

Version 1.2
Revised December 2023

**STANDARD FORM OF AGREEMENT BETWEEN OWNER & CONSULTANT
FOR PROFESSIONAL ADMINISTRATIVE SERVICES**

CDBG DR-4317 Housing Program, Project: Fall Creek Phase III

OWNER NAME:	City of Branson	CONTACT:	Cherri Phifer, Finance Director
ADDRESS:	110 W. Maddux St. Branson, MO, 65616	EMAIL:	cphifer@bransonmo.gov
PHONE:	417-337-8548		

GENERAL CONTRACT INFORMATION

SOUTHWEST MISSOURI COUNCIL OF GOVERNMENTS (Consultant) CONTACT PERSONNEL:

Technical: Kelsi Burton and Garrett Colony

Administrative: Jason Ray

Phone: 417-836-3031

Phone: 417-836-6977

Email: KelsiBurton@MissouriState.edu

Email: JasonRay@MissouriState.edu

CONTRACT TITLE: Fall Creek Phase III

CONTRACT PERIOD: See Section 3

CONTRACT AMOUNT: \$25,000.00 fixed cost agreement. Plus actual costs incurred, not to exceed \$50,000.00. The total contract amount for both services, as described in Exhibit A and B, shall not exceed \$75,000.00. If there is no award for a grant by The Missouri Department of Economic Development (DED), the contract is terminated with no fixed costs and no actual costs owed by the Owner to the Consultant. No fixed costs nor actual costs will be owed by Owner to Consultant unless approved and reimbursed by DED.

DEBARMENT CERTIFICATION: The Owner certifies that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or Agency.

The Consultant certifies that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or Agency.

DESCRIPTION OF SERVICES: See attached Exhibits A, and B; services outlined in the exhibits are contingent upon receipt of the successful awarding of the grants. Exhibit C outlines terms, conditions, and documented compliance as required by the Community Development Block Grant (CDBG).

CANCELLATION POLICY: Should there be a need by the Owner or Consultant to cancel this contract, it will be mutually understood that no fees will be paid; reasonable and necessary expenses incurred prior to the cancellation will be addressed on a case-by-case basis. In the event that grant funds are not awarded to Owner by the CDBG program, this agreement shall be terminated by Owner.

PAYMENT PROCESS (Exhibit A): The amount the Owner shall pay the Consultant for performance of this agreement shall be a fixed cost of \$25,000. See Section 4. No fixed costs nor actual costs will be owed by Owner to Consultant unless approved and reimbursed by DED.

PAYMENT PROCESS (Exhibit B): The amount the Owner shall pay the Consultant for performance of this agreement shall be invoiced monthly for actual costs incurred. The total amount for this service shall not

exceed \$50,000.00. See Section 4. No fixed costs nor actual costs will be owed by Owner to Consultant unless approved and reimbursed by DED.

PROFESSIONAL ADMINISTRATIVE SERVICES CONTRACT

This is an agreement made as of _____, 2024, between the City of Branson ("Owner") and the Southwest Missouri Council of Governments (SMCOG) ("Consultant"). The owner intends to perform a community development project, and the owner and consultant in consideration of their mutual covenants herein agree in respect of the performance of professional administrative services by consultant and the payment for those services by owner as set forth below. Consultant shall provide professional administrative services for owner in all phases of the project to which this agreement applies, serve as the owner's representative for the project as set forth below, and shall provide professional consultation of services hereunder.

Section 1 – Basic Services for Consultant

The consultant shall perform professional administrative services and activity delivery services as hereinafter stated that include the administration of the owner's Community Development Block Grant Program, Fall Creek Phase III Project. The specific services of the consultant are indicated in Exhibits A and B, "Scope of Services."

Section 2 – Owner's Responsibilities

The owner shall:

- 2.1 Provide all criteria and full information as to owner's requirements for the project, and furnish copies of all documents related to the project.
- 2.2 Assist consultant by placing at his/her disposal all available information pertinent to the project, including previous reports and any other data relative to the project.
- 2.3 Give prompt written notice to consultant whenever owner observes or otherwise becomes aware of any development that affects the scope of timing of the consultant's services.
- 2.4 Bear all costs incidental to compliance with the requirements of Section 2.

Section 3 – Period of Service

- 3.1 The provisions of this Section 3 and the rates of compensation for the consultant's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the project through completion.
- 3.2 The consultant agrees to complete the project by the ending date identified in the owner's "Grant Agreement" with the Missouri Department of Economic Development for the Community Development Block Grant Program from which part of the project has been financed.
- 3.3 If the owner has requested significant modifications or changes in the extent of the project, the time of performance of consultant's services and his/her rates of compensation shall be adjusted appropriately.

Section 4 – Payments to Consultant

- 4.1 The maximum amount the owner shall pay the consultant for the performance of this agreement shall not exceed the lesser of \$25,000 or 1% of actual CDBG expenses. Based on the proposed project budget, the current estimate for this service is \$25,000. Specific scope of services is shown in Exhibit A. All payments are subject to approval and reimbursement by CDBG. Owner is not responsible for any obligation unless approved and reimbursed by CDBG. Invoicing will occur upon successful awarding of the grant and completion of services in accordance with the following timeline:
 - a. Consultant may submit a statement up to 25% of services and expenses incurred when removal of grant conditions has been issued (this is issued at the completion of the NEPA Environmental Assessment);
 - b. Up to 50% upon approval of first contractor's payroll;

- c. Up to 75% upon 50% of construction draw;
 - d. Up to 90% prior to final paperwork and;
 - e. 100% after completion of all final paperwork.
- 4.2 The maximum amount the owner shall pay the consultant for performance of this agreement, as Construction Activity Deliverable Costs (ADCs), shall not exceed \$50,000.00. All payments are subject to approval and reimbursement by CDBG. Owner is not responsible for any obligation unless approved and reimbursed by CDBG. Specific scope of services is shown in Exhibit B. The Owner will be invoiced monthly for actual ADCs incurred, but will not be required to pay invoices until approved and paid by CDBG.
- 4.3 All costs and expenses incurred are subject to approval by CDBG. Owner is not responsible for expenses/costs not allowed and approved by CDBG.

Section 5 – General Considerations

- 5.1 The consultant shall comply with all applicable rules, regulations, laws, and requirements in relation to the Community Development Block Grant Program as distributed by the Missouri Department of Economic Development.
- 5.2 The owner and consultant each binds himself/herself and his/her partners, successors, executors, administrators, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations to this agreement.
- 5.3 Neither owner nor consultant shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except as stated in paragraph 5.3 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to or assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent consultant from employing such independent consultants, associates, and subcontractors as he/she may deem appropriate to assist him/her in the performance of service hereunder.

Section 6 – Special Provisions and Exhibits

- 6.1 The following exhibits are attached to and made a part of this Agreement.
- 6.1.1 Exhibit A, "Scope of Services," consisting of 1 page.
 - 6.1.2 Exhibit B, "Scope of Services," consisting of 1 page.
 - 6.1.3 Exhibit C, "Terms and Conditions," consisting of 5 pages.
- 6.2 This Agreement (consisting of pages 1 to 11, inclusive), together with the exhibits identified above, constitute the entire agreement between the owner and consultant and supersede all prior written or oral understandings. This agreement and said exhibits may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Section 7 – General Provisions and Legal Responsibility

- 7.1 Notwithstanding any provision contained herein, none of the parties hereto shall be liable under this Agreement, on account of any delay, failure to provide assistance, loss, damage, injury or calamities suffered by any such party resulting from causes beyond its reasonable control, including acts of God, acts of government, governmental rules and regulations, floods, epidemics, quarantine restrictions, strikes, fires, disputes with workmen, shipment embargoes, other unavoidable delays in transportation, unusually severe weather, accidents, illness or death of employees, voluntary termination of employees of their employment, and/or any other cause whatsoever, whether similar or dissimilar to those enumerated beyond its reasonable control.
- 7.2 Consultant does not accept liability beyond the remedies set forth herein. Except as expressly provided in this Agreement, Consultant will not be liable for any consequential, special, indirect, or punitive damages, even if advised of the possibility of such damages, or for any claim by any third party.

In witness whereof, the parties hereto have made and executed this Agreement as of the day and year first above written.

City of Branson, Missouri
(Owner)

Southwest Missouri Council of Governments
(Consultant)

Larry D. Milton, Mayor

Jason Ray, Executive Director

Attest:

Hillary Briand, City Clerk

Approved as to form by:

Holly Dodge, City Attorney

PROFESSIONAL SERVICES AGREEMENT (CONTINUED)

EXHIBIT A – SCOPE OF SERVICE

1. **Title Program:** Fall Creek Phase III Administrative Services
2. **Program Director:** Kelsi Burton
3. **Program Description:** Perform Professional Administrative Services that include the administration of the Owner's CDBG project.

SCOPE OF SERVICES

The consultant shall complete, in a professional and timely manner, the following services relative to the owner's Community Development Block Grant Program. Such actions shall be performed in a manner prescribed by the Missouri Department of Economic Development.

The Consultant shall work with the Developer and Owner to complete the following:

1. Environmental Review – including publications and related costs; Assessment; SHPO; Completion of whole Environmental Review Record; Designation as Environmental Review Officer
2. Civil Rights Compliance – including language in contracts; Fair housing activities; Publication costs; material costs; Analysis of Impediments activities
3. Public Participation Requirements (notice publication requirements can be reimbursable under the grant award)
4. Completion of close-out forms and required performance reports

PROFESSIONAL SERVICES AGREEMENT (CONTINUED)

EXHIBIT B – SCOPE OF SERVICE

1. **Title Program:** Fall Creek Phase III Activity Deliverable Costs
2. **Program Director:** Kelsi Burton
3. **Program Description:** Perform Activity Delivery Services for the Owner's CDBG project.

SCOPE OF SERVICES

The consultant shall complete, in a professional and timely manner, the following services relative to the owner's Community Development Block Grant Program. Such actions shall be performed in a manner prescribed by the Missouri Department of Economic Development.

The Consultant shall work with the Developer and Owner to complete the following:

1. Financial Management (accounting, file maintenance, cost documentation, Part 85/A-87 conformance, RFF preparation and related matters)
2. Labor Standards Compliance – including wage rates requests for bidders; review of weekly payrolls; wage restitution, if necessary; Employee interviews
3. Preparation of contract documents, except for engineering specifications
4. Administer procedures required by the "Uniform Act" in relation to the acquisition of property, including specific tasks related to easements

PROFESSIONAL SERVICES AGREEMENT (CONTINUED)

EXHIBIT C – TERMS AND CONDITION

CONTRACT FOR PROFESSIONAL SERVICES TERMS AND CONDITIONS

1. Termination of Contract for Cause. If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner his obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant under this Contract shall, at the option of the Owner, become its property and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Consultant shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Contract by the Consultant, and the Owner may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due the Owner from the Consultant is determined.

2. Termination for Convenience of the Owner. The Owner may terminate this Contract at any time by giving at least ten (10) days notice in writing to the Consultant. If the Contract is terminated by the Owner as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Consultant, Paragraph 1 hereof relative to termination shall apply.
3. Changes. The Owner may, from time to time, request changes in the scope of the services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon by and between the Owner and the Consultant, shall be incorporated in written amendments to this Contract.
4. Personnel.
 - a. The Consultant represents that he/she has, or will secure at his/her own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.
 - b. All of the services required hereunder will be performed by the Consultant or under his/her supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
 - c. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.
5. Assignability. The Consultant shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or invitation), without the prior written consent of the Owner thereto. Provided, however, that the claims for money by the Consultant from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.

6. Reports and Information. The Consultant, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.
7. Records and Audits. The Consultant shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner to assure proper accounting for all project funds, both Federal and non-Federal shares. These records will be made available for audit purposes to the Owner or any authorized representative, and will be retained for five years after the expiration of this Contract unless permission to destroy them is granted by the Owner.
8. Findings Confidential. All of the reports, information, data, etc. prepared or assembled by the Consultant under this Contract are confidential and the Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the Owner. Parties acknowledge that Consultant's records, including this agreement, are subject to the Missouri Sunshine Law.
9. Copyright. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Consultant.
10. Compliance with Local Laws. The Consultant shall comply with all applicable laws, ordinances, and codes of the State and local governments, and the Consultant shall save the Owner harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.
11. Equal Employment Opportunity. During the performance of this Contract, the Consultant agrees as follows:
 - a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, religion, or sex. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, religion, or sex. Such action shall include, but not be limited to, 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 agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth the provisions of this non-discrimination clause.
 - b. The Consultant will, in all solicitation or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, religion, or sex.
 - c. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
 - d. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- e. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Owner and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - f. In the event of the Consultant's noncompliance with the non-discrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Consultant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - g. The Consultant will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204, Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Owner, the Consultant may request the United States Government to enter into such litigation to protect the interests of the United States.
12. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
13. Section 109(a) of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
14. Section 503 of the Rehabilitation Act of 1973, as amended, provides for the nondiscrimination in contractor employment. All recipients of Federal funds must certify to the following through all contracts issued.
15. Affirmative Action for Handicapped Workers.
- a. The consultant will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The consultant agrees to take affirmative action to employ, advance in employment, and to otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices, such as employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.
 - b. The consultant agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

- c. In the event of the consultant's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
 - d. The consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the consultant's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of the applicants and employees.
 - e. The consultant will notify each labor union or representative of workers, if applicable, with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by terms of Section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
 - f. The consultant will include the provisions of this clause in every subcontract, if applicable, or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The consultant will take such action with respect to any subcontractor or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
16. Section 504 of the Rehabilitation Act of 1973, as amended, provides for nondiscrimination of an otherwise qualified individual solely on the basis of his handicap in benefiting from any program or activity receiving Federal financial assistance. All recipients must certify to compliance with all provisions of this Section.
17. Age Discrimination Act of 1975. No person in the United States, on the basis of age, shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.
18. Authorized Employees. Consultant acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Consultant therefore covenants that is not knowingly in violation of subsection 1 or Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully to work in the United States.
19. Interest of Members of a City. No member of the governing body of the City and no other officer, employee, or agent of the City, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract, and the Consultant shall take appropriate steps to assure compliance.
20. Interest of Other Local Public Officials. No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract, and the Consultant shall take appropriate steps to assure compliance.

21. Interest of Consultant and Employees. The Consultant covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his/her services hereunder. The Consultant further covenants that in the performance of this Contract, no person having any such interest shall be employed.