

RESOLUTION

WHEREAS, Rutherford County desires to enter into a Contract with Greater Nashville Regional Council for personal/professional services relative to the administrative and management services and assistance of the Tennessee Housing Development Agency HOME Grant for a fee of Seven Thousand Two Dollars (\$7,200.00).

THEREFORE BE IT RESOLVED by the Rutherford County Board of Commissioners that the County Mayor be authorized to execute a Contract with Greater Nashville Regional Council for personal/professional services for the administrative and management services of the Tennessee Housing Development Agency HOME Grant, a copy of the same being attached hereto as "Exhibit 1" and incorporated herein by reference as if set forth herein at length verbatim.

RESOLVED this 16th day of October, 2014.

RUTHERFORD COUNTY, TN

BY: _____
ERNEST G. BURGESS, Chairman

ATTEST:

LISA CROWELL, County Clerk

CONTRACT

**PERSONAL/PROFESSIONAL SERVICES
CONTRACT NUMBER 14-THDA-H-10
FOR
ADMINISTRATIVE AND MANAGEMENT SERVICES AND ASSISTANCE**

**BY
AND
BETWEEN**

**RUTHERFORD COUNTY
AND
GREATER NASHVILLE REGIONAL COUNCIL**

This Personal/Professional Services Contract made and entered into as of the 16th day of October, 2014 by and between the County of Rutherford (COUNTY) and the Greater Nashville Regional Council (COUNCIL).

DECLARATIONS

1. The COUNTY intends to provide certain owner occupied housing rehabilitation, referred to as the "Project," with funds from the Tennessee Housing Development Agency HOME Grant (HOUSING Program), made available through the Tennessee Housing Development Agency (THDA).
2. There are certain administrative and management functions, identified in the "Scope of Services," associated with the Project and required under the HOUSING program.
3. The COUNCIL is equipped, competent, and able to undertake the administrative and management functions associated with this Project.
4. The COUNTY has indicated its desire to engage the COUNCIL to render certain professional, administrative and management services in connection with the Project.

The County of Rutherford and the Greater Nashville Regional Council, therefore, in consideration of the premises, the mutual covenants and promises set forth here, and other good and valuable consideration, receipt and legal sufficiency of which is acknowledged, mutually agree as set out in this contract.

SECTION 1. EMPLOYMENT OF THE COUNCIL

The COUNTY agrees to retain the COUNCIL and the COUNCIL agrees to perform the professional services required in connection with the Project as stated in the "Scope of Services" and, for the satisfactory performance of these services, the COUNTY agrees to pay to the COUNCIL the stated compensation.

SECTION 2. SCOPE OF SERVICE

The COUNCIL shall perform the following administrative and management assistance services for the Project and shall perform them in a satisfactory and proper manner in accordance with the regulations of the funding agency or agencies:

- A. Assist the COUNTY in the development of policies and procedures for the operation of the HOUSING project.
- B. Assist with preparation of all contract documentation necessary to begin Project implementation, including meeting contract conditions of THDA.
- C. Take applications from property owners and verify ownership and tenant income.
- D. Assist in arranging a code inspection for the home of each qualified applicant.
- E. Monitor the work write-up prepared by the housing inspector.
- F. Develop a Priority List based on individual need and dwelling condition that lists the order in which houses are to be rehabilitated.

- G. Hold a pre-bid conference to review Policies and Procedures, code inspections, method of payment and grievance procedures.
- H. Arrange for bidders to be monitored as they conduct on-site inspections.
- I. Arrange for the receipt of bids and the awarding of contracts.
- J. Hold a pre-construction conference with the owner and the contractor to review the rehabilitation contract.
- K. Assist the COUNTY in the periodic inspection of the work in progress and arrange for payments to the rehabilitation contractor.
- L. Assist the COUNTY in arrangements for a final inspection, with the owner and the contractor in attendance, and suggest items for a final punch list, if necessary.
- M. Assist the COUNTY in arrangements to inspect the house with the owner to make certain all punch list items have been addressed.
- N. Send the Certification of Completion and Final Inspection to the THDA with the final pay request for the project and submit the Project Completion Report to the THDA.
- O. In all cases, the COUNCIL will provide and maintain the necessary documentation for inclusion in files that must be maintained by the COUNTY.
- P. Maintain administrative record keeping files.
- Q. Assist in removing any contract conditions and securing release of funds.
- R. Assist in establishing procedures for financial management of Contract.
- S. Prepare and submit any necessary budget amendments.
- T. Monitor records for completeness.
- U. Prepare, coordinate, and submit all necessary reports, forms, and documents, including but not limited to all environmental reviews and reports.
- V. Respond to all other requested assistance by the COUNTY needed for the completion of the Project.

SECTION 3. COUNTY'S or CITY'S RESPONSIBILITIES

The COUNTY shall provide to the COUNCIL complete and full information that is required and necessary for the COUNCIL to fulfill the Scope of Services. The COUNTY shall:

- A. Bear all costs incidental to compliance with the requirements of this Project.
- B. Designate, in writing, a person to act as the COUNTY'S local representative.
- C. Provide the COUNCIL with all available information that is pertinent to the Project.
- D. Guarantee access to the Project site(s) and make all provisions for the COUNCIL to enter upon public and private lands as required to perform surveys, inspections, or other work essential to the development of the Project.
- E. Give thorough considerations to all documents presented by the COUNCIL, and inform the COUNCIL of all decisions within a reasonable time so as not to delay the timely completion of this Project.
- F. Hold promptly all required special meetings, serve all public and private notices, receive and act upon all protests and fulfill all requirements necessary in the development of the Project and pay all attendant incidental costs.

- G. Furnish approvals and permits from all government authorities having jurisdiction over the Project and other approvals and consents necessary for the completion of the Project.
- H. Comply with all applicable federal, state, and local laws and regulations as relate to this Project.

SECTION 4. TIME OF PERFORMANCE

The COUNTY and the COUNCIL agree that the term of this contract is from October 9, 2014 to the final acceptance by THDA of the Project Completion Report.

SECTION 5. INDEPENDENT CONTRACTOR STATUS

- A. The COUNCIL is skilled, trained, knowledgeable, and experienced in the area of grant administration and management and in the requirements of state agencies such as the Tennessee Housing Development Agency (THDA). The COUNCIL is offering its services under this Contract as an independent contractor to the COUNTY. In determining the existence of the COUNCIL'S independent contractor status, the common law right to control applies. It is understood and agreed by the COUNCIL and the COUNTY that the COUNCIL is and will be viewed, treated, and held out to be an independent contractor. As such the COUNCIL will be responsible for any federal, state, and local taxes payable under this contract. The COUNCIL is not an employee or agent of the COUNTY and is not eligible for and will not receive any benefits through the COUNTY, including without limitation federal, social security, health or dental or prescription of life insurance benefits, credit union or deferred compensation plans, and annual and sick leave benefits.
- B. The COUNTY under this Contract will not:
 - (1.) Provide instruction, training, supervision, oversight, control or direction in the modes, ways, methods, details, manner, or means of how the COUNCIL is to do the work or performs services under this Contract. The COUNCIL'S means of performance of this Contract are within the COUNCIL'S exclusive control.
 - (2.) Require schedule or routine or work except final completion date on assigned work, meetings, or projects.
 - (3.) Infringe or inhibit the COUNCIL'S right and ability to employ or to contract with others in assisting the COUNCIL in the performance of this Contract except that the COUNCIL warrants to the COUNTY that it will adhere to the provisions of the non-discrimination and non-financial interest provisions of this Contract.
 - (4.) Require that the COUNCIL work exclusively for the COUNTY.
 - (5.) Hold out, present, or imply to others that the COUNCIL is and agent, representative, or employee of the COUNTY.
- C. All work performed by the COUNCIL under this Contract will be considered work made for hire and will be the property of the COUNTY.
- D. **Personnel**
 - (1.) The COUNCIL represents that it has, or will secure at its own expense, all personnel required in performing the Scope of Services under this Contract. These personnel may not be employees of or have any contractual employment relationship with the COUNTY, the State of Tennessee, or THDA.
 - (2.) All of the services required will be performed by the COUNCIL staff or independent contractors engaged by the COUNCIL, and all personnel engaged in the work will be fully qualified and authorized or permitted under state and local law to perform these services.
 - (3.) None of the work or services covered by this Contract may be subcontracted without the prior written approval of the COUNTY. Any work or services subcontracted must be specified by written contract or agreement and is subject to each provision of this Contract.

SECTION 6. COMPENSATION

For services rendered under Section 2, Scope of Services, the COUNTY shall pay to the COUNCIL the maximum sum of: **SEVEN THOUSAND TWO HUNDRED and No/100 Dollars (\$7,200.00)**.

This compensation is for the COUNCIL'S direct and indirect labor costs, general and administrative overhead costs, travel expenses, or expenses for independent contractor or contractors retained by the COUNCIL for the purposes of assisting the COUNCIL in the fulfillment of this Contract. This maximum amount may not be exceeded except as authorized by written amendment to this contract agreed upon the COUNTY, THDA, and the COUNCIL.

Nothing contained in this contract limits or otherwise affects any local membership contributions/dues normally remitted to the COUNCIL by the COUNTY for services rendered outside the scope of this Contract.

Upon receipt of an invoice for services the COUNTY shall make payment to the COUNCIL. Invoice shall be sent at intervals of no more than one per month.

The COUNTY'S remuneration to the COUNCIL for the services rendered under Section 2, Scope of Services, shall be from funds received by the COUNTY from the Tennessee Housing Development Agency (THDA).

SECTION 7. TERMS AND CONDITIONS

A. Termination of Contract for Breach

If, through any cause, either the COUNCIL or the COUNTY materially breaches this Contract, the non-breaching party may terminate this Contract. A material breach is, among others, a violation of any provision found in Sections 2, 3, 5, 6, or 7, subsections J, K, L, M, N, O, P. The party seeking termination may initiate termination of this Contract by giving written notice to the other party of the pending termination and specifying the reason(s). This written notice shall be delivered to the breaching party and the breaching party has fifteen (15) days after receipt to cure the breach. If the breaching party fails to cure the breach, the non-breaching party may terminate the Contract. In this event, all finished or unfinished documents, data, studies, surveys, drawings, and maps prepared under this Contract shall be delivered to and be the property of the COUNTY, and the COUNCIL shall receive just and equitable compensation for any contract work satisfactorily completed. The remedies contained within this subsection are the exclusive remedies for either party for breach of contract.

B. Termination for Convenience

Either party may terminate this Contract at any time by giving at least ten (10) days notice in writing to the other party. If the Contract is terminated by the COUNTY, the COUNCIL will be paid for the time provided and expenses incurred up to the termination date and the COUNTY shall receive all finished and unfinished documents, data, studies, surveys, drawings, and maps prepared under this Contract by the Council. The remedies contained within this subsection are the exclusive remedies for either party upon termination for convenience.

C. Changes

The COUNTY may, from time to time, request changes in the Scope of Services to be performed by the COUNCIL. Any such change, including any increase or decrease in the amount of the COUNCIL'S compensation, that are mutually agreed upon by and between the COUNTY and the COUNCIL, shall be incorporated in written amendments to this Contract. Any increases in compensation to the COUNCIL due to such an amendment in excess of the Contract amount as stated in Section 6, Compensation, must be approved by THDA before the written amendment's execution.

E. Assignability

The COUNCIL may not assign any interest in this Contract, and may not transfer any interest in it (whether by assignment or novation), without the prior written consent of the COUNTY. Claims for money by the COUNCIL from the COUNTY under this Contract,

however, may be assigned to a bank, trust company, or other financial institution without this approval. Written notice of any such assignment or transfer shall be furnished promptly to the COUNTY.

F. **Reports and Information**

The COUNCIL, at times and on forms the COUNTY requires, shall furnish the COUNTY periodic reports it requests pertaining to the work or services undertaken under this Contract, the costs and obligations incurred or to be incurred in connection with it, and any other matters covered by this Contract.

G. **Records and Audits**

The COUNCIL shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and any other records deemed necessary by the COUNTY 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 COUNTY or any authorized representatives, and will be retained for three years after the expiration of this Contract unless permission to destroy them is granted by COUNTY.

H. **Findings Confidential**

To the extent permitted by law, all reports and information concerning a person's financial or personal data or a business's financial or personnel data prepared or assembled by the COUNCIL under this Contract are confidential, and the COUNCIL agrees that they will not be made available to any individual or organization without the prior written approval of the COUNTY.

I. **Copyright**

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

J. **Compliance with Local Laws**

In fulfilling their obligations under this Contract, the parties shall comply with all applicable laws, ordinances and codes of the State and local governments.

K. **Equal Employment Opportunity; Civil Rights Act of 1964; Section 109 of the Housing and Community Development Act of 1974; Section 3 Compliance in the Provision of Training, Employment and Business Opportunity**

During the performance of this Contract, the parties to this Contract agree as follows:

(1.) **Equal Employment Opportunity**

- (a.) The parties will not discriminate against any employee or applicant for employment because of handicap and/or disability, age, race, creed, religion, sex, color or national origin, or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law. The parties will take affirmative action to ensure that applicants and employees are treated without regard to their handicap and/or disability, age, race, creed, sex, religion, color or national origin, or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law. These actions include, but are 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 parties agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- (b.) The parties will, in all solicitations or advertisements for employees placed by or on behalf of the parties, state that all qualified applicants will receive consideration for employment without regard to handicap and/or disability, age, race, creed, color, sex, national origin or religion or any

other classification protected by Federal and/or Tennessee State constitution and/or statutory law.

- (c.) The parties will comply with all provisions of Executive Order 11246 of September 24, 1965, and by the rules, regulations, and relevant orders of the Secretary of Labor.
- (d.) The parties will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, and will permit access to their books, records, and accounts by the parties, THDA, and the Secretary of Labor for purposes of investigation to ascertain compliance with those rules, regulations, and orders.
- (e.) In the event of either party's non-compliance with the equal opportunity clauses of this Contract or with any of the noted rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the non-complying party may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (f.) The parties will include the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued under Section 204 of Executive Order 11246 of September 24, 1965, such as contracts or subcontracts for standard commercial supplies or raw materials, so that these provisions will be binding upon each nonexempt subcontractor or vendor. The parties will take action with respect to any subcontract or purchase order as either party directs as a means of enforcing these provisions, including sanctions for non-compliance. If the parties become involved in, or are threatened with, litigation with a subcontractor or vendor as a result of this action by the parties, the parties may request the United States to enter the litigation to protect the interests of the United States.

(2.) **Civil Rights Act of 1964**

Under Title VI of the Civil Rights Act of 1964, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

(3.) **Section 109 of the Housing and Community Development Act of 1974**

No person in the United States may on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the Housing and Community Development Act of 1974.

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

- (a.) The work to be performed under this Contract is on a project assisted under the State HOME program, which provides federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given 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.

- (b.) The parties to this Contract will comply with the provisions of Section 3 and the regulations issued under it by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
- (c.) The parties to this Contract 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 labor organization or workers' representative of its 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.
- (d.) The parties to this Contract will include this Section 3 clause in every subcontract for work in connection with the Project and will, at the direction of the applicant for or a recipient of federal financial assistance, take appropriate action under the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The parties 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 Part 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.
- (e.) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued prior to the execution of the Contract, are a condition of the federal financial assistance provided to the Project, and are binding upon the applicant or recipient for this assistance, its successors and assigns. Failure to fulfill these requirements subjects the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to sanctions specified by 24 CFR Part 135.

L. **Warranty of Non-Financial Interest and Non-Payment**

The COUNCIL warrants that no part of the funds received by the COUNCIL in the performance of this Contract will be paid directly or indirectly to an employee or official of the COUNTY, the State of Tennessee, or the federal government as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the COUNCIL in connection with any work contemplated or performed by the COUNCIL relative to this Contract.

M. **Federal Lobbying Disclosure Assurances**

The parties certify, to the best of their knowledge and belief that:

- (1.) No federal appropriated funds have been paid or will be paid, by or on behalf of the parties, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an officer or employee of Congress in connection with the awarding of any federal contract; the making of any federal grant; the making of any federal loan; entering into any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or co-operative 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, or an officer or employee of Congress in connection with a federal contract, grant, loan, or cooperative agreement, the parties shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- (3.) COUNCIL shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

N. **Drug Free Work Place**

The parties certify that they will continue to be a drug free workplace and will comply with the provisions of the Drug Free Workplace Act of 1988.

O. **Limitation of Liability**

- (1.) It is expressly agreed by the parties that the COUNCIL does not have or assume any liability nor responsibility for information or data obtained from other sources or generated by the COUNCIL from data, maps, or other information available to the COUNCIL that is associated with or included in the Environmental Review Record as it pertains to wetlands or in any construction related activities or effects of construction related activities of this Project to wetlands. To the extent permitted by law, the COUNTY agrees to indemnify and hold harmless the COUNCIL, its officials, member governments, and its employees from any claims, demands, actions or causes of action of whatever nature or character, damages, losses and expenses, including but not limited to attorney fees, arising out of any construction related activities or effects of construction related activities of this Project on wetlands or other habitat, plants, and animals protected by either state or federal laws or regulations.
- (2.) To the extent permitted by law, the COUNTY agrees to indemnify and hold harmless the COUNCIL, its member governments, its officers and employees from all claims, losses, or suits occurring or resulting from any person, firm, corporation or other entity that may be injured or damaged as a result of acts or omissions of the COUNTY, its agents or contractors in construction of the Project.
- (3.) The COUNTY, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et seq.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the COUNCIL beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.
- (4.) The COUNTY agrees that if the COUNCIL deems it necessary to take legal action or to defend itself in a legal action and the action arises or results from this contract, the COUNTY shall compensate the COUNCIL for its reasonable attorney fees and costs for this litigation.

P. **Interest of COUNCIL and Employees, Member of COUNTY or CITY, Other Local Public Officials**

- (1.) The COUNCIL covenants that it has no interest and will not acquire interest, direct or indirect, in the Project area or any parcels in the project area or any other interest that would conflict in any manner or degree with the performance of the services under this contract. The COUNCIL further covenants that in the performance of this Contract, no person having any such interest will be employed by the COUNCIL.
- (2.) The COUNTY covenants that no member of the governing body of the COUNTY and no other officer, employee, or agent of the COUNTY who exercises any functions or responsibilities in connection with the planning and carrying out of the Project will have any personal financial interest, direct or indirect, in this Contract; and the COUNTY shall take appropriate steps to assure compliance.

Q. This Contract shall be governed by laws of State of Tennessee.

- R. This Contract entered into in the County of Rutherford, State of Tennessee.
- S. This Contract is not binding upon the parties until it is executed by the duly authorized officials of the parties.
- T. Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, that provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

The parties have executed and made this Contract as of the date set out above.

COUNTY OF RUTHERFORD

BY: _____
NAME: Ernest Burgess
TITLE: County Mayor

GREATER NASHVILLE REGIONAL COUNCIL

BY: _____
NAME: Kim McMillan
TITLE: President, Greater Nashville Regional Council