but not limited to all applicable OSHA/MIOSHA requirements and the Americans with Disabilities Act.

#### ARTICLE IX - INTEREST OF CONTRACTOR AND COUNTY

The Contractor promises that it has no interest which would conflict with the performance of services required by this contract. The Contractor also promises that, in the performance of this contract, no officer, agent, employee of the County of Washtenaw, or member of its governing bodies, may participate in any decision relating to this contract which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested or has any personal or pecuniary interest. However, this paragraph does not apply if there has been compliance with the provisions of Section 3 of Act No. 317 of the Public Acts of 1968 and/or Section 30 of Act No. 156 of Public Acts of 1851, as amended by Act No. 51 of the Public Acts of 1978, whichever is applicable.

#### ARTICLE X - CONTINGENT FEES

The Contractor promises that it has not employed or retained any company or person, other than bona fide employees working solely for the Contractor, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach of this promise, the County may cancel this contract without liability or, at its discretion, deduct the full amount of the fee, commission, percentage, brokerage fee, gift or contingent fee from the compensation due the Contractor.

#### ARTICLE XI – DEBARMENT AND SUSPENSION

By signing this Contract, Contractor assures the County that it will comply with Federal Regulation 45 CFR Part 76 and certifies that to the best of its knowledge and belief the Contractor and any subcontractors retained by Contractor:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or contractor;
2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in section 2, and ;
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

## ARTICLE XII – LOBBYING

By signing this contract, Contractor assures the County that it will comply with Section 1352, Title 31 of the U.S. Code (pertaining to not using federal monies to influence federal contracting and financial transactions). The Contractor assures the County that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form - LLL, Disclosure of Lobbying Activities," in accordance with its instructions;
3. This language shall be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

## ARTICLE XIII - DRUG-FREE WORKPLACE

### Grantees Other Than Individuals

- A. As required by the Drug-Free Workplace Act of 1988, the Contractor assures the County that it will or will continue to provide a drug-free workplace by:
- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - b) Establishing an on-going drug-free awareness program to inform employees about—
    - 1) The dangers of drug abuse in the workplace;
    - 2) The grantee's policy of maintaining a drug-free workplace;
    - 3) Any available drug counseling, rehabilitation, *and* employee assistance programs; and
    - 4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
  - d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
    - 1) Abide by the terms of the statement; and
    - 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
  - e) Notifying the County, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to the County;
  - f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- g) Making a good faith effort to continue to maintain a drug- free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

#### Grantees Who Are Individuals

As required by the Drug-Free Workplace Act of 1988:

- A. As a condition of the grant, the Contractor assures the County that it will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and
- B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, the Contractor agrees to report the conviction, in writing, within 10 calendar days of the conviction, to the County.

#### ARTICLE XIV - FEDERAL PROCUREMENT STANDARDS

The Contractor assures the County that it will follow federal procurement standards as described in the Code of Federal Regulations section 2 CFR Part 215.4 when procuring goods or services with federal funds to insure that procurement decisions are made ethically and with free and open competition among those providing the goods or services.

#### ARTICLE XV - EQUAL EMPLOYMENT OPPORTUNITY

The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, national origin, physical handicap, age, height, weight, marital status, veteran status, religion and political belief (except as it relates to a bona fide occupational qualification reasonably necessary to the normal operation of the business).

The CITY and COUNTY acknowledge that both parties have adopted ordinances and/or policies to eliminate discrimination based on sex, race, sexual orientation, or a handicap in the hiring of applicant and the treatment of employees.

The Contractor agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of the Contractor, will state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, national origin, physical handicap, age, height, weight, marital status, veteran status, religion and political belief.

#### ARTICLE XVI - LIVING WAGE

The parties understand that the County has enacted a Living Wage Ordinance that requires covered vendors who execute a service or professional service contract with the County to pay their employees under that contract, a minimum of either \$11.05 per hour with benefits or \$ 12.96 per hour without benefits. Contractor agrees to comply with this Ordinance in paying its employees. Contractor understands and agrees that an adjustment of the living wage amounts, based upon the Health and Human Services poverty guidelines, will be made on or before April 30, 2012 and annually thereafter which amount shall be automatically incorporated into this contract. County agrees to give Contractor thirty (30) days written notice of such change. Contractor agrees to post a notice containing the County's Living Wage requirements at a location at its place of business accessed by its employees.

## ARTICLE XVII - EQUAL ACCESS

The Contractor shall provide the services set forth in Article I without discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, marital status, physical handicap, or age.

## ARTICLE XVIII - OWNERSHIP OF DOCUMENTS AND PUBLICATION

All documents developed as a result of this contract will be freely available to the public. None may be copyrighted by the Contractor. During the performance of the services, the Contractor will be responsible for any loss of or damage to the documents while they are in its possession and must restore the loss or damage at its expense. Any use of the information and results of this contract by the Contractor must reference the project sponsorship by the County. Any publication of the information or results must be co-authored by the County.

## ARTICLE XIX - ASSIGNS AND SUCCESSORS

This contract is binding on the County and the Contractor, their successors and assigns. Neither the County nor the Contractor will assign or transfer its interest in this contract without the written consent of the other.

## ARTICLE XX - TERMINATION OF CONTRACT

Section 1 - Termination without cause. Either party may terminate the contract by giving thirty (30) days written notice to the other party.

## ARTICLE XXI - PAYROLL TAXES

The Contractor is responsible for all applicable state and federal social security benefits and unemployment taxes and agrees to indemnify and protect the County against such liability.

## ARTICLE XXII- PRACTICE AND ETHICS

The parties will conform to the code of ethics of their respective national professional associations.

## ARTICLE XXIII- CHANGES IN SCOPE OR SCHEDULE OF SERVICES

Changes mutually agreed upon by the County and the Contractor, will be incorporated into this contract by written amendments signed by both parties.

## ARTICLE XXIV - CHOICE OF LAW AND FORUM

This contract is to be interpreted by the laws of Michigan. The parties agree that the proper forum for litigation arising out of this contract is in Washtenaw County, Michigan.

ARTICLE XXV - EXTENT OF CONTRACT

This contract represents the entire agreement between the parties and supersedes all prior representations, negotiations or agreements whether written or oral.

ATTESTED TO:

WASHTENAW COUNTY

By: \_\_\_\_\_  
Lawrence Kestenbaum (DATE)  
County Clerk/Register

By: \_\_\_\_\_  
Verna J. McDaniel (DATE)  
County Administrator

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
**Mary Jo Callan** (DATE)

By: \_\_\_\_\_  
Curtis N. Hedger (DATE)  
Office of Corporation Counsel

CITY OF ANN ARBOR

By: \_\_\_\_\_  
John Hieftje (Date)  
Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry (Date)  
City Clerk

Approved as to Substance

By: \_\_\_\_\_  
Steven D. Powers (Date)  
City Administrator

By: \_\_\_\_\_  
Sumedh Bahl (Date)  
Community Services Administrator

Approved as to Form:

By: \_\_\_\_\_  
Stephen K. Postema (Date)  
City Attorney

Exhibit A: Approved Work Plan