

Exhibit 3-B

AGREEMENT FOR ADMINISTRATIVE SERVICES

Project _____

Contract N°. _____

Project N°. _____



Distribution to:

- Owner
- Consultant
- DFA
- Other

Community Development Block Grant Program

This Agreement entered into this ____ day of _____, 20____, by and between

the **"Grantee"**

and the **"Consultant"**

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[This document was prepared to be used with Community Development Block Grant and state funded projects. This document has important legal consequences; consultation with an Attorney is encouraged with respect to its completion or modification]

PART I -- AGREEMENT

This agreement for administrative services ("Agreement") is by and between _____,
name of grantee
(hereinafter called the "Grantee" or "Owner") and _____ a corporation
name of consultant
organized under the laws of the State of New Mexico, (hereinafter called the "Consultant").

WITNESSETH THAT:

WHEREAS, Grantee has entered into an agreement with the State of New Mexico Department of Finance and Administration ("Funding Agency") for the implementation of a Community Development Block Grant (CDBG) project (the "Project") pursuant to Title 1 of the Housing and Community Development Act of 1974, as amended; and,

WHEREAS, Grantee desires to engage Consultant to render certain administrative services in connection with the Project;

NOW, THEREFORE, the parties do mutually agree as follows:

1. Employment of Consultant

Grantee agrees to engage Consultant, and Consultant agrees to satisfactorily perform the following scope of services:

2. Scope of Services (check applicable services)

- Complete tasks as required to comply with Funding Agency's CDBG policies and requirements.
- With the assistance of the Grantee, help conduct public hearings. This includes, but is not limited to, tasks such as assisting with public hearings, preparing public notices, and documenting citizen input.
- Prepare Environmental Review Record for all activities. Responsibilities include making a recommendation to the local governing body as to a finding of the level of impact, preparation of all required public notices, preparation of the Request for Release of Funds, and obtaining adequate backup documentation. For activities which are not exempt from environmental assessments, an environmental assessment will be prepared. For activities which are exempt from environmental assessments, a written Finding of Exemption will be prepared, which should identify the project or activity, and under which category of exemption it falls. Documentation of compliance with the requirements of historic preservation, flood plains and wetlands, and other applicable authorities must be included.
- Coordinate requests for payment with the Grantee to ensure compliance with the procedures established for the CDBG program and Funding Agency instructions.
- Ensure that the Grantee has an acceptable financial management system for the CDBG program. An acceptable system includes, but is not limited to, cash receipts

and disbursement journal and accompanying ledgers, and should conform to generally accepted principles of municipal accounting.

- Establish Grantee Project files. These must be maintained in compliance with Funding Agency CDBG requirements and all applicable state, local and federal regulations. Monitor Project files throughout the program to ensure they are complete and that all necessary documentation is being retained in the Grantee's files.
- Assist Grantee in complying with regulations governing land acquisition (real property, easements, rights of way, donation of property, etc.).
- Obtain contractor and subcontractor clearances from the Funding Agency.
- Support Grantee with labor compliance. Assist with review of weekly payrolls, on-site interviews and comparison of the results with appropriate payrolls.
- Monitor construction for compliance with Equal Opportunity and Labor Standards Provisions, Section 3 obligations, and other CDBG requirements.
- Make progress inspections and, to the extent applicable, certify partial payment requests.
- Accompany the Project's design professional on final inspection and issue a final certificate of payment.
- Prepare close-out documents to include Project Completion Report, Final Wage Compliance Report, Section 3 documentation, and Certificates of Completion.
- Other: _____

Services in each of the selected task areas above shall be performed at the direction of the Grantee's designated representative specified in Article 10 of this Agreement.

3. Time of Performance

The Consultant shall commence work on _____ and shall continue providing services in the sequence appropriate to Grantee's CDBG Project. Provided this Agreement is not terminated earlier pursuant to Section 4 or Section 5 of the CDBG Terms and Conditions for Professional Services, all services shall be completed no later than thirty-six months from the Effective Date of this Agreement unless such time period is extended via formal amendment to this Agreement.

4. Access to Information

It is agreed that all Grantee information, data, reports, records and maps required for the performance of the services hereunder shall be furnished to Consultant by Grantee and its agencies. No charge will be made to Consultant for such information, and Grantee and its agencies will cooperate with Consultant to facilitate the performance of the work described in this Agreement.

5. Compensation and Method of Payment

Consultant compensation under this Agreement is contingent on the award of CDBG funding for the Project. The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed \$ _____ for all services, including travel, per diem and other expenses. All work will be performed on a time and materials basis. Consultant time for principal and staff will be provided at their respective rates of pay times for direct personal expense. Ten percent (10%) of the total contract amount shall be retained by Grantee until formal closeout of the Project by the Funding Agency.

Travel at the lowest practicable class of common carrier and per diem costs at the amount set in Grantee's mileage and per diem regulations for food, lodging and incidental expenses are INCLUDED in the maximum contract amount.

For payments due, Consultant shall submit monthly invoices to Grantee for costs incurred in that period. Invoices shall itemize the tasks completed, person-days provided, and shall list the travel and per diem costs incurred in performing the tasks. The invoice shall be payable to the Consultant within 20 days of receipt by Grantee.

The Consultant agrees to keep accurate records of all time and expenses allocated to the work. Such records shall be kept in the office of the Consultant and shall be made available to Grantee and Funding Agency for inspection and copying upon reasonable request.

6. Ownership of Documents

All documents and data produced in the performance of services hereunder are the property of the Grantee. Consultant may retain reproducible copies.

7. Indemnification

Consultant shall comply with the requirements of all applicable laws, rules, and regulations, and shall assume full responsibility for payment of federal, state, and local taxes or contributions imposed or required under Social Security, Workman's Compensation, and income tax laws. Consultant shall indemnify, defend, and hold Grantee and Funding Agency harmless with respect to any damages, expenses, or claims arising from or in connection with any acts, errors or omissions performed by Consultant under this Agreement. This shall not be construed as a limitation of Consultant's liability under this Agreement, or as otherwise provided by law.

8. Expert Testimony

Grantee agrees to pay for additional staff time, at the contract hourly billing rates, plus expenses at cost, that might be required for expert testimony or court appearances, including preparation time and legal costs that might arise because of Consultant's involvement in this assignment, whether subpoenaed by the Grantee or any other party.

9. Terms and Conditions

This Agreement is subject to the provisions titled "CDBG Terms and Conditions for Professional Services" consisting of four (4) pages, attached hereto and incorporated herein by reference.

10. Contact Information for Notices and Communications

Grantee:

Representative
Name:

Address:

City, State,
Zip:

Email:

Consultant:

Representative
Name:

Address:

City, State,
Zip:

Email:

11. Section Headings

Each paragraph of this Agreement has been supplied with a section heading only to serve as a guide to the contents. The section heading does not control the meaning of a paragraph or in any way determine its interpretation or application.

[signature page follows]

The parties hereto have caused this Agreement to be executed by their respective duly authorized representatives:

ATTEST:

Grantee: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Consultant: _____

By: _____

Title: _____

Date: _____

DFA Concurrence:

By: _____

Title: _____

Date: _____

CDBG TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

The CDBG program is subject to Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), and HUD's regulations at 24 C.F.R. Part 570.

Vendor performance shall include compliance with:

- A. Applicable CDBG/HUD program statutes and regulations;
- B. 24 C.F.R. Part 200;
- C. Build America, Buy America (BABA) requirements, as applicable to the Project;
- D. Civil rights, fair housing, and other national policy requirements;
- E. Debarment/suspension and anti-lobbying;
- F. 24 C.F.R. § 85.36 (as applicable) and 24 C.F.R. § 570.489, State Procurement Code, and the CDBG Implementation Manual, applying the most stringent requirement when conflicts occur in accordance with 24 C.F.R. § 570.480(f); and
- G. Reporting requirements, including UEI/SAM and FFATA.

Vendor must adhere to applicable CDBG Implementation Manual processes, as amended, available at:

<https://www.nmdfa.state.nm.us/infrastructure-planning-and-development-division/cdbg-implementation-manual/>

For the purposes of these supplemental terms and conditions, the term "Vendor" shall refer to the applicable defined term in a DFA-approved vendor contract, including the following:

- Exhibit 3-B: Consultant
- Exhibit 3-D: Engineer
- Exhibit 3-E: Architect
- Exhibit 3-G: Planner

In the event of any conflict between these supplemental terms and conditions and the terms of the contract or agreement to which this document is attached or within which this document is incorporated, the more restrictive terms and conditions shall apply.

1. **Debarment.** The Vendor covenants that it is not debarred, suspended or otherwise excluded from contracting on any projects involving federal funds. The Vendor shall provide the Owner and the Funding Agency documentation of eligibility at least once per year as well as promptly following any written request from the Owner or Funding Agency. Prior to any participation in the Project, the Vendor shall verify that all subcontractors employed are not debarred, suspended or otherwise excluded from contracting on any projects involving federal funds. The Vendor shall provide immediate notice to the Owner and Funding Agency, but in no case later than three (3) business days, after becoming aware that the Vendor or any subcontractor has been debarred or is prohibited in any way from contracting on any projects involving federal funds. The Owner may immediately terminate this Agreement if the Vendor or any subcontractor is or becomes a "debarred" or "active exclusion" contractor or subcontractor.
2. **Payments.** Requests for payment shall be submitted in an appropriate format with supporting documentation. The Owner or Funding Agency may dispute or withhold requests for payment for noncompliance or insufficient documentation. The Vendor agrees to provide certification and receipts for reimbursement expenditures. The Vendor is exclusively responsible for ensuring its subcontractors are paid promptly in accordance with applicable law; the Owner bears no responsibility for subcontractor payments.
3. **Construction Approvals.** The bidding process for the Project's construction activities shall not begin until the Funding Agency issues a signed Authority to Use Grant Funds in response to the Owner's Request for Release of Funds. During construction, proposed change orders must be submitted to the Owner and Funding Agency for written approval prior to execution.
4. **Termination of Agreement for Cause.** If, through any cause, the Vendor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Vendor violates any of the covenants, agreements, or stipulations of this Agreement or fails to comply with applicable program requirements, the Owner shall have the right to terminate this Agreement by giving written notice to the Vendor of such termination and specifying the effective date thereof, such notice to be provided at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys and reports prepared by the Vendor under this Agreement shall, at the option of the Owner, become its property and the Vendor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder prior to

the termination date.

Notwithstanding the above, the Vendor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Agreement by the Vendor or by virtue of any other act or omission by the Vendor, and the Owner may, among other remedies, withhold any payments to the Vendor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Vendor is determined.

5. **Termination for Convenience of the Owner.** The Owner may terminate this Agreement at any time by giving at least ten (10) days notice in writing to the Vendor. If the Agreement is terminated by the Owner as provided herein, the Vendor will be paid for the time provided and expenses incurred up to the termination date. If this Agreement is terminated due to the fault of the Vendor, Section 4 above relative to termination shall apply.
6. **Changes.** The Owner may, from time to time, request changes in the scope of the services of the Vendor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Vendor compensation, which are mutually agreed upon by and between the Owner and the Vendor and comply with applicable program requirements, shall be incorporated in written amendments to this Agreement. Amendments to this Agreement require Funding Agency concurrence.
7. **Personnel; Subcontracting.**
 - a. The Vendor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Owner or Funding Agency.
 - b. All of the services required hereunder will be performed by the Vendor or under the Vendor's supervision and all personnel engaged in the work shall be fully qualified and shall be licensed, certified, authorized or permitted under state and local law to perform such services.
 - c. The Vendor shall perform its obligations under this Agreement in accordance with the highest standards of care, skill, and diligence in the Vendor's industry, trade, or profession.
 - d. None of the work or services covered by this Agreement 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 the applicable provisions of this Agreement and applicable program requirements. In the event approval to subcontract is granted by the Owner, the Vendor will include the applicable provisions of this Agreement in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.
8. **Assignability.** The Vendor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto; provided, however, that claims for money by the Vendor from the Owner under the Agreement 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.
9. **Reports and Information.** The Vendor, 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 Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.
10. **Records and Audits.** The Vendor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Agreement and such other records as may be deemed necessary by the Owner or Funding Agency. These records will be made available for audit purposes to the Owner, Funding Agency or any authorized representative, and will be retained for six (6) years after Project closeout (as determined by the Funding Agency).
11. **Findings Confidential.** All of the reports, information, data, etc., prepared or assembled by the Vendor under this Agreement are confidential and the Vendor agrees that they shall not be made available to any individual or organization without the prior written approval of the Owner. Disclosure of such reports, information, data, etc. to Funding Agency shall not be considered a breach of this Agreement.
12. **Patents and Copyright.** No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for patent or copyright by or on behalf of the Vendor.
13. **Compliance with Laws.** The Vendor shall comply with all applicable laws, ordinances and codes, and the Vendor shall indemnify, defend, and save the Owner and Funding Agency harmless with respect to any

damages arising from any breach of applicable law or any tort done in performing any of the work embraced by this Agreement.

14. Section 3 Compliance in the Provision of Training, Employment and Business Opportunities.

- a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 ("Section 3") as amended (Economic Opportunities for Low- and Moderate-Income Persons, Minority Business Enterprise and Women's Business Enterprise Policy). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD financial assistance shall be directed to low and very low income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.
- b. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 75, including the Section 3 requirements outlined in 24 C.F.R. Part 75.19. As evidenced by their execution of this contract, the parties to this contract certify they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- c. The Vendor will complete, to the satisfaction of the Funding Agency, all requirements imposed under Section 3, pursuant to 24 C.F.R. Part 75 of the Regulations.

15. Interest of Members of the Owner or Other Public Officials. During tenure and for one year thereafter, no member of the governing body of the Owner and no other officer, employee, or agent of the Owner or other public official who exercises any functions or responsibilities in connection with the planning and carrying out of the Project, shall have any actual, potential, or apparent interest, direct or indirect, in this Agreement; the Vendor shall take appropriate steps to assure compliance.

16. Interest of Vendor and Employees. The Vendor covenants that it presently has no actual, potential, or apparent interest, direct or indirect, and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which could conflict or appear to conflict in any manner or degree with the performance of the Vendor's services hereunder or with any interest of the Owner's constituents. The Vendor further covenants that in the performance of this Agreement, no person having or acquiring any such interest shall be employed by Vendor. The obligations of this section shall apply during the term of this Agreement and for a period of one year following termination or expiration.

17. Conflict of Interest Notification. The Vendor shall provide immediate notice to the Owner and Funding Agency after becoming aware of any actual, potential, or apparent conflict of interest described in Section 15 or Section 16 above. This obligation shall survive expiration or termination of this Agreement.

18. Federal Requirements.

Vendor shall comply with the following requirements:

- a. Equal Employment Opportunity, including Executive Order 11246 as further amended by Executive Order 11375;
- b. Contract Work Hours and Safety Standards Act;
- c. Rights to Inventions Made Under a Contract or Agreement (37 C.F.R. Part 401);
- d. All applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act;
- e. Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. Part 180);
- f. Byrd Anti-Lobbying Prohibition (31 U.S.C. § 1352);
- g. Davis-Bacon and Related Acts;
- h. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 C.F.R. § 200.216);
- i. Domestic Preferences for Procurements where appropriate and to the extent consistent with other laws and regulations (2 C.F.R. § 200.322);
- j. Procurement of Recovered Materials as required by 2 C.F.R. § 200.323;
- k. Civil Rights Act of 1964, including Title VI;
- l. Age Discrimination Act of 1975;
- m. Americans with Disabilities Act of 1990;

- n. To the extent applicable, Section 504 of the Rehabilitation Act of 1973;
- o. Section 109 of the Housing and Community Development Act of 1974;
- p. Copeland "Anti-Kickback" Act;
- q. Energy Policy and Conservation Act;
- r. 2013 National Defense Authorization Act (41 U.S.C. § 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection);
- s. National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973;
- t. Wild and Scenic Rivers Act of 1968;
- u. Resource Conservation and Recovery Act;
- v. Toxic Substance Control Act;
- w. False Claims Act and 32 U.S.C. Chapter 38 (Administrative Remedies);
- x. Buy American Preference terms and conditions pursuant to 2 C.F.R. Part 184; and,
- y. Subpart K of 24 C.F.R. Part 570, 24 C.F.R. § 570.502 and 2 C.F.R. Part 200.

Any reference in this Agreement to a statute, regulation, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the effective date of this Agreement.

19. **Data Protection.** The Vendor must establish, document, and maintain effective internal controls, including implementing reasonable cybersecurity and other measures to protect information, such as protected personally identifiable information and other types of sensitive data. This obligation shall also apply to information that the Owner or Funding Agency designates as sensitive, and such internal controls shall comply with applicable Federal, state, local, and tribal privacy laws and responsible handling of confidential information.
20. **Publicity.** Any publicity regarding the Project or this Agreement requires prior written approval of the Owner and Funding Agency; violations may result in termination. Federal Agency Seal(s), Logos, Crests, or Reproductions of Flags or Likeness of Federal Agency Officials are prohibited from being utilized without specific federal agency pre-approval.
21. **Governing Law.** New Mexico law and applicable federal laws govern.
22. **External Terms and Conditions.** Notwithstanding anything to the contrary herein, the Owner shall not be subject to any provision included in any terms, conditions, or agreements appearing on the Vendor's or a subcontractor's website or any provision incorporated into any click-through or online agreements related to the Project or services unless that provision is specifically included in this Agreement.
23. **Survival of Certain Agreement Terms.** Any provision of this Agreement that imposes an obligation on a party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other party.