

SAMPLE PROFESSIONAL SERVICE CONTRACT

**INDIANAPOLIS HOUSING AGENCY  
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, entered into as of this 18th, day of May 2006 between the Indianapolis Housing Agency, an Independent Public Governmental Agency of the State of Indiana, hereinafter referred to as the Agency and \_\_\_\_\_, Inc. located at \_\_\_\_\_, Indianapolis, Indiana 462\_\_ and hereinafter referred to as Contractor.

**WITNESSETH:**

WHEREAS, the Agency desires to engage the Contractor to render certain professional services, described as \_\_\_\_\_ for \_\_\_\_\_ as set forth in Attachment A, Scope of Services which is incorporated by reference herein; and

WHEREAS, the Agency in engaging the Contractor as named herein desires to provide for the efficient and orderly performance of the designated Services; and

WHEREAS, the Contractor represents that it possesses the necessary skills to perform the Services as herein stated, in a manner which is responsive to the Agency needs in all respects; and

WHEREAS, the Agency through its approval process and for the benefit of the public has selected the Contractor who is qualified to carry out the objectives of this contract as described herein; and

WHEREAS, the objectives of this Contract is for Contractor to provide long range and strategic planning and other related services for the Agency as set forth in Attachment A, Scope of Services, response to Agency RFP.;

WHEREAS, other related services may be provided in support of the Services under this Contract.

NOW THEREFORE, in consideration of the premises, the mutual undertakings and benefits to accrue to the parties and to the public, the parties hereto agree as follows:

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### **1. ENGAGEMENT OF THE CONTRACTOR AND CONTRACTORS RESPONSIBILITIES**

1.01 The Agency hereby engages the Contractor and the Contractor hereby agrees to faithfully and diligently perform the Services hereinafter set forth in Attachment A, Response to the RFP, in accordance with the terms and conditions contained in this Contract.

1.02 The Contractor shall perform in a satisfactory, expeditious and proper manner, as shall be determined within the sole and reasonable discretion of the Agency, the Services as described in Attachment A . In the event that there shall be any dispute between the parties with regard to the extent, execution, character and progress of the Services to be performed or the quality of performance under this Contract, the interpretation and determination of the Agency shall govern.

1.03 The Contractor shall confer as necessary and cooperate with the Agency in order that the work may proceed in an efficient and satisfactory manner. The Services are deemed to include all conferences, consultations and public hearings deemed necessary by the Agency to insure that the Contractor shall be able to fully perform the objectives as set forth in this Contract. Upon request of the Agency, the Contractor shall submit for Contractor's services work schedules which may be adjusted as the project(s) proceed, and said schedules shall include allowances for reasonable periods of time for review and approval of submissions by the Agency and other authorities having jurisdiction over the project(s). Time limits established by said schedule approved by the Agency shall not, except for reasonable cause, be exceeded by the Contractor or the Agency unless otherwise mutually agreed in writing and set forth in an Amendment and approved by the Authorities having jurisdiction.

1.04 The Contractor shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all Services furnished by it or its Associates under this Contract. The Contractor shall, without additional compensation, correct or revise without delay any errors or deficiencies in its Services.

### **2. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

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2.01 To induce the Agency to enter into the Contract, the Contractor represents and warrants as follows:

(a) The Contractor is incorporated or organized as a sole proprietorship or partnership, and is authorized to do business under the laws of the City of Indianapolis, Marion County and State of Indiana, and is duly qualified to perform the Services as set forth in the Contract. The Contractor's address and chief place of business is that as set forth above on page one (1) of this Contract.

(b) The execution, delivery and performance thereof are within the Contractors authorized powers and are not in contravention of law or the terms of the Contractors incorporation or organizational charter and/or bylaws.

**3. UNCLASSIFIED SERVICE/INDEPENDENT CONTRACTOR**

3.01 The relationship of the Contractor to the Agency is to be that of an independent contractor and no liability or benefits, such as retirement benefits or liabilities, pension rights or liabilities, insurance rights or liabilities, holiday pay, sick pay, vacation pay, personal injury or property insurance rights or liabilities arising out of a contract for hire or employer-employee relationship either express or implied shall arise or accrue to either party as the result of this agreement and undertaking. The Contractor shall under no circumstances, represent himself/herself as an employee of the Agency or City of Indianapolis.

**4. TERM OF CONTRACT**

4.01 This Contract is effective for the period of twelve months commencing on the date the Contract is completely executed, unless properly amended or terminated as provided herein. The Contract may be renewed by written agreement upon its expiration.

4.02 The term of this Contract shall be from \_\_\_2007 through \_\_\_\_, XXX

4.03 Prior to the execution of this Contract, the Contractor shall have no authority to begin work under this Contract. The Agency's Contracting Officer and/or his designee shall not authorize any payments to the Contractor prior to such award, nor shall the Agency incur any liability to reimburse the Contractor regarding any expenditure for the purchase of materials or the payment for Services prior to commencement of this Contract. The Contract shall not become effective until the Contract has been approved and signed by the authorities having jurisdiction over this Contract.

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4.04 Upon receipt of a Notice to Proceed or Task Order, the Contractor shall provide all related services necessary for the accomplishment of the tasks delineated in the Scope of Services contained in Attachment A, Response to RFP.

4.05 The Contractor shall bear the risk of not being paid for services performed prior to the execution of this contract.

**5. PERSONNEL AND CONTRACT ADMINISTRATION**

5.01 The Contractor represents that it has or shall at its own expense, obtain all personnel required to perform the Services. All of the Services required hereunder shall be performed by the Contractor or under its supervision.

5.02 To ensure proper performance of the Services and a quality Work Product, the Contractor warrants that all personnel assigned to perform the services or other consultants or subcontractors engaged by the Contractor to perform the services, are fully qualified and authorized to perform such services under the state and local laws and governing professional association rules, if any, where such employee, subcontractor or consultant is employed.

5.03 The Contractor hereby waives any claim against the Agency and agrees not to hold the Agency liable for personal injury or property damages incurred by it, its employees or associates under this Contract, unless it is found in a court of competent jurisdiction to be directly attributable to the gross negligence or malicious intentional conduct of an employee of the Agency acting within the scope of his employment. The Contractor further agrees to hold the Agency harmless from any such claim by its employees or associates.

5.04 The Contract Monitor shall manage the project unless otherwise designated in the Scope of Services.

5.05 No substitutes of any of the key personnel shall be made by the Contractor without the prior written consent of the Agency. Said consent shall not be unreasonably withheld.

**6. COMPENSATION**

6.01 The Agency shall compensate the Contractor for services as specified in Attachment B that is attached hereto and incorporated by reference herein as part of this Contract. Agency shall pay Contractor at the rate described in Attachment A Scope of Services and Fee Schedule. Compensation shall not exceed \$ XX, 000.00 (\_\_\_\_ thousand dollars and zero cents)

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6.02 The intent of this Contract is for the Agency and the Contractor to enter into a firm fixed fee Contract with no provision for reimbursable expenses except as provided in other provisions herein.

6.03 Additional Services shall be provided for as set forth in Article 16 (AMENDMENTS) where applicable. Additional Services are those Services that are in addition to the Scope of Services contained in Attachment A and which require the Contractor to incur verifiable additional costs, which shall be reasonable.

Within ten (10) days after receipt of the Agency's request for Additional Services, the Contractor shall be given a cost quotation and the terms and conditions, if any, for the performance of the Additional Services. In the event the Agency deems the Contractor's cost quotation to be too high or its terms to be unacceptable, the Agency shall have the option to have the Additional Services performed by another organization of its choice.

6.04 When Contract payments are contingent upon receipt of grant funds, the Agency reserves the right to delay payments without penalty or interest until receipt of adequate funds from the Government-Grantor Agency.

The Agency reserves the right to terminate the Contract pursuant to Section 10.03 Termination for Convenience (ARTICLE 10) upon thirty (30) days notice if funds for the continued fulfillment of this Contract by the City of Indianapolis, Marion County or Department of Housing and Urban Development (HUD) or non governmental entity are at any time not forthcoming or insufficient.

6.05 The Contractor shall maintain full and complete books, ledgers, journals, accounts, documents and records reflecting all its operations pursuant to this Contract. The records shall be kept in accordance with generally accepted accounting practices and principles for a minimum of three (3) years from the Contract completion date. The Agency and any Government-Grantor Agency providing funding under this Contract and/or the project to which this Contract is related, shall have the right at any time and from time to time, without notice, to examine and audit all records and other supporting data as the Agency or other Government-Grantor Agency deems necessary of the Contractor or any consultants, subcontractors or agents rendering services under this Contract, whether direct or indirect.

The Contractor shall make all records available for examination during normal business hours at its Indianapolis office(s) or alternatively at its facility nearest Indianapolis. The Contractor shall make copies of all records on request.

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The Contractor agrees to include the covenants contained in this section in any Contract it has with any subcontractor, consultant or agent whose service shall be charged directly or indirectly to the Agency on this project.

### **7. METHOD OF PAYMENT**

7.01 Payment for the proper performance and Agency approval of the Services, and Additional Services or Reimbursable Expenses, if included in Scope of Services, shall be commensurate with the scheduled progress of the work as evidenced by the timely receipt of the Agency approved Reports and services and shall be contingent upon receipt by the Agency and invoice for payment. The Invoice shall certify the total cost of the Services rendered to the project to date, the total cost of Reimbursable Expenses, if allowed, rendered to the project to date, the cost of Additional Services rendered to the project to date for that billing period. The following shall be itemized:

- (a) each expenditure and/or charge;
- (b) the services rendered pursuant thereto; and
- (c) the date such services were rendered

The appropriate receipts shall be attached. The invoices must be received by the Agency not more than thirty (30) days after the close of each calendar month and signed by an authorized officer or designee of the Contractor. The invoice shall be paid within thirty (30) days of receipt and approval of the invoice.

7.02 Invoices and Reports shall be directed to the attention of the Contract Monitor. Checks as payment for Services rendered hereunder shall be drawn to the order of the Contractor and mailed to the Contractor at the address stated in Article 19.

The making of payments, including partial payments by the Agency to the Contractor in the manner aforesaid, shall vest in the Agency title to, and the right to take possession of all Work Products produced by the Contractor up to the time of such payments. The Agency shall have the right to use the same for public purposes or make any desirable alternatives thereto without other or further compensation to the Contractor or to any other person.

### **8. INDEMNITY AND DAMAGES**

8.01 The Contractor agrees to save harmless the Agency against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses, including without limitation, fees and expenses of attorneys, expert witnesses and other consultants (at the prevailing market rate for such person or firms) which may be imposed upon, incurred by or asserted against the Agency by reason of any of the following occurring

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during the term of this Contract:

(a) Any negligent or tortious act, error or omission of the Contractor, or any of its Associates for whose acts any of them might be liable, regardless of whether or not it is caused in part by a person indemnified hereunder.

(b) Any failure by the Contractor, or any of its Associates to perform its obligations, either implied or expressed under this Contract.

The Contractor also agrees to hold the Agency harmless from any and all injury to the person or damage to the property of, or any loss or expense incurred by an employee of the Agency which arises out of or pursuant to the Contractor's performance or that of its Associates under this Contract.

8.02 The Contractor undertakes and assumes all risk of dangerous conditions, if any, in and about any Agency premises and agrees to make an examination of all places where said Services are to be performed in order to determine whether such places are safe for the performance of the Services. The Contractor also agrees to waive and release any claim or liability against the Agency for personal injuries or property damage while performing under this Contract on premises which are not owned by the Agency.

8.03 In the event any action or proceeding shall be brought against the Agency by reason of any claim covered hereunder, the Contractor, upon notice from the Agency shall at its sole cost and expense, resist and defend the same with counsel of the Contractor's choice, which is acceptable to the Agency.

8.04 The Contractor agrees that it is its responsibility and not the responsibility of the Agency to safeguard the property and materials that it or any of its Associates use or have in their possession while performing under this Contract. Further, the Contractor agrees to hold the Agency harmless for any loss of such property and materials used by any such persons pursuant to the Contractor's performance under this Contract or which is in their possession.

8.05 The indemnification obligation under this article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by the Contractor under Worker's Compensation Acts or other employee benefit acts. In addition, the Contractor agrees to hold the Agency harmless from the payment of any deductible on any insurance policy.

8.06 The Contractor agrees that this Article shall apply to all matters described herein which occurs or arises between the Contractor or its Associates and the Agency. The Contractor agrees to save the Agency harmless therefrom as provided in this Article.

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8.07 For the purpose of the hold harmless and indemnity provision contained in the Contract, the term Agency shall be deemed to include the City of Indianapolis, Marion County and all other associated, affiliated, allied or subsidiary entities or commission, their officers, agents representatives and employees now existing or hereafter created.

**9. INSURANCE**

9.01 The Contractor shall maintain at its expense during the term of this Contract the following insurance:

Worker’s Compensation & Disability	Statutory Requirements
Employers Liability Bodily Injury by Accident	\$1 million each accident
Bodily Injury by Disease	\$500,000 policy limit \$100,000 each employee

Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products/completed operations, errors & omissions.

General Aggregate (other than Products/Completed Operations)	\$2,000,000.00
Personal and Advertising Injury Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00
Fire Damage (any one fire)	\$ 300,000
Medical expense limit (any one person)	\$ 10,000
Comprehensive Auto Liability (Owned, hired and non-owned)	\$1 million each Occurrence and aggregate
Bodily injury and property damage	\$50,000.00 (single limit)

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Real Estate Errors and Omissions

N/A

With the prior approval of the Agency, Contractor may substitute different limits of liability for those specified as long as the total amount of required protection is not reduced.

The Commercial General Liability Insurance policy shall name as an additional insured the Indianapolis Housing Agency and City of Indianapolis and shall state that the Contractor's insurance is primary, with respect to the Indianapolis Housing Agency and City of Indianapolis as an additional insured, and not excess over any insurance already carried by the Indianapolis Housing Agency and City of Indianapolis.

9.02 If during the term of this Contract changed conditions or other pertinent factors should, in the reasonable judgment of the Agency, render inadequate the insurance limits or types of coverage, the Contractor shall furnish or demand from its insurer such additional coverage as may reasonably be required under the circumstances. All such insurance shall be affected at the Contractor's expense under valid and enforceable policies, issued by insurers of recognized responsibility, which are well-rated by national rating organizations and are acceptable to the Agency.

9.03 All policies shall name the Contractor as the insured and shall be accompanied by a commitment from the insurer that such policies shall not be canceled, or reduced without at least thirty (30) days prior written notice to the Agency. A Certificate of Insurance evidencing such coverage shall be submitted to the Materials and Contract Manager prior to the commencement of performance under this Contract and at least fifteen (15) days prior to the expiration dates of expiring policies. In the event that the policies lapse and not be renewed, the contract is subject to termination.

9.04 If any work is sublet in connection with this Contract, the Contractor shall require each subcontractor to effect and maintain the types and limits of insurance as requested by the Agency and shall require documentation of same, copies of which documentation shall be promptly furnished to the Agency.

## **10. DEFAULT AND TERMINATION**

10.01 The Contract shall remain in full force and effect until terminated according to Article 4 (TERM OF CONTRACT) unless otherwise terminated for cause or convenience according to Section 10.02 and 10.03 below.

10.02 The Agency reserves the right to terminate this Contract for cause. Cause usually

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results when there is an event of default.

(a) An event of default shall be construed as a material breach of this Contract and occurs when:

(1) The Contractor fails to begin work in accordance with the terms of this Contract; or

(2) The Contractor in the judgment of the Agency is unnecessarily or unreasonably or willfully delaying the performance and completion of the Work Product or Services as set forth herein; or

(3) The Contractor abandons the work or Services to be undertaken; or

(4) The Agency is of the opinion that the work cannot be completed within the time herein provided or within such time as the completion has been extended, provided however that the impossibility of timely completion is in the Agency's judgment, attributable to conditions within the Contractor's control; or

(5) The Contractor without just cause reduces its work force to a number which, if maintained would be insufficient, in the judgment of the Agency, to complete the Services or work in accordance with the terms of this Contract or within a reasonable time in keeping with the needs of the Agency and fails to sufficiently increase such work force when directed to do so by the Agency; or

(6) The Contractor assigns, transfers, conveys, or otherwise disposes of this Contract in whole or in part without prior approval of the Agency; or

(7) Any Agency officer or employee acquires an interest directly or indirectly in this Contract; or

(8) The Contractor violates any of the provisions of this Contract, disregards applicable laws, ordinances, permits, licenses, instructions or orders dictated by the Agency; or

(9) The Contractor or any of its subcontractors, assignees or employees fail in any of the agreements herein contained; or

(10) The Contractor ceases to conduct business in the normal course by reason of insolvency, bankruptcy or any similar proceedings, whether voluntarily or involuntarily, filed under any present or future bankruptcy or other applicable law; or

(11) The Contractor admits in writing its inability to pay its debts generally as they become due.

(b) The Agency shall give the Contractor Notice of its default status and grounds or ground thereof before contract termination. Upon receiving such Notice, and within five (5) working days, the Contractor shall be given an opportunity to explain why these defaults have occurred and how they can be corrected. The Agency may decide (but it is under no obligation to do so) allow the Contractor a specific number of

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calendar days, but usually not more than fifteen (15), to take such remedial measures or make satisfactory arrangements to remove or eliminate the ground or grounds for declaring this default.

- (c) If the Agency finds the Contractor's explanation of this matter and/or the remedial steps to be taken unsatisfactory, it shall so state in writing to the Contractor, and also prepare a written report of the Contractor's default status and include all supportive data.

Notice of Termination shall be sent to the Contractor at least fifteen (15) days prior to the effective date of termination, stating the ground(s) for termination and the date of termination.

If after Notice of Termination it is determined by the Agency for any reason that the Contractor was not in default under the provision of Subsection (a), the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the termination for the convenience of the Agency.

- (d) The Contractor shall be liable to the Agency for any damages it sustains by virtue of the Contractor's breach including reasonable attorney's fees. The Agency may withhold any payment(s) to the Contractor for the purpose of damages due to the Agency from the Contractor. It is expressly understood that the Contractor shall remain liable for any damages the Agency sustains in excess of any set off. If the Contract is so terminated, the Agency may take over the Services, and pursue the same to completion by Contract with another party or otherwise.

Other remedies shall also be available to the Agency. The provisions outlined herein shall be in addition to any and all other legal or equitable remedies permissible.

10.03 The Agency may terminate this Contract in whole or in part for its convenience at any time, without incurring any further liability whatsoever, other than as stated in this Article. When the Contract is to be terminated for convenience, the Agency shall prepare a written report establishing the fact that the Contract is to be terminated. A Notice of Termination shall be sent to the Contractor, specifying the effective date thereof at least fifteen (15) days prior to the effective date of such termination. If the Contract is so terminated, the Agency shall pay the Contractor only for the Services rendered; any expenses incurred prior to termination (if expenses are allowed pursuant to Section 7.02); bonafide termination settlement costs reasonably incurred by the Contractor as determined by the Agency relating to commitments (which had become firm prior to the termination) but only to the extent that the Contractor could not have mitigated same; and such other compensation which, in the judgment of the Agency, represents a fair value of the Services provided less the amount of

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any previous payments made, which payment the Contractor agrees shall constitute full and complete payment and upon acceptance constitutes an accord and satisfaction of any and all claims of whatsoever kind or nature under this Contract. Should the Agency or the Agency's designee undertake any part of the Services which are to be performed by the Agency or its designee, the Contractor shall not be entitled to any compensation for the services so performed. The parties expressly agree that no payments under this Article shall exceed the maximum sum payable provision in Article 7 (COMPENSATION).

10.04 After receipt of a Notice of Termination and except as otherwise directed by the Agency, the Contractor shall:

- (a) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- (b) Obligate no additional Contract funds for payroll costs and other costs beyond such date as the Agency shall specify, and place no further orders on subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under this Contract as if not terminated.
- (c) Terminate any and all orders and subcontracts to the extent that they relate to the portion of work so terminated;
- (d) As of the date the termination is effective, preserve all Contract records and submit to the Agency such records and reports as the Agency shall specify, and furnish to the Agency an inventory of all furnishings, equipment, and other property purchased for the Contract, if any and carry out such directives as the Agency may issue concerning the safeguarding or disposition of files and other property; and
- (e) Submit within thirty (30) days a final report of receipts and expenditures of funds relating to this Contract and a list of all creditors, subcontractors, lessors, and/or other parties with which the Contractor has incurred financial obligations pursuant to this Contract.

## 11. ASSIGNMENT

11.01 The Contractor shall not assign, transfer, convey, encumber, or otherwise dispose of any interest whatsoever in this Contract, indirectly or directly (whether by assignment or novation), without the prior written consent of the Agency. Said written consent shall define the terms of any agreed assignment.

## 12. SUBCONTRACTING

12.01 None of the services covered by this Contract shall be subcontracted without the prior written approval of the Agency and any Government-Grantor Agency if required. The Agency reserves the right to withhold approval of subcontracting such portions of the work

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or services which the Agency may deem is not in the Agency's best interest.

12.02 Each subcontract entered into shall provide that the provisions of this Contract shall apply to the subcontractor and his officers, agents and employees in all respects as if it and they were employees of the Contractor. The Contractor agrees to bind each subcontractor and each subcontractor shall agree to be bound by the terms of the Contract insofar as applicable to its work or Services.

12.03 The Contractor and the subcontractor jointly and severally agree that no approval by the Agency of any proposed subcontractor, nor any subcontract, nor anything in this Contract shall create or be deemed to create any rights in favor of the subcontractor against the Agency, nor shall it be deemed or construed to impose upon the Agency an obligation, liability or duty to a subcontractor, or to create any contractual relation whatsoever between a subcontractor and the Agency.

12.04 The Contractor agrees to defend, indemnify and hold harmless the Agency from any claims initiated against the Agency pursuant to any subcontracts it enters into in performance of this Contract. The Agency's approval of any subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible to the Agency for the acts or defaults of its subcontractor and of each of subcontractor's officers, agents, and employees, each of who will, for this purpose be deemed to be the agent or employee of the Contractor by nature of its subcontract.

12.05 Any subcontractors, outside associates, or consultants required by the Contractor in connection with the services covered by the Contract shall be limited to individuals or firms that were specifically identified in the Agency approved Contractor's final proposal.

12.06 The Contractor shall take all steps necessary to ensure that whenever possible, subcontracts are awarded to minority firms, women's business enterprises, and labor surplus area firms.

### **13. CONFLICT OF INTEREST AND NON-COLLUSION/NON-IDENTITY/NON-INTEREST**

13.01 The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services under this Contract. The Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed.

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The Contractor further covenants that no officer, agent or employee of the Agency and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Contract has any personal or financial interest, direct or indirect, in the Contract or in the proceeds thereof, via corporate entity, partnership or otherwise. An executed Certificate of Non Organizational Conflict of Interest shall be attached and incorporated by reference to this Contract.

13.02 The Contractor warrants that to the best of its information, knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest with Agency.

13.03 The Contractor agrees that if after award of the Contract it discovers an organization conflict of interest with respect to this Contract, it shall make an immediate and full disclosure in writing to the Agency which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The Agency may terminate the Contract for convenience if it would be in the best interest of the Agency.

13.04 The Contractor also hereby warrants that it shall not and has not employed any person to solicit or secure this Contract upon any agreement or arrangement for payment of a commission, percentage, brokerage or contingent fee, other than bona fide employees working solely for the Contractor, directly or indirectly and that if this warranty is breached, the Agency may, at its option, terminate this Contract without penalty, liability or obligation or may, at its election, deduct from any amounts owed to the Contractor hereunder any amounts of such commission, percentage or contingent fee.

13.05 The Contractor covenants not to employ an employee of the Agency for a period of one (1) year after the date of termination of this Contract without Agency approval.

## **14. CONFIDENTIAL INFORMATION**

14.01 In order that the Contractor may effectively fulfill its covenants and obligations under this Contract, it may be necessary or desirable for the Agency to disclose confidential and proprietary information to the Contractor or its associates pertaining to the Agency's past, present and future activities. The Contractor shall instruct its associates to regard all information gained by each such person as a result of the services to be performed hereunder, as information which is proprietary to the Agency and not to be disclosed to any organization or individual without the prior written consent of the Agency.

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14.02 The Contractor agrees to take appropriate action with respect to its Associates to ensure that the obligations of non-use and nondisclosure of confidential information of this Contract can be fully satisfied.

**15. COMPLIANCE WITH LAWS**

15.01 The Contractor shall comply with and shall require its associates to comply with all (a) applicable Federal, state and local laws, ordinances, code(s), regulations and policies.

15.02 The Contractor shall hold the Agency harmless with respect to any damages arising from any violations of the same by it or its Associates. The Contractor shall commit no trespass on any public or private property in performing any of the Services encompassed by this Contract. The Contractor shall require as part of any subcontract that subcontractors comply with all such laws and regulations.

**16. AMENDMENTS**

16.01 The Agency may consider it in its best interest to change, modify or extend a term, condition or covenant of this Contract or require the Contractor to perform additional

16.02 Services that are not contained within the Scope of Services as set forth in Attachment A.

16.03 Any such change, addition, deletion, extension or modification of Services may require that the compensation paid to the Contractor by the Agency be proportionately adjusted, (increase or decrease), to reflect such modification in the Scope of Services.

If the Agency and Contractor mutually agree to any change or modification of this Contract, the modification shall be incorporated by written amendments to this Contract.

16.02 Amendments incorporated hereafter shall not invalidate this Contract nor relieve or release the Contractor unless expressly stated therein.

16.03 No Amendment to this Contract shall be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing and is signed and acknowledged by duly authorized representatives of both parties, executed by the Material and Contracts Manager and is approved and executed by the Executive Director. 16.04 The parties herein acknowledge that that the scope of services provided for herein are exclusive and exhaustive as provided in Attachment A, Scope of Services. Contractor herein acknowledges that it has no authority to expand the scope of services or to work beyond the contractual completion date without the expressed written consent of the Agency. If prior to receipt of written approval, Contractor works beyond scope of services or works beyond the completion/expiration date, Contractor does so at its own risk and will have no right

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to compensation in law and/or in equity.

**17. FAIR EMPLOYMENT PRACTICES**

17.01 In accordance with the U.S. Constitution and all federal legislation and regulations governing fair employment practices and equal employment opportunity including, but not limited to Title VI and the Civil Rights Act of 1964 (P.L. 88-352, 78 STAT. 252), and the U.S. Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to that Title; and in accordance with the Indiana Constitution and all state laws and regulations governing fair employment practices and equal employment opportunity, including but not limited to the Indiana Civil Rights Act and the Indiana Handicappers Civil Rights Act the Contractor agrees that it shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status or handicap that is unrelated to the individual's ability to perform the duties of a particular assignment or position. The Contractor hereby recognizes the right of the United States and the State of Indiana to seek judicial enforcement of the foregoing covenant against discrimination, against itself or its subcontractors connected directly or indirectly with the performance of this Contract.

17.02 The Contractor agrees that it shall notify any subcontractor(s) of the obligations relative to nondiscrimination under this Contract when soliciting same, and shall include the provision of this Article 17 in a subcontract, as well as provide the Agency a copy of any subcontract upon request.

17.03 Breach of the terms and conditions of this Article 17 shall constitute a material breach of this Contract and may be governed by the provisions of Article 10 (DEFAULT AND TERMINATION).

17.04 The Contractor shall post in conspicuous places available to employees and applicants for employment the Notices to be provided by the Contracting Officer that explains this clause. The Contractor shall, in all solicitations or advertisements of employment placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.

17.05 Where applicable, the Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the Notice to be provided by the Contracting Officer advising the labor union or worker's representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for

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employment.

17.06 The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

17.07 Where applicable, the Contractor shall furnish all information and reports required by Executive Order 11246, as amended any rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

17.08 In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this Contract may be canceled, terminated, deemed null and void, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or otherwise provided by law.

17.09 The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of HUD or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17.10 Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Clause titled Indian Preference.

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**18. NOTICES**

18.01 All notices, consents, approvals, requests and other communications (herein collectively called Notices) required or permitted under this Contract shall be given in writing and mailed by first-class mail and addressed as follows:

***If to the Agency:***

Indianapolis Housing Agency  
1919 N. Meridian Street  
Indianapolis, Indiana 46202-1303

***Attention:***

Contract Compliance Monitor  
\_\_\_\_\_  
Director, \_\_\_\_\_  
1919 N. Meridian Street  
Indianapolis, IN 46202-1303

***If to the Contractor:***

\_\_\_\_\_  
President/CEO  
\_\_\_\_\_  
Indianapolis, IN 46\_\_\_\_

18.02 All Notices shall be deemed given on the day of mailing. Either party to this Contract may change its address for the receipt of Notices at any time by giving notice thereof to the other as herein provided. Any Notice given by a party hereunder must be signed by an authorized representative of such party.

18.03 Notwithstanding the requirement above as to the use of first-class mail, change of address notices, termination notices or other notices of a legal nature shall be sent by each party to this Contract by certified first-class mail, postage prepaid, return receipt requested.

**19. WAIVER**

19.01 The Agency shall not be deemed to have waived any of its rights under this Contract unless such waiver is in writing and signed by the Agency.

19.02 No delay or omission on the part of the Agency in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one (1) occasion shall not be construed as a waiver of any right on any future occasion.

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19.03 No failure by the Agency to insist upon the strict performance of any covenant, agreement, term or condition of this Contract or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term and condition.

### **20. MISCELLANEOUS**

20.01 If any provision of this Contract or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable it shall be stricken from this Contract and the remainder of this Contract or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby. Each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

20.02 This instrument, including all Attachments attached hereto, which are made a part of this Contract contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Neither the Agency nor the Agency's Agents have made any representation except those expressly set forth herein, and no rights or remedies are or shall be acquired by the Contractor by implication or otherwise unless expressly set forth herein. The Contractor hereby waives any defense it may have to the validity of the execution of this Contract.

20.03 In accordance with 42 U.S.C. 1437j, the Contractor shall pay not less than wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable state or local law) by the Secretary of HUD, to all professional, technical, executive, supervisory and administrative employees. The Contractor shall furnish to the Agency, with each statement submitted for services entered, certifications to such compliance.

20.04 In the event that the Agency has notice of underpayment of wages required to be paid under the requirement above, the Agency may withhold from the Contractor, out of the payment due, any or all amounts until the appropriate wages have been paid to such employees by the Contractor.

20.05 The Contractor shall be prohibited from placing a lien on the Agency's property. This prohibition shall apply to all subcontractors.

### **21. CHOICE OF LAW AND FORUM SELECTION**

21.01 This agreement shall be governed and interpreted in accordance with the laws of the

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State of Indiana and, for the purpose of resolving any issue pertaining to conflict of laws, this agreement shall be deemed to be fully and solely executed, performed and/or observed in the State of Indiana. The parties hereto expressly consent to personal jurisdiction in the State of Indiana in any action or proceeding brought in any court therein, state or federal, arising from alleging facts arising from the transaction contemplated herein.

### **22. COMPLIANCE WITH SECTION 3 OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REGULATIONS**

The work to be performed under this contract 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). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 13, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or worker's representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth the minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name, and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin. The contractor

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agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135.

The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR 135.

Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**All of which is Agreed to by the undersigned on the dates indicated below**

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**Agency:**

**Contractor:**

**Indianapolis Housing Agency  
1919 N. Meridian Street  
Indianapolis, IN 46202-1303**

\_\_\_\_\_  
\_\_\_\_\_  
**Indianapolis, IN 462\_\_**

**By: \_\_\_\_\_  
Rufus "Bud" Myers**

**By: \_\_\_\_\_  
\_\_\_\_\_**

**Title: Executive Director**

**Title: President/CEO**

**Date: \_\_\_\_\_**

**Date: \_\_\_\_\_**

**APPROVED AS TO LEGAL FORM  
AND ADEQUACY:**

**By: \_\_\_\_\_  
Shelette Veal  
Deputy General Counsel**

**Date: \_\_\_\_\_**

Copy: File