



INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Los Alamos Housing Partnership, Inc.**, a New Mexico corporation ("Contractor"), to be effective for all purposes August 10, 2022.

WHEREAS, the County Purchasing Officer determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services, and County issued Request for Proposals No. 22-81 (the "RFP") on May 19, 2022, requesting proposals for Housing Rehabilitation Program ("HRP") Services, and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated June 7, 2022 ("Contractor's Response"); and

WHEREAS, based on the evaluation factors set out in the RFP, Contractor was the successful Offeror for the services listed in the RFP; and

WHEREAS, the County Council approved this Agreement at a public meeting held on August 9, 2022; and

WHEREAS, Contractor shall provide the Services, as described below, to County.

NOW, THEREFORE, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. SERVICES:

1. **Contractor Services.** Contractor shall provide complete housing rehabilitation services as described below, ranging from program promotion and outreach within the community, customer application submittals and reviews through construction approval and final project closeout, in accordance with the programmatic and affordability requirements described in Los Alamos County Code Ordinance 02-248, incorporated herein by reference for all purposes, and loan/mortgage servicing throughout the life of this Agreement.

- a. **Contractor Services – Program Administration:** Contractor shall provide a range of services under this component related to application submittals, application intake, review, approval, and closeout. The tasks and associated deliverables are as follows:

- i. Conduct ongoing program outreach and marketing, participating in at least four (4) promotional events per year, which shall be determined by County's Project Manager and Contractor.
 - ii. Guide potential applicants by describing program goals, parameters, requirements, qualification criteria, and instructions on how to apply.
 - iii. Conduct pre-application meetings for potential applicants to clarify eligibility requirements for the Housing Rehabilitation Program ("HRP")

- and provide information required for a complete application. Meetings serve as a pre-screening step in the process to notify applicants when they don't qualify prior to completing the application process.
- iv. Accept and review applications, engage with applicants to obtain all required information to verify project and lending eligibility, and create and maintain files for each applicant.
 - v. Conduct a site visit of an applicant's property, once income qualification for a project is verified. The site visit shall determine the eligibility of the property and the proposed improvements.
 - vi. Prepare a project scope of work and a cost estimate, and review both with the client to make any adjustments.
 - vii. Prepare an analysis of the application which shall include a verification of employment, income certification, lending eligibility, a loan underwriting analysis, credit report, and property status report (title search and surveys where necessary) to determine the qualifications of the applicant and rehabilitation needs of the property.
 - viii. Schedule and conduct application review meetings with County staff and the County Loan Review Committee ("LRC") for final applicant eligibility determination, relevant underwriting analysis, and recommendations for approval or denial of application.
 - ix. Maintain relationships with LRC members, and assist with new member recruitment when necessary.
 - x. Prepare minutes for LRC meetings, collect and maintain signed Decision Criteria sheets and submit the final HRP request to County for County Manager's Office ("CMO") consideration. If approved by the CMO, the approved project shall continue through the HRP process.
 - xi. Prepare a Loan Estimate, Closing Disclosure, HRP Mortgage, Promissory Note, and Affordability Agreement, and review all documents with the client per state and federal lending requirements. Once signed, the documents shall be routed to the CMO for signature.
 - xii. Establish escrow accounts for each project and complete the bank and County documentation to establish each account and coordinate with County and the bank to wire the correct funding to each account. Monthly bank statements for each account shall be used to track all deposited and expended funds for each project.
 - xiii. Secure funding for any project change orders and/or dispute resolutions. Should a change order be required, an additional mortgage loan, affordability agreement, loan estimate, and closing disclosure are required.
 - xiv. Upon project completion, Contractor shall close the escrow account, and prepare and submit a project closeout package to the County's Project Manager. The Closeout Package shall include a detailed accounting of all funds used in the project, such as all monthly bank account statements, balances from beginning to end, itemization of all deposits and withdrawals made from the account, to whom and for what purpose, progress payment request itemization, construction contracts, lien releases, change orders, and the executed note, mortgage, and affordability agreement.
 - xv. Prepare and email monthly status reports to the County's Project Manager, regardless of the number of ongoing projects.

- xvi. Respond to inquiries from County staff on specific projects and Program Policies and Procedures.
- xvii. Prepare loan payoffs and lien releases on HRP loans. Respond to inquiries from lenders, title companies, and clients requesting payoffs on HRP loans as of a certain date. Calculate interest due, the total loan payoff, coordinate check delivery or wire instructions of funds to the County upon closing, and prepare release of mortgage documents for CMO signature and recording with the County Clerk.
- xviii. Collect required information from client and lender for the HRP loan subordination requests, analyze and prepare a recommendation to County, if the request is approved, and prepare the loan subordination agreement for CMO signature.
- xix. Revise Policies and Procedures, and Construction Standards. Contractor shall provide annually a revised draft of the Policies and Procedures and Construction Standards document to the County's Project Manager. County shall provide any revisions to be incorporated into a final draft prepared by Contractor for approval by the Community Development Director. Written standards shall address at a minimum, lead hazard requirements, energy efficiency and green building techniques, and a written plan to address homeowner complaints.
- xx. Contractor shall annually provide and publish a recommended Income Limits chart based on Department of Housing and Urban Development ("HUD") data.

b. Contractor Services - Project Administration and Rehabilitation Project Oversight.

Contractor shall provide a range of services under this component including oversight and quality control assurance of housing rehabilitation construction activities. The tasks and associated deliverables are as follows:

- i. Prepare and distribute bid packages for qualified project contractors.
- ii. Meet with potential project contractors or other personnel when bids and/or work specifications and estimates require negotiation to finalize the bid process or to resolve a dispute.
- iii. Conduct site visits with client and interested project contractors. Once the project contractor is selected by the client, site visits shall allow the project contractor and client to review the details of the Project.
- iv. Review bids with client and make recommendations for the client to consider in the selection of a project contractor, and secure additional funding for improvements, if necessary. Before the finalization of a construction contract, Contractor shall arrange a meeting between client and project contractor to review the bid received and the scope of work to verify that the scope of work shall be addressed. The construction contract is a contract between the client and the project contractor, neither County nor Contractor is a party to the construction contract.
- v. If a construction contract is executed by the client, client shall execute the note, mortgage, and affordability agreement. Contractor shall prepare the first draw from the escrow account to allow the project contractor to begin work.
- vi. Ensure all required permits are obtained for applicable work.
- vii. Perform periodic inspections of the work in progress, and conduct project status reviews with construction contractor and client. Contractor shall visit sites daily to review the work, identify concerns of the client and

- project contractor, and facilitate effective communication between the client, project contractor, and Contractor.
- viii. Review and process progress payment requests, and verify that progress payments are made consistent with the contract and with the amount of work performed to date.
 - ix. Review any client and contractor recommended change orders. Change orders are considered if unforeseen issues arise, and sufficient budget is available to pay for the change.
 - x. Conduct a final inspection, prepare a punch list for remaining work, and process the final payment to project contractor when the work is complete and the client has accepted the improvements and confirmed that all required inspections have passed.
 - xi. Conduct outreach and marketing to potential contractors (general contractors, plumbing and mechanical, electrical, roofing, environmental, heating ventilation, and air conditioning), educate them about the HRP, and encourage participation. Perform background and reference checks on contractors who are interested in participating in the HRP program.
 - xii. Train participating contractors in the HRP processes, procedures, and standards. Participating contractors shall participate in training on HRP requirements including but not limited to the following: permitting procedures, lead-based paint protocols, inspection requirements, progress payment requests, change order rules, client and Contractor coordination, and communication requirements and project closeout procedures.

SECTION B. TERM: The term of this Agreement shall commence August 10, 2022, and shall continue through August 9, 2025, unless sooner terminated, as provided herein. At County's sole option the Agreement may be renewed for up to one (1) consecutive one-year period, unless sooner terminated, as provided therein.

SECTION C. COMPENSATION:

1. **Amount of Compensation.** County shall pay total compensation for the life of this Agreement, including any possible extensions, for performance of services in an amount not to exceed SEVEN HUNDRED EIGHTY-SIX THOUSAND THREE HUNDRED EIGHTY-THREE DOLLARS (\$786,383.00), which amount does not include applicable New Mexico gross receipts taxes ("NMGRT"). Compensation shall be paid in accordance with the rate schedule set out in Exhibit "A," attached hereto, and made a part hereof for all purposes.
2. **Monthly Invoices.** Contractor shall submit itemized monthly invoices to County's Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

SECTION D. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting, and remitting all NMGRT levied on the amounts payable under this Agreement.

SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall not be considered an employee of County for any purpose. Contractor, its agents, or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position

title on a nameplate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty, or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

SECTION F. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and shall maintain the personnel, experience, and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables, or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent, or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

SECTION H. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary, or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship with its employees and subcontractors.

SECTION I. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be canceled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

- 1. General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.

2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.
4. **Professional Liability Insurance:** \$1,000,000 per occurrence; \$2,000,000 aggregate. Professional Liability Insurance shall provide coverage for Services provided hereunder during the term of this Agreement and for a period of at least three (3) years thereafter.

SECTION J. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION K. APPLICABLE LAW: Contractor shall abide by all applicable federal, state, and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

SECTION L. NON-DISCRIMINATION: During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

SECTION M. INDEMNITY: Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents, and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives, and subcontractors.

SECTION N. FORCE MAJEURE: Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

SECTION O. NON-ASSIGNMENT: Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

SECTION P. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION Q. PROHIBITED INTERESTS: Contractor agrees 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 its services hereunder. Contractor further agrees that it shall not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION R. TERMINATION:

1. **Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
2. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION S. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Project Manager
Incorporated County of Los Alamos
1000 Central Avenue, Suite 150
Los Alamos, New Mexico 87544

Contractor:

Mr. Steve Brugger, Executive Director
Los Alamos Housing Partnership
1362 Trinity Drive, Suite C-1
Los Alamos, New Mexico 87544

SECTION T. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

SECTION U. NO IMPLIED WAIVERS: The failure of the County to enforce any provision of this Agreement is not a waiver by the County of the provisions or of the right thereafter to enforce any provision(s).

SECTION V. SEVERABILITY: If any provision of this Agreement is held to be unenforceable for any reason: (i) such provision shall be reformed only to the extent necessary to make the intent of the language enforceable; and (ii) all other provisions of this Agreement shall remain in effect.

SECTION W. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes.

SECTION X. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES: Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

SECTION Y. DUPLICATE ORIGINAL DOCUMENTS: This document may be executed in two (2) counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

By: _____
STEVEN LYNNE **DATE**
COUNTY MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

LOS ALAMOS HOUSING PARTNERSHIP, INC., A NEW
MEXICO CORPORATION

By: _____
KARL HJELVIK **DATE**
PRESIDENT

Exhibit "A"
Compensation Rate Schedule
AGR22-81

Category	Year 1	Year 2	Year 3	Year 4	CONTRACT TOTAL
Cost Per Project	\$9,895	\$10,375	\$10,855	\$11,406	
Assumed No. Of Projects	15	15	15	15	60
Subtotal - Project Cost	\$148,425	\$155,625	\$162,825	\$171,090	\$637,965
Fixed Costs	\$34,510	\$36,200	\$37,890	\$39,818	\$148,418
TOTAL COST	\$182,935	\$191,825	\$200,715	\$210,908	\$786,383

Hourly Rates by Labor Type				
	Year 1	Year 2	Year 3	Year 4
Executive Director	\$ 175.00	\$ 184.00	\$ 193.00	\$ 203.00
Project Manager	\$ 110.00	\$ 115.00	\$ 120.00	\$ 126.00
Construction Inspector	\$ 95.00	\$ 100.00	\$ 105.00	\$ 110.00

Fixed costs detailed above are not dependent on the number of applications received or completed projects and shall be billed monthly in accordance with Section C. Compensation detailed above.

Cost per Project is a variable cost dependent on the number of completed projects, should the number of completed projects be lower than 15 per year, the annual total cost will vary, and the cost per project amount shall be multiplied by the number of completed projects to calculate actual compensation.