

Management Services Contract

**Agreement
By and Between
Community Foundation of Western Massachusetts
and
Org Name**

THIS AGREEMENT, was made as of **Month Day, 2022** by and between the Community Foundation of Western Massachusetts (hereinafter referred to as the FOUNDATION) and Org Name (hereinafter referred to as the CONSULTANT).

WITNESSETH THAT:

WHEREAS, the FOUNDATION has entered into an agreement with the Commonwealth of Massachusetts (hereinafter "Commonwealth") Department of Housing and Community Development (hereinafter DHCD), Massachusetts Community Development Block Grant Program (hereinafter Mass. CDBG) to undertake a community development program of food security (hereinafter Program) pursuant to the Housing and Community Development Act of 1974 (hereinafter Act), as amended, and regulations thereunder, and

WHEREAS, professional services relating to the implementation and administration of the Program are sought to assist the FOUNDATION in the timely achievement of its Mass. CDBG-CV-2020 Grant Program objectives.

NOW, THEREFORE, THE PARTIES HERETO DO AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT:** The FOUNDATION hereby engages the CONSULTANT to perform the services set forth herein and the CONSULTANT hereby accepts the engagement.
2. **SCOPE OF SERVICES:** The CONSULTANT shall perform the necessary services as described in the approved proposal to the FOUNDATION, which is attached hereto and incorporated by reference herein as Attachment A as may be amended from time to time.
3. **RESPONSIBILITY OF THE FOUNDATION:** The FOUNDATION shall assume responsibility for assisting the CONSULTANT insofar as possible for the purpose of efficiency and furnishing the CONSULTANT with information needed to satisfactorily complete the services.
 - 3.1 The FOUNDATION shall designate a project representative authorized to work with the CONSULTANT with respect to the project. The FOUNDATION's representative is Sheila Toto, Senior Program Officer. TELEPHONE: 413-417-6386.
 - 4.1 **REPORTING:** The CONSULTANT will submit written reports to the FOUNDATION on the status of the professional services, according to the schedule and dates specified below, or at other times as required by an information request or reporting requirement of Mass. CDBG.

REPORT: Monthly Report

DATE DUE: 5 business days after the end of the previous month

5. SUBCONTRACTS: No subcontracts may be awarded by the CONSULTANT, the purpose of which is to fulfill in whole or in part the services required of the CONSULTANT, without prior written approval of the FOUNDATION and DHCD.

The CONSULTANT shall use its best efforts to ensure that it will not knowingly use funds under this contract to purchase, or enter into contracts to purchase, any equipment, services, or systems that use telecommunications equipment or services as a substantial or essential component of a system that is subject to 2CFR § 200.216. In the event the CONSULTANT identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system that is subject to 2 CFR § 200.216, during Contract performance, the CONSULTANT shall alert the FOUNDATION as soon as possible and shall provide information on any measures taken to prevent recurrence.

6. TIME OF PERFORMANCE: The services of the CONSULTANT are to commence on or about **Month XX, 2022(project start date)** and shall be undertaken and completed in sequence as to assure their expeditious completion.

6.1 All services required hereunder shall be completed by March 31, 2023.

7. PAYMENTS AND COMPENSATION: The FOUNDATION will pay the CONSULTANT a total fee in the amount not to exceed (Grant Amount) Dollars (\$XXXXX), with no reimbursements for out-of-pocket expenses, based on invoices submitted in a form approved by the FOUNDATION and according to the "Method and Schedule of Compensation", found as Attachment B (project budget).

8.GENERAL PROVISIONS

8.1 RETENTION OF RECORDS: The CONSULTANT shall maintain in accordance with 2CFR Part 200.333, and any Mass. CDBG regulations, procedures or guidelines, those books, records, and other documents, including but not limited to payroll records, and purchase orders that are sufficient to document that activities carried out were in accordance with this Agreement, and the primary objectives of the Act, and any other applicable laws and regulations. Such records shall contain all information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, liabilities, outlays and income. The CONSULTANT shall maintain such records for a period of seven (7) years from the date of expiration of this Agreement, or if such records become the subject of audit findings, they shall be retained until such findings have been resolved, whichever is later.

8.1.1 Program Income: If the CONSULTANT's services under this Agreement includes the tracking, reporting, or utilizing of funds considered to be program income, CONSULTANT will track, report, and utilize any and all such program income generated through CDBG funded activities as required by Mass. CDBG.

8.1.1. ~~Photographic Documentation (for construction projects only): CONSULTANT shall submit photographs to the FOUNDATION of all construction projects assisted with CDBG funds, illustrating conditions prior to, during, and at completion of the project. Photographs are to be submitted at the time of _____.~~
of n/a.

8.2 ACCESS TO RECORDS: The CONSULTANT shall make all books, accounts, records, reports, files, and other papers, things or property, that relate to its activities under this Agreement, available at all reasonable times for inspection, review, and audit by DHCD, their authorized representatives, authorized representatives of the U. S. Department of Housing and Urban Development (hereinafter HUD), the Inspector General of the United States, or of the Commonwealth, the Auditor of the Commonwealth, and the Attorney General of the United States, or of the Commonwealth reserves the right of the Governor or his designee, the Secretary of Administration and Finance, and the State Auditor and his designee, at reasonable times and upon reasonable notice to examine the books, records, and other compilative data of the CONSULTANT which pertain to the performance of the provisions and requirements of this Agreement, as provided by Executive Order 195.

8.3 TERMINATION: The FOUNDATION may terminate the contract, for cause, upon fifteen (15) days written notice to the CONSULTANT. In case of termination, all finished and unfinished documents and records of the CONSULTANT relating to the Program shall become the property of the FOUNDATION. This section 8.3 of this Agreement shall be superseded by federal HUD regulations and directives which outline provisions for termination for convenience and for termination in whole or in part pursuant to 2 CFR§ 200.340.

8.3.1 In the event of termination, the CONSULTANT will be compensated for services provided to the date of termination, according to the "Method and Schedule of Compensation", Attachment B.

8.4 AMENDMENTS: This Agreement may be amended provided such amendment is in writing and executed by the parties to this Agreement, and receives approval from DCHD prior to its effective date.

8.5 NON-DISCRIMINATION: The CONSULTANT shall adhere to the requirements set forth in Title VI of the Civil rights Act of 1964 (Public Law 88-352), and the regulations issued pursuant thereto by HUD; Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), as amended; section 109 of the Housing and Community Development Act of 1974, and the HUD regulations issued pursuant thereto (24 CFR 570.601); Federal Executive Order 11063, as amended by Executive Order 12259 and the HUD regulations issued pursuant thereto (24 CFR 107); The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Section 402 of the Veterans of the Vietnam Era Act (for projects of \$10,000 or more); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Massachusetts General Laws Chapter 151B Section 1 et seq.; State Executive Order 478; Mass. CDBG regulations, procedures or guidelines; and all other applicable federal and state laws, regulations, guidelines, and executive orders.

The CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, ancestry, status as a veteran or any other basis prohibited by law. The CONSULTANT shall take affirmative action to ensure that qualified applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, ancestry, status as a veteran, or any other basis prohibited by law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The CONSULTANT shall state that all qualified applicants will

receive consideration for employment without regard to race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, ancestry, status as a veteran, or any other basis prohibited by law.

8.6 **PROCUREMENT STANDARDS:** The CONSULTANT shall adhere to the requirements set forth in and Mass. CDBG regulations or the Massachusetts CDBG Program Operations Manual, as applicable, as well as procedures and guidelines with respect to standards governing procurement, and any applicable provisions of Commonwealth laws and regulations relative thereto, including Chapter 30, section 39M; Chapter 149, section 44A through 44J; Chapter 484 of the Acts of 1984; and Chapter 30B. All procurement transactions without regard to dollar value shall be conducted in a manner that provides maximum free and open competition. It is national and state policy that the recipient take affirmative steps to award a fair share of contracts taken to assure that small and minority owned businesses are utilized when possible as sources of supplies, equipment, construction and services. The CONSULTANT shall maintain records sufficient to detail the process for procurement.

8.7 **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11478, “Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246 Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

8.8 **EMPLOYMENT OPPORTUNITIES:** Where applicable, the CONSULTANT shall comply with provisions of Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701u) and the HUD regulations issued pursuant thereto (24 U.S.C. 135), which shall serve as guidance for the implementation of said section.

8.9 **FAIR HOUSING:** In addition to the laws and regulations set forth herein with respect to ensuring fair housing opportunities, the CONSULTANT shall adhere to the provisions of State Executive Orders 215 and 526.

8.10 **LABOR STANDARDS:** Where applicable, the CONSULTANT shall adhere to the provisions of Section 110 of the Act, and the Massachusetts General Laws Chapter 149 sections 26 and 27D inclusive (as amended by Chapter 484 of the Acts of 1984). In case of the rehabilitation of commercial property, or rehabilitation of residential property designed for residential use of eight or more families, the CONSULTANT shall adhere to the Federal Labor Standards Provisions (HUD Handbook 1344.1), the requirements of the Contract Work Hours and the Safety Standards Act (40 U.S.C. 327 et. seq.) and the Copeland Anti- Kickback Act.

8.11 **CONFLICT OF INTEREST:** The CONSULTANT shall adhere to the mandates of the Massachusetts Conflict of Interest Statute, M.G.L.c.268A, the federal Conflict of Interest Provisions at 24 CFR 570.489 and the federal Hatch Act, 5 U.S.C.ss 1501 et seq.

8.12 DOMESTIC PREFERENCES FOR PROCUREMENTS: Pursuant to CFR § 200.322, the CONSULTANT should, to the greatest extent practicable under this Agreement and as appropriate and to the extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The CONSULTANT shall include this requirement in agreements with subgrantees, including all contracts and purchase offers for work or products under this Agreement.

8.13 COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS, AND CDBG REGULATIONS, PROCEDURES AND GUIDELINES: All activities authorized by this Agreement shall be subject to and performed in accordance with the provisions of the FOUNDATION's Grant Agreement with DHCD and all its attachments (including, where relevant, Section 4.14, Flood Disaster Protection, 4.15, Historic Preservation, 4.16, Additional Environmental Requirements, 4.17, Lead Paint Hazards, and 4.18 Relocation Assistance), all applicable federal, state and local laws and regulations, including but not limited to any applicable regulations issued by HUD published in 24 CFR Part 570, as may be amended from time to time. The CONSULTANT shall comply with the provisions 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principle and Audit Requirements for Federal Awards," and all applicable State and local laws and regulations, including but not limited to those specifically stated herein, any additional regulations, procedures or guidelines as may be established or amended by DHCD.

9. AVAILABILITY OF FUNDS: The compensation provided by this Agreement is subject to the continued availability of federal funds for Mass. CDBG, and to the continued eligibility of the Commonwealth and the FOUNDATION to receive such funds.

10. INDEMNIFICATION: the CONSULTANT shall indemnify, defend, and hold the FOUNDATION harmless from and against any and all claims, demand, liabilities, actions, causes of actions, cost and expenses caused by or arising out of the CONSULTANT's breach of this Agreement or the negligence or misconduct of the CONSULTANT, or the agents or employees.

11. LICENSES: The CONSULTANT shall procure and keep current any licenses, certifications, or permits required for any activity to be undertaken as part of the Scope of Services, Attachment A, as required by federal, state or local laws or regulations, and shall comply with the provisions of 2 CFR Part 200.325 with respect to any bonding or other insurance requirements.

12. CONFIDENTIALITY: The CONSULTANT will protect the privacy of, and respect the confidentiality of information provided by, program participants, the FOUNDATION, and DCHD, consistent with applicable federal and Commonwealth laws and regulations, including M.G.L., C.66A, regarding access to public records, M.G.L. c. 93H; M.G.L. c.66 sec. 17A and any applicable regulations, including without limitation, 801 CMR 3.00: Privacy and Confidentiality and 201 CMR 17.00: Standards for the Protection of Personal Information of Residents of the Commonwealth.

The CONSULTANT certifies that the CONSULTANT has reviewed and shall comply with all information security programs, plans, guidelines, standards and policies that apply to the work to be performed under this Agreement, that the CONSULTANT shall communicate these provisions to and enforce them against its subcontractors, and that the CONSULTANT shall implement and maintain any other reasonable and appropriate security procedures and practices necessary to protect personal information to which the CONSULTANT is given access as part of this Agreement, from unauthorized access, destruction use, modification, disclosure or loss.

The CONSULTANT understands and agrees that only those individuals who must access personal data for the performance of their job duties under CDBG are authorized to access such personal data. These authorized individuals shall not use or disclose this data for purposes other than those required to fulfill their job duties under CDBG. Pursuant to the above, the CONSULTANT acts as a holder of personal data and the CONSULTANT certifies that it and its authorized employees shall comply with all Federal and State laws and regulations applicable to the data, including but not limited to M.G.L. c. 66A, M.G.L. c. 93H, and M.G.L. c. 66 sec. 17A. The FOUNDATION and the CONSULTANT shall not use any of the foregoing data for any purpose described in Section 603(d)(1) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(d)(1)) or in any manner that would cause DHCD, the FOUNDATION, or the CONSULTANT to be considered a "consumer reporting agency" under Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)).

13. COPYRIGHT: No material prepared in whole or in part under this Agreement shall be subject to copyright in the United States of America or in any other country except with the prior written approval of Mass. CDBG.

14. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT: If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the FOUNDATION or the CONSULTANT wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the CONSULTANT will comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

15. CLEAN AIR ACT (42 U.S.C. 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED: If the amount of the contract or subgrant exceeds \$150,000, the CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

16. ENERGY POLICY AND CONSERVATION ACT (42 U.S.C. 6201): Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan must be issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

17. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689): A contract (see 2 CFR 180.220) must not be made with parties listed on the government-wide Excluded Parties List System in the System for Award Management (hereinafter "SAM"), in accordance with the United States Office of Management and Budget guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The FOUNDATION is not currently debarred or suspended by the federal or state government under any law or regulation. The CONSULTANT certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation.

