

MEMORANDUM

June 14, 2010

To: Board of Mayor and Alderman

From: Eric Stuckey, City Administrator
Vernon Gerth, ACA-Community & Economic Development

Subject: Annual Housing Consultant Contract for 2010-11 CDBG Program Year
The Housing Fund, Inc. – Contract Number 2010-0085

Purpose:

Consideration of annual contract between the City of Franklin and The Housing Fund, Inc. for consultant services associated with developing and implementing affordable housing programs in conjunction with Franklin's Community Development Block Grant Program in the amount of \$20,000.

Background:

The Housing Fund, Inc. (THF) is a Nashville-based private, 501(c)(3) organization that offers affordable housing development consultant services and financing to nonprofit organizations, housing authorities, and community organizations for affordable housing and neighborhood revitalization projects. In 1997, the city utilized THF to assist in preparing and submitting Franklin's first Community Development Block Grant application and Consolidated Housing Plan. HUD requires CDBG entitlement communities to submit annual progress reports and updated applications to remain eligible for CDBG funding. Last month, THF assisted the City with updating our Consolidated Plan and submit our application for the 2010-11 fiscal year. Pending approval, the City will receive approximately \$290,000. As endorsed by the Affordable/Workforce Housing Advisory Committee and specified in Franklin's Consolidated Plan next year's funds have been designated to support the Emergency Rehabilitation Home Repair Program, analyze impediments to Fair Housing, homebuyer education, and assist Community Based Development Organizations in their efforts to create affordable housing. Previously, THF received \$25,000 annually for consultant service but since staff is becoming increasing proficient in administering and documenting CDBG program information the contract reflects a reduce amount.

Financial Impact:

HUD regulations allow communities to utilize up to twenty percent of CDBG funding to cover program administration. \$20,000 has been designated for THF to assist with the administrative costs associated with updating of the Consolidated Plan, Action Plan, & CAPER (annual report) and to provide technical assistance in developing housing programs and resources. Mr. Paul Johnson represents THF and works closely with City staff and the Affordable/Workforce Housing Advisory Committee in providing technical advice on potential programs and to insure compliance.

Recommendation:

A motion to approve is recommended.

**CONTRACT FOR THE HOUSING FUND, INCORPORATED
ADMINISTRATION AND ASSISTANCE
COF Contract #2010-0085**

This Contract, made and entered into this ____ day of ____, 2010, by and between the City of Franklin, (hereinafter "THE CITY") and The Housing Fund, Inc. (hereinafter "THE ORGANIZATION").

WITNESSETH:

WHEREAS, THE CITY and its Board of Mayor and Aldermen desire to increase the supply of and access to moderately priced housing for its citizens; and

WHEREAS, THE CITY continues to be eligible for entitlement funds through the federal Community Development Block Grant ("CDBG") program, which requires submission of an updated 5 Year Consolidated Plan for Housing and Community Development, with an annual report due by May 15 of each year, to the U.S. Department of Housing and Urban Development; and

WHEREAS, THE CITY desires to again contract with The Housing Fund, as a housing related non-profit organization, to compile the Consolidated Plan, Annual Action Plan, Annual Report (CAPER); and to provide assistance in developing strategies to increase the supply of housing for eligible low and moderate income households within its jurisdiction; and

NOW, THEREFORE, in consideration of the mutual promises as contained herein, the parties hereto have agreed and hereby enter into this Contract according to the provisions as set forth herein.

SECTION 1 - SCOPE OF SERVICES

Working under the direction of the Assistant City Administrator for Community and Economic Development and the Housing Development Coordinator or their designee, THE ORGANIZATION shall carry out activities necessary to guide the development of the 5 Year Consolidated Plan, Annual Action Plan, CAPER and associated public meetings and notices, and other actions as proposed in Exhibit A, which is referenced as if fully incorporated herein.

SECTION 2 - RESPONSIBILITIES OF PARTIES

- A. THE ORGANIZATION will perform the duties described above and take any actions necessary to accomplish the spirit of this agreement.
- B. THE ORGANIZATION will submit regular reports (no less than quarterly) as directed by THE CITY detailing the progress of their project.
- C. At the request of THE CITY, THE ORGANIZATION will periodically send a representative to neighborhood or other public meetings to discuss and promote its project.
- D. THE CITY will provide funding for the program from the CDBG program as set forth in Section 3 of this contract.

SECTION 3 – COMPENSATION

THE ORGANIZATION will receive up to Twenty Thousand Dollars and No/100 (\$20,000.00) for the services outlined above from the Community Development Block Grant program for eligible expenses.

SECTION 4 - TIME OF PERFORMANCE

- A. Services shall be performed over a twelve (12) month period to commence July 1, 2010 and to end on June 30, 2011.
- B. This Agreement may be terminated upon thirty (30) days written notice by either party.

SECTION 5 - PAYMENT TERMS AND CONDITIONS

- A. THE CITY shall reimburse THE ORGANIZATION for services rendered based on submittal of valid invoices for project costs with a description and documentation of work performed. The CITY has the option of inspecting the completed work prior to making any payments.
- B. The Schedule of Payments is attached as Exhibit B, which is referenced as if fully incorporated herein.
- C. Invoices shall be submitted by THE ORGANIZATION to THE CITY no less often than quarterly.
- D. Final payment will be subject to receipt of a final report that is satisfactory to THE CITY.

SECTIONS 6 - NOTICES

All notices under this Agreement shall be in writing and sent by certified mail to the address listed below for each party.

Vernon Gerth
City of Franklin City Hall
109 3rd Avenue, S.
Franklin, TN 37064

Paul Johnson
The Housing Fund, Inc.
305 11th Avenue, S.
Nashville, TN 37203

SECTION 7 - STANDARD TERMS AND CONDITIONS

- A. COMPLIANCE WITH FEDERAL LAWS/REGULATIONS. THE ORGANIZATION shall comply with all applicable Federal and State laws and regulations in the performance of this Contract.
- B. ANTIDISCRIMINATION/AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY
 - 1. No person on the grounds of handicap, age, race, color, religion, sex, national origin, disability, or marital/familial status or any other classification protected by Federal and/or State of Tennessee constitutional and/or statutory law-shall be excluded from participation in, or be denied benefits or, or be otherwise subjected to discrimination in the performance of this Contract.

2. THE ORGANIZATION agrees to add Section 7 Subsection B, paragraph 1 to all contracts relative to this Contract and shall require its contractors to add the same paragraph in all sub-contracts relative to this Contract.

C. AUDIT REQUIREMENTS

1. This Contract, as well as any sub-agreement made with other participating agencies, is subject to all of the administrative requirements in OMB Circulars A-110 and A-122.
2. THE CITY hereby notifies THE ORGANIZATION that a single audit is required for non-profit agencies receiving \$300,000 or more in federal funds in any single fiscal year. This requirement is in accordance with OMB Circulars A-110 and A-133. If required, a copy of the single audit report will be kept on file and made available to THE CITY staff during sub-recipient monitoring visits and appropriate officials as requested.

- D. CONFLICT OF INTEREST. THE ORGANIZATION agrees to abide by the following requirements with respect to conflicts of interest, and covenants that it presently has no interest, direct or indirect, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. THE ORGANIZATION further covenants that in the performance of this Agreement no person having such an interest, direct or indirect, shall be employed or retained by THE ORGANIZATION hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of THE ORGANIZATION or of any designated public agencies or sub-recipients that are receiving funds under this program.

E. PROCUREMENT STANDARDS AND METHODS

1. THE ORGANIZATION shall comply with THE CITY's current policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds herein.
2. THE ORGANIZATION shall procure all materials, property, or services in accordance with the requirements of Attachment O of OMB Circular A-110, Procurement Standards.

- F. VENUE. In the event of a dispute or litigation arising out of said Contract, it is understood and agreed and that this Contract was executed and performed in Williamson County, Tennessee, and as such, it is agreed by both parties that venue of said litigation, including an action for Declaratory Judgment, will be in Williamson County, Tennessee.

- G. ASSIGNMENT. Neither THE CITY nor THE ORGANIZATION may assign its rights or delegate its responsibilities under this contract.

H. ENTIRE CONTRACT AND MODIFICATION.

1. The Contract between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Contract. The terms and

conditions of this Contract may not be changed except by an amendment expressly referencing this Contract by section number and signed by an authorized representative of each party.

2. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.
- I. SEVERABILITY. If any provision of this Contract is held invalid, the remainder of the Contract shall not be affected thereby and all other parts of this Contract shall nevertheless be in full force and effect.
- J. TIME OF THE ESSENCE. The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.
- K. NO TAXES, NO INTEREST PAYMENTS. As a tax-exempt entity, THE CITY shall not be responsible for sales or use taxes incurred for products or services. THE CITY shall supply THE ORGANIZATION with its Sales and Use Tax Exemption Certificate upon THE ORGANIZATION's request. THE ORGANIZATION shall bear the burden of providing its suppliers with a copy of THE CITY's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred. THE CITY does not agree to pay any interest for late payments, having agreed to pay in a timely manner.
- L. WAIVER. Neither party's failure or delay to exercise any of its rights or powers under the Contract will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.
- M. BREACH. Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

SECTION 8 - SIGNATURES

THE CITY OF FRANKLIN

By: _____
John Schroer, Mayor

Date: _____

Attest:

Eric S. Stuckey City Administrator

Date: _____

Approved as to Form:

Kristen L. Corn, Staff Attorney

THE HOUSING FUND

Authorized Signature

Date: _____

Exhibit A

Proposal for The City of Franklin From The Housing Fund

Housing Fund, Inc (THF) is a private, 501(c)(3) organization established to finance affordable housing and neighborhood revitalization projects throughout Middle Tennessee and Allen, Edmonson and Warren counties in Kentucky. Since its incorporation in 1996, THF has assisted over 2,300 first time homebuyers receive \$15.3 million in downpayment assistance loans, as well as providing more than \$43 million in financing to assist individuals and organizations purchase, rehabilitate, or construct homes for low and moderate income families. THF is certified by the US Treasury Department as a Community Development Financial Institution (CDFI), and is supported by a variety of public and private resources including investments from financial institutions and corporations, grants from local, state and federal governments, foundations and United Way of Middle Tennessee.

The Housing Fund proposes to provide the following services to the City of Franklin:

- Preparation of the 5 Year Consolidated Plan for Housing and Community Development. The Consolidated Plan is a HUD requirement of Community Development Block Grant (CDBG) participating jurisdictions. The plan, which will be the City's second Consolidated Plan, consists of a housing market analysis, a strategic plan for the CDBG program, and an action plan that outlines the use of CDBG funds for Year 1;
- Preparation of the Consolidated Annual Performance and Evaluation Report (CAPER) for Year 2 of the first 3 Year Consolidated Plan. The CAPER is the reporting document submitted annually to HUD which presents achievements from the use of previous year CDBG funding.
- Conduct all public hearings required by HUD and a reasonable number of public meetings requested by the City for completion of the above two documents.
- Provide technical assistance in achieving and maintaining program compliance, including general policies and procedures for CDBG funded projects/programs.
- Provide technical assistance on the monitoring of CDBG subrecipients and on preparing for HUD monitoring of the CDBG program.

Exhibit B

Schedule of Payments

1. Schedule of Payments

THE ORGANIZATION shall submit invoices, including supporting documentation to The City of Franklin on a quarterly basis. With the first quarter beginning July 1, 2010 and ending September 30, 2010, the first quarterly invoice shall be submitted on or about October 1, 2010. Subsequent quarters shall be billed on or about January 1, 2011, April 1, 2011, and June 30, 2011.