

**HOUSING AUTHORITY OF THE CITY OF ASHEVILLE
INDEPENDENT CONTRACTOR AGREEMENT**

This Independent Contractor Agreement (“Agreement”) is entered into between the Housing Authority of the City of Asheville, a public housing authority and body corporate and politic of North Carolina (“HACA”), and _____ (“Contractor”).

1. **SCOPE OF WORK.** This is an agreement for _____. The scope of work is described in Attachment A, incorporated herein by reference.
2. **TIME OF PERFORMANCE.** Contractor will begin work on _____, and complete the work within ____ calendar days, on or before _____.
3. **CONTACT PERSONS.** Communications and notices regarding this Agreement must be given to the persons named in this paragraph to be effective.

a. For Contractor:

Name & Title:	
Address:	
City, State, Zip:	
Telephone:	
Fax:	
Mobile:	
Email:	

b. For HACA:

Name & Title:	
Address:	
City, State, Zip:	
Telephone:	
Fax:	
Mobile:	
Email:	

4. **PRICE AND PAYMENT TERMS.** The total contract price shall not exceed \$_____, unless modified in writing by both parties. HACA will pay Contractor under the following terms *[complete as applicable or indicate N/A]*:

- a. ___ Payment in full upon completion and approval of the work by HACA.
- b. ___ Contractor will submit monthly payment applications based on percentage of completion for certification and approval by _____ *[architect, other]*. HACA will retain ___% of each approved payment request. Provided that Contractor submits its payment application by the 5th day of a month, payment will be made on or before the 25th day of that month, subject to certification and approval as provided above.
- c. ___ Monthly invoices based on hours worked at the following hourly rate(s): _____
- d. ___ Payment based on percentage of completion as follows:
 - \$_____ upon the execution of this Agreement;
 - \$_____ when the work is ___% complete;
 - \$_____ when the work is ___% complete;
 - \$_____ upon final completion and approval of the work by HACA and any applicable government inspector.

5. **TAXPAYER NUMBER.** Contractor must submit with this Agreement a completed and signed [IRS Form W-9](#), even if Contractor has submitted to HACA an IRS Form W-9 previously. Contractor’s TIN, SSN, or EIN as verified on that Form W-9 is _____.

6. LIQUIDATED DAMAGES. If Contractor fails to complete the work within the time of performance set forth above, subject to changes in the time of performance agreed to in writing by both parties, Contractor shall pay to HACA, as liquidated damages, the sum of \$___ for each consecutive calendar day that the work is delayed beyond the time for performance. Furthermore, HACA may, upon written notice to Contractor and subject to changes in the schedule agreed to in writing by both parties, withhold from the Contractor's monthly pay requests up to the sum of \$___ per day for each day that the work is determined to be behind the schedule referenced above, at any time that the work has remained behind schedule for more than fifteen days. Said damages shall be withheld until such time as it is determined that the work is back on schedule. The parties agree that these sums are not a penalty, but a reasonable estimation in advance of the damages that HACA will sustain per day if Contractor fails to complete the work on time or fails to adhere to the schedule referenced above, such time being of the essence of this Agreement and a material consideration hereof.

7. EMPLOYMENT AND SUBCONTRACTING TERMS. The U.S. Department of Housing and Urban Development (HUD) requires that certain provisions be incorporated by reference in this agreement. The relevant HUD document is Attachment C. HACA draws Contractor's attention to three key HUD and HACA requirements:

- (a) Contractor must take specific steps to ensure that subcontracting opportunities are provided to small and minority firms, women's business enterprises, and labor surplus area firms. HACA has adopted a policy with a participation goal of 5% for contracts with minority business enterprises and 5% for contracts with women's business enterprises, and Contractor agrees to comply with that policy and take the required steps to achieve those goals.
- (b) Contractor must take specific steps to provide employment, training and contracting opportunities for low-income persons under Section 3 of the Housing and Urban Development Act of 1968. HACA has adopted a policy with a goal that 30% of persons newly hired to perform this contract after the date the contractor is selected (not the contract effective date) will be Housing Authority residents or other low-income persons, and Contractor agrees to comply with that policy and take the required steps to achieve that goal.
- (c) Contractor must comply with the applicable Davis-Bacon or HUD wage ruling (Attachment D) in paying its employees under this Agreement, and provide the necessary wage documentation to HACA with each request for payment.

8. OTHER TERMS AND CONDITIONS. *[if applicable]*

9. LIST OF AGREEMENT DOCUMENTS. The following documents are incorporated herein by reference as though fully set forth in this Agreement.

- (a) Part 2 of this Agreement
- (b) Attachments:
 - Attachment A: _____ *[scope of work or proposal]*
 - Attachment B: _____ *[applicable plans and specifications]*
 - Attachment C: _____ *[applicable HUD provisions]*
 - Attachment D: _____ *[applicable Davis Bacon or HUD wage ruling]*
 - IRS Form W-9, completed and signed by Contractor
 - Contractor's Proof of Insurance Coverage as required in Part 2, Section 3

This Agreement has been duly executed on behalf of the parties by the following authorized persons on the dates indicated below.

CONTRACTOR: _____

HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

HOUSING AUTHORITY OF THE CITY OF ASHEVILLE INDEPENDENT CONTRACTOR AGREEMENT – PART 2

1. INDEPENDENT CONTRACTOR. Contractor is an independent contractor and is not HACA's employee, agent, partner or joint-venturer for any purpose, including the accrual of employee benefits. Contractor may not represent or bind HACA in any dealings between Contractor and third parties. Employees furnished by Contractor are exclusively Contractor's employees.

2. WARRANTY. Contractor warrants that information, documents and other deliverables it provides to HACA are complete, accurate, timely and responsive to the requests of HACA; that professional services meet or exceed applicable standards of care and professional conduct; that goods are new, of good quality and are fit for the particular purpose for which they are provided; and that labor is performed in a good and workmanlike manner. At the request of HACA and at Contractor's expense, Contractor shall promptly correct, replace or repair any defective or deficient deliverables, goods, services or labor for a period of one year after completion of work under this Agreement. This paragraph does not diminish HACA's rights against Contractor with respect to the time within which HACA may file legal action.

3. INSURANCE. Before commencing work, Contractor shall furnish to HACA certificates of insurance showing:

- Commercial general liability insurance with limits of not less than \$1,000,000 per occurrence and in the aggregate, and naming HACA as an additional insured;
- Automobile liability insurance with coverage for owned, hired, and non-owned automobiles, with limits of not less than \$1,000,000;
- Worker's compensation insurance as required by North Carolina law, including employer's liability coverage;
- If applicable, builders risk insurance (construction contracts);
- If applicable, errors and omissions insurance; and
- If applicable, professional malpractice insurance.

Contractor shall continuously maintain this required insurance during this Agreement. All insurance must satisfy the laws of North Carolina and shall be obtained from companies authorized to provide such coverage by the North Carolina Commissioner of Insurance. Limits of coverage do not limit the Contractor's liability or obligations under this Agreement. HACA shall be named as an additional insured and be given notice by the insurer of any lapse or termination of coverage.

If there is a lapse of any of Contractor's required coverage, HACA may order Contractor to cease work, order Contractor and all of its equipment off HACA property, and stop payments to Contractor for work done from the date of the lapse until Contractor submits a current Certificate of Insurance showing resumption of coverage adequate to HACA (which may exceed those listed in this Agreement if the lapse has created a change in risk to HACA) to HACA's Contact Person shown in this Agreement. Additionally, HACA may void this Agreement or impose additional reasonable conditions upon Contractor, such as obtaining a satisfactory result from inspection of Contractor's work to date, before allowing Contractor to resume work.

Contractor must include all conditions in this section in all subcontractor agreements.

4. INDEMNIFICATION. Contractor shall indemnify and hold harmless HACA from and against all liabilities (including, but not

limited to, all claims, demands, suits, losses, costs, damages, settlements, fines, fees, penalties and other expenses, including reasonable attorney's fees), for injury or death of any person, or damage or destruction of property, arising out of any act or omission by Contractor, its officers, employees, agents, subcontractors, or independent contractors, in connection with or resulting from the performance of the work under this Agreement.

5. AMENDMENTS. This Agreement may not be amended orally or by performance. To be effective, any amendment must be made in a writing properly executed by both parties.

6. TIME IS OF THE ESSENCE. Contractor understands that time is of the essence and shall diligently and in good faith perform the work. Contractor understands that delays in performance may cause substantial economic damages to HACA.

7. TERMINATION BY MUTUAL CONSENT. This Agreement may be terminated at any time by mutual written consent of the parties.

8. TERMINATION FOR CONVENIENCE. See applicable HUD contract form, attached.

9. TERMINATION FOR DEFAULT. If Contractor fails or refuses to supply sufficient and properly skilled labor or sufficient and appropriate goods, equipment or material, or fails to diligently prosecute work, or is in default or breach of any provision of this Agreement, HACA may terminate this Agreement upon three (3) calendar days written notice. Upon termination, Contractor shall immediately stop work and remove its employees, if any, from HACA's property. If applicable, HACA may complete the work in whatever way it determines best, and at completion of the work shall pay Contractor for the value of the work (excluding profit) performed by Contractor and unpaid prior to the termination, less any costs incurred by HACA to correct any deficiencies or defects attributable to Contractor's work.

10. ASSIGNMENT. Contractor may not assign any interest in this Agreement without HACA's prior written consent.

11. SUBCONTRACTS. Contractor shall not subcontract any work without HACA's prior written consent. Subcontracts must state that the subcontractor is bound by this Agreement as if the subcontractor were the Contractor. HACA's consent to a subcontract does not relieve Contractor of its duties or obligations under this Agreement.

12. CONFIDENTIALITY. Contractor may have access to confidential information regarding HACA, its employees, its residents and its future plans. This information is valuable to HACA, is the sole property of HACA and is acquired by Contractor in confidence. Unless otherwise provided herein, Contractor shall not provide or disclose to a third party any information acquired during its performance of this Agreement if that information is treated as confidential by HACA and is not otherwise known in the public domain by proper means.

13. CONFLICTS OF INTEREST. During this Agreement, Contractor, its employees and agents shall not enter into any activity, employment or business arrangement that conflicts with HACA's interests. Contractor shall advise HACA immediately of any activity, employment, or business arrangement contemplated by Contractor that may be a conflict.

14. WORK PRODUCT AND COPYRIGHT IS PROPERTY OF HACA. Any work product that results from this Agreement is the exclusive property of HACA and may be used fully and freely by HACA.

HACA and Contractor consider the services rendered by the Contractor to be a work made for hire. Contractor acknowledges and agrees that the work and all rights therein, including without limitation, any copyright or patent, belongs to and shall be the sole and exclusive property of HACA.

15. NO SPECIAL OR CONSEQUENTIAL DAMAGES. CONTRACTOR WAIVES ANY SPECIAL OR CONSEQUENTIAL DAMAGES FOR CLAIMS, DISPUTES OR OTHER MATTERS IN QUESTION RELATING TO THIS AGREEMENT.

16. ATTORNEYS FEES AND OTHER CHARGES. Contractor shall pay reasonable attorneys fees and other costs incurred by HACA to enforce this Agreement upon Contractor's breach or default.

17. SOVEREIGN IMMUNITY. Nothing in this Agreement constitutes a waiver of HACA's sovereign immunity for any purpose beyond HACA's specific obligations as set forth in this Agreement.

18. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of North Carolina, subject to all applicable Federal laws.

19. PERSONAL JURISDICTION AND VENUE. Contractor consents to the personal jurisdiction of the Federal District Court for the Western District of North Carolina and the North Carolina General Court of Justice located in Buncombe County, North Carolina. Any legal actions arising out of this agreement shall be adjudicated in one of those courts.

20. NO ARBITRATION OR MANDATORY MEDIATION. The parties agree that any provisions allowing or requiring arbitration or mandating mediation of disputes in any of the documents associated with this Agreement shall not apply. This shall not prevent the parties from resolving any disputes through voluntary mediation.

21. COMPLIANCE WITH LAWS, RULES AND POLICIES. Contractor shall comply with all applicable Federal, State and local laws, rules and regulations.

22. PERMITS AND LICENSES. Contractor shall obtain, continuously maintain and pay for all licenses and permits required to perform the work of this Agreement.

23. TAXES. Contractor shall pay all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Upon request by HACA, Contractor shall substantiate that all taxes and other charges have been paid.

24. SAFETY. Contractor shall establish and enforce safe working procedures during its performance of this Agreement in accordance with all Federal, State and local laws.

25. CLEANUP. Contractor shall keep its work areas clean of debris and excess materials. If Contractor fails to clean up as

required, HACA may clean up and deduct the cost from payments due to Contractor.

26. HAZARDOUS MATERIALS. Contractor shall handle and dispose of hazardous materials in compliance with applicable Federal, State and local laws.

27. FORCE MAJEURE. Neither HACA nor Contractor are responsible for delay or default caused by fire, riot, acts of nature, war or other causes beyond the reasonable control of HACA or Contractor, respectively. HACA and Contractor shall make all reasonable efforts to remove or eliminate the cause of delay or default and Contractor shall then diligently pursue performance of its obligations under this Agreement. If Contractor complies with the foregoing sentence, then the contract time shall be extended by the number of days performance was delayed by force majeure.

28. SINGULAR, PLURAL, ETC. Whenever context requires, the singular includes the plural number and vice versa, and any reference to gender includes the masculine, feminine or neuter.

29. CAPTIONS. Captions in this Agreement are for convenience only and do not define or limit this Agreement.

30. NO WAIVER. If HACA does not insist upon strict compliance with any provision of this Agreement, or does not exercise rights provided herein, such action or inaction is not a waiver of HACA's right to require strict compliance or exercise any of its rights in connection with this Agreement.

31. EFFECTIVE DATE. This Agreement is effective when executed by both parties, evidenced by the signatures of duly authorized representatives of the parties on the signature page. If the parties sign the Agreement on different dates, the date the last party signs is the date of execution.

32. ENTIRE AGREEMENT. This Agreement, together with all attachments incorporated herein, is the entire agreement of the parties. It supersedes all prior undertakings or agreements, written or oral, between HACA and Contractor regarding the subject matter of this Agreement.

33. SEVERABILITY. If any provision of this Agreement or its application to any person or circumstance is held to be invalid, that provision is, to the extent of its invalidity, deemed omitted, and the balance of the Agreement shall remain enforceable.

34. CONFLICTING PROVISIONS. If a conflict is found to exist between the express terms of this Independent Contractor Agreement and any document associated with it, then the terms of, first, any HUD-required attachment, and, second, this Independent Contractor Agreement shall prevail.