

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 4, 2012

SUBJECT: Scattered Site Housing Rehabilitation Grant Administration Contract

PRESENTER: Anthony W. Starr, AICP, Planning Director

ATTACHMENTS: 1. Draft Grant Administration Agreement with Benchmark CMR, Inc.

SUMMARY OF REQUEST:

The County has used outside firms to administer this grant program for prior grant cycles. The program requirements and documentation are quite large and require a tremendous effort to manage. The grant program provides funds to hire a firm to manage the grant. No local funds are required for the grant administration. Planning Staff solicited proposals for this service and recommends Benchmark CMR as the most qualified firm.

Most local governments hire outside firms for this service because of the complex nature of the grant requirements. The Planning Department does not have the necessary staffing to administer this grant in house. The County received this grant once every 3 years from the State. Benchmark's proposal would provide complete service for a fixed fee of \$59,500.00. Consulting type contracts over \$50,000 require Board approval as specified in the FY2013 Budget Ordinance.

BOARD ACTION REQUESTED:

Planning Staff requests authorization to enter into a contract with Benchmark CMR for grant management and administration.

Suggested Motion: I move that the Board authorize the Planning Director to enter into a contract with Benchmark CMR for grant management and administration for the fixed amount of \$59,500.00.

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**AGREEMENT FOR
ADMINISTRATIVE
AND SERVICE
DELIVERY
SERVICES
FOR SCATTERED SITE
HOUSING PROJECT**

THIS AGREEMENT, made and entered into this ____ day of _____, by and between, Henderson County, herein and after referred to as the “Local Government” and Benchmark CMR, Inc., a North Carolina Corporation located in Kannapolis, North Carolina.

WITNESSETH:

WHEREAS, Benchmark CMR, Inc. has expertise in response in response pertaining to the 2011 Scattered Site housing Grant; and

WHEREAS, the Local Government and Benchmark CMR, Inc. desire to memorialize Benchmark CMR, Inc.'s proposal and award of the contract,

NOW THEREFORE, the Local Government and Benchmark CMR, Inc., for mutual and valuable consideration, agree as follows:

1. SCOPE OF SERVICES: Benchmark CMR, Inc. agrees to provide and perform for the Local Government all services described in the Scope of Services attached to this contract as Attachment “A” and which is hereby incorporated by reference. Any different or additional Scope of Services must be approved and authorized by the Local Government in writing in advance and shall be compensated when authorized in accordance with the terms agreed to by both parties in a formally executed Contract Addendum.

2. COMPENSATION FOR SERVICES: In the provision of the aforementioned services, Benchmark CMR, Inc. shall receive compensation in the form of: (1) a fixed fee in the amount of \$ 59,500. This fee shall be paid to Benchmark CMR, Inc. in accordance with Section 3 below.

a. Any changes or additions to the Scope of Services as authorized by Local Government shall be compensated in accordance with the terms agreed to by both parties in a formally executed contract addendum.

b. Benchmark CMR, Inc. understands and accepts liability in an instance where, for whatever reason, Local Government is not awarded the Scattered Site grant that Benchmark CMR, Inc shall not be compensated for any services performed up until notification. At the time of notification of the lack of grant funding, this contract shall be terminated. Local Government shall not be liable for any payment to Benchmark CMR,

Inc. in an instance where no grant funds are awarded. If less grant funds are awarded than anticipated at the time of the execution of this contract, both parties shall amend the scope of services and payment to reflect the reduced grant funds in a formally executed written amendment to this contract.

3. METHOD OF PAYMENT Benchmark CMR, Inc. shall prepare and submit to the Local Government an invoice statement for fees stated in Section 2 above along with a status report. The Local Government shall compensate Benchmark CMR, Inc. for services satisfactorily performed within thirty (30) days of the date of said invoice statement.

4. TERMINATION OF CONTRACT FOR CAUSE: If Benchmark CMR, Inc. shall fail to fulfill in a timely, professional and proper manner all obligations under this contract, or should Benchmark CMR, Inc. violate any of the covenants, agreements, or stipulations of this contract, the Local Government shall have the right to terminate this contract immediately by giving written notice to Benchmark CMR, Inc. of such termination and specifying the effective date thereof. In a like manner, Benchmark CMR, Inc. shall have the right to terminate this contract by giving a written 30 day notice to the Local Government of such termination and specifying the effective date thereof. In such event of termination by either party, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by Benchmark CMR, Inc. under this contract shall, at the option of the Local Government, become the property of the Local Government. Benchmark CMR, Inc. shall be entitled to receive just and equitable compensation for any work satisfactorily completed pursuant to this contract. However, the Local Government shall not be obligated to pay any remaining charges for work satisfactorily completed where there exists a right in favor of the Local Government for refund, reimbursement or offset in connection with any obligations arising from Benchmark CMR, Inc. to the Local Government.

5. LEGAL REMEDIES: Benchmark CMR, Inc. shall not be relieved of any liability to the Local Government for damages sustained by the Local Government by virtue of any breach of this contract by Benchmark CMR, Inc. It is specifically understood that the Local Government may withhold any payments to Benchmark CMR, Inc. for the purpose of offset until such time as the exact amount of damages due the Local Government from Benchmark CMR, Inc. is determined.

6. CHANGES: The Local Government may, from time to time, request changes in the Scope of Services of Benchmark CMR, Inc. to be performed hereunder. Such changes, including any increase or decrease in the amount of Benchmark CMR, Inc.'s compensation which may be mutually agreed upon between the Local Government and Benchmark CMR, Inc., shall be incorporated in written amendments to this contract after appropriate authorization as called for in Section 2 of this contract.

7. EQUAL EMPLOYMENT OPPORTUNITY: Benchmark CMR, Inc. shall not discriminate against any employee or applicant for employment on account of age, race, color, religion, sex, national origin, because of handicapping condition, or Vietnam Era Veteran status. Benchmark CMR, Inc. shall take affirmative action to ensure equal employment opportunity with respect to all of its employment practices.

8. FEDERAL AND STATE COMPLIANCE: The Company shall be required to adhere to all State, Federal, and local laws in performing the terms of this Agreement, including but not limited to corporate, partnership or individual taxation laws; worker's compensation; and any laws, regulations, assurances, certifications required of the Local Government in order to receive CDBG grant funds.

Benchmark CMR, Inc. shall pay all applicable taxes and insurance premiums stipulated by applicable law and shall hold harmless the Local Government for the payment thereof. Benchmark CMR, Inc. acknowledges exemption from withholding of applicable taxes or other deductions from compensation agreed to in Section 2 of this contract. Benchmark CMR, Inc. agrees to furnish Federal Form W-9, upon execution of this contract and prior to issuance of any compensation from the Local Government.

Benchmark CMR, Inc. shall complete or abide by all applicable assurances, certifications, or regulations required for receipt of CDBG funds.

9. REPORTS AND INFORMATION: Benchmark CMR, Inc., at such times and in such manner as the Local Government may require, shall furnish the Local Government such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the cost and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

10. RECORDS AND AUDITS: Benchmark CMR, Inc. 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 Local Government 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 Local Government or any duly authorized representative of the Local Government, to the U.S. Department of HUD and to the Comptroller General of the United States. Such records will be retained for a period of three (3) years after the expiration of this contract.

11. FINDINGS CONFIDENTIAL: All of the reports, information, data and other such material prepared or assembled by Benchmark CMR, Inc. may not be released to any individual or organization without the prior written approval of the Local Government because of the confidential nature of some of the information. The Local Government shall have the exclusive right to determine what, if any, such information is public information and may be made available to any such requesting individual or organization.

12. CONFLICT OF INTEREST: Benchmark CMR, Inc. covenant and agree that they presently have no interest and shall not acquire any interest, direct or indirect, in the target area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of this contract. Furthermore, no person having any interest shall be employed by or have any other business connection with Benchmark CMR, Inc. No elected or appointed official of the Local Government nor any of its employees shall participate in any decision relating to this contract which affects his/her personal interest or the interest of any corporation,

partnership or association in which he/she is directly or indirectly interested; nor shall any member, officer, agent or employee of the Local Government have any interest direct or indirect in this contract or the proceeds thereof.

13. "SECTION 3" - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT, AND BUSINESS OPPORTUNITIES

a. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development (HUD) and is subject to the requirements of Section 3 of the HUD Act of 1968, as amended, 12 U.S. Consultant G. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

c. Benchmark CMR, Inc. will send to each labor organization or representative of workers with which Benchmark CMR, Inc. has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

d. Benchmark CMR, Inc. will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. Benchmark CMR, Inc. will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors or assigns to those sanctions specified by the grant or loan agreement of contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

14. EXECUTIVE ORDER 11246 CLAUSE

During the performance of this contract, Benchmark CMR, Inc. agrees as follows:

(1) Benchmark CMR, Inc. will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Benchmark CMR, Inc. will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. 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. Benchmark CMR, Inc. agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause (2).

(2) Benchmark CMR, Inc. will, in all solicitations or advertisements for employees placed by or on behalf of Benchmark CMR, Inc., state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) Benchmark CMR, Inc. will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the contractors commitments under Section 202 of Executive Order 11246 of 9-24-65, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Benchmark CMR, Inc. will comply with all provisions of Executive order No. 11246 of 9-24-65, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) Benchmark CMR, Inc. will furnish all information and reports required by Executive Order No. 11246 of 9-24-65, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractors noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Benchmark CMR, Inc. may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of 9-24-65, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of 9-24-65, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) Benchmark CMR, Inc. will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive order No. 11246 of 9-24-65, so that such

provisions will be binding upon each subcontractor or vendor. Benchmark CMR, Inc. will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance, provided however, that in the event the contract becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Benchmark CMR INC> may request the United States to enter into such litigation to protect the interests of the United States.

15. LOBBYING CLAUSE

Benchmark CMR, Inc. agrees that as required by Section 1352, Title 31, US Code:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative, agreement, and extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, .Disclosure Form to Report Lobbying in accordance with its instruction.

16. Benchmark CMR, Inc. covenants that no person shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under this Federal program on the grounds of sex, race, color, age, handicap, or national origin.

17. IMPROPER EXPENDITURE OF CDBG FUNDS. The Local Government shall indemnify Benchmark CMR INC. in the case of a dispute between the NC Division of Community Assistance and the Local Government regarding improperly expended funds if the Division of Community Assistance cannot provide a convincing regulatory or rule basis for the disallowed CDBG expenditure(s) or where evidence of selective enforcement is present. This indemnification shall remain in effect pending the outcome of an appeal by the Local Government to a NC Administrative Law Judge under 4 NCAC 19L , Section 1105 “Administrative Hearings.”

If an administrative ruling provided under the terms of the paragraph above requires the Local government to reimburse the NC Division of Community Assistance for disallowed CDBG expenditures, Benchmark CMR INC. shall reimburse the Local government for any improperly expended grant funds which have to be returned to the NC Division of Community Assistance . Benchmark CMR INC. reserves the right to defend any claim made by the Local Government related to improperly expended funds at its own expense.

18. SERVICE OF PROCESS: Service of all notices under this Agreement shall be sufficient if given personally, by registered or certified mail, returned receipt requested, and mailed to the party involved at the address and to the attention of the person set forth below, or to such other person or address as said party may provide in writing in writing from time to time. Any such notice mailed to such address shall be effective upon the date received as shown by the returned receipt or otherwise:

For Benchmark CMR, Inc.
PO Box 430
c/o Gary Wilson
Kannapolis NC 28082

For County of Henderson
Henderson County Planning Dept.
c/o Anthony Starr, Planning Director
213 1st Ave. East
Hendersonville, North Carolina 28792

19. ASSIGNMENT: This contract may not be assigned to any other party by Benchmark CMR, Inc unless approved by Local Government in writing prior to assignment..

20. MISCELLANEOUS:

- a. General: This Agreement constitutes the entire agreement and understanding of Local Government and Benchmark CMR, Inc. with respect to the subject matter of this contract and supersedes all offers, negotiations, and other agreements. There are no representations or understandings of any kind not set forth herein.
- b. Rule of Law: This Agreement shall be construed in accordance with the laws of North Carolina.

- c. Severability: If any of the terms of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- d. Pre-Audit Certificate: Both parties must certify that this document has been pre-audited in the manner required by the Local Government and Fiscal Control Act. N.C. G.S. 159-28(a).
- e. Original: A signed copy of this Agreement shall be considered as an original.

21. ENTIRE AGREEMENT: This is the entire agreement between the parties and there are no terms, conditions, representations or warranties relating to the work to be performed hereunder which are not specifically set forth herein.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

ATTEST

HENDERSON COUNTY

Signature

BY: _____
Signature

Print or Type name

Anthony W. Starr, Planning Director
Name and Title

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

J. Carey McLelland, Finance Director

ATTEST

BENCHMARK CMR, INC.

Signature

Tommy Sides, Vice President

Name

Date

BY:

Gary M. Wilson, President

Name

Date