

***** PURCHASE OF SERVICES AGREEMENT *****
MAHUBE-OTWA HOME ENERGY and CONSERVATION PROGRAMS

THIS AGREEMENT, entered into by and between Mahube-Otwa Community Action Partnership, Inc., a nonprofit corporation under the laws of the State of Minnesota, hereinafter referred to as "MAHUBE-OTWA", and

_____, hereinafter referred to as "Contractor".
 WHEREAS, MAHUBE-OTWA administers home energy conservation programs; and
 WHEREAS, the Contractor will submit its bid for work to be performed in connection with the Mahube-Otwa Home Energy Conservation Programs; and
 NOW THEREFORE, in consideration of the mutual covenants of the parties hereinafter set forth, the parties agree as follows:

SECTION I - RESPONSIBILITIES OF PARTIES

1. RESPONSIBILITIES OF PARTIES

1.1 Responsibilities of Contractor

- 1.1.1. Contractor agrees to apply materials and labor to dwellings as set forth in the Contractor's bid, and as specified in the Job Work Order forms and the MN SWS Field Guide.
- 1.1.2. Contractor shall secure all necessary permits and licenses required to perform the work called for by this Agreement, and all such work shall be in compliance with all building code regulations and ordinances whether or not covered by the specifications and drawings for the work.
- 1.1.3. Contractor shall be licensed and/or bonded as required by pertinent laws, ordinances, regulations or codes, and furnish proof thereof, including proof of MN Building Contractor's License and MN Mechanical Bond, as applicable.
- 1.1.4. Contractor shall pass a criminal background check, using, at a minimum, the Minnesota Bureau of Criminal Apprehension's Computerized Criminal History system.
- 1.1.5. Contractor shall comply with the Copeland "Anti-Kick Back" Act (18 USC 874) as supplemental in Department of Labor Regulations (29 CFR, Part 3).
- 1.1.6. Contractor will furnish materials free from defects and assumes full guaranty and warranty of all materials and workmanship to the program recipient, hereinafter referred to as "client", and hold MAHUBE-OTWA blameless and harmless for any negligence of the Contractor.
- 1.1.7. Upon acceptance of bid and submission of evidence of satisfactory insurance coverage, the work shall be satisfactorily completed by the completion date on the work order, and in accordance with U.S. Dept. of Energy, MN Dept. of Commerce and other relevant energy program policies, standards and requirements. Any time extension requires prior written approval from MAHUBE-OTWA.
- 1.1.8. Contractor agrees to keep the work-site premises clean and orderly during the course of the work and remove all debris at the completion of the work.
- 1.1.9. The Contractor agrees to treat program clients with respect and dignity.
- 1.1.10. Contractor agrees to payment of a re-inspection fee in accordance with the provisions of Section 2.4 of this Agreement.
- 1.1.11. The Contractor agrees to abide by all applicable OSHA and Safety regulations that regulate equipment and work practices.
- 1.1.12. The Contractor shall follow EPA's Lead Renovation, Repair and Painting Program (RRP), which includes to be trained in Lead Safe practices, certified by the EPA as a Lead Firm, and be accompanied by an EPA Certified Renovator, if performing projects that disturb lead paint.

1.2 Responsibilities of MAHUBE-OTWA

- 1.2.1. Prepare job work orders and invitations to bid.
- 1.2.2. Conduct interim and final inspections as appropriate.
- 1.2.3. Provide coordination with program clients.
- 1.2.4. Provide contractor with technical requirements for field work, including the MN Weatherization SWS Field Guide, the U.S. Dept. of Energy, Minnesota Dept. of Commerce, and other relevant energy program policies, standards and requirements.

SECTION II - SERVICE FEES

2. SERVICE FEES

2.1 Service Fees

2.1.1. MAHUBE-OTWA shall pay Contractor a fee for performing the services provided pursuant to Section 1.1.1 of this Agreement.

2.2 Payment of Taxes

2.2.1. The parties agree that the Contractor will be solely responsible for all taxes incurred as a result of payments made pursuant to this Agreement. The parties further agree that MAHUBE-OTWA has absolutely no responsibility to pay any employment related taxes, social security contributions, pension contributions or any additional sums arising out of or related to the terms and conditions of this Agreement.

2.3 Method of Payment

2.3.1. Payment shall not be due until the Contractor has delivered to MAHUBE-OTWA complete release of all liens arising out of this Contract for all work completed in accordance with MN Statute 514.001, or receipt in full covering all labor and materials for which a lien could be filed, indemnifying the client and MAHUBE-OTWA against lien.

2.3.2. Contractor agrees that payment by MAHUBE-OTWA is contingent upon final inspection and acceptance by MAHUBE-OTWA, and upon execution of the Completion Certificate by all parties.

2.3.3. MAHUBE-OTWA will make every effort to make final payment within fourteen (14) days of execution of the Completion Certificate.

2.4 Reinspection Fees

2.4.1. In the event MAHUBE-OTWA should need to reinspect the Contractor's work due to a failed initial inspection, client complaint, or other valid reason, MAHUBE-OTWA may charge the Contractor a reinspection fee, and the Contractor agrees to pay a reinspection fee of the actual costs to include time, materials, and reasonable expenses. The Contractor authorizes MAHUBE-OTWA, at MAHUBE-OTWA's sole discretion, to deduct the reinspection fee from the Contractor's obligated funds for that particular dwelling.

SECTION III - TERM AND TERMINATION

3. TERM AND TERMINATION

3.1 Contract Term

3.1.1. **The term of this Agreement shall be effective from date of signature and shall remain in effect through JUNE 30, 2022**, unless sooner terminated as provided herein. Failure of the Contractor to meet the contractor responsibilities as specified in section 1.1 for the duration of this agreement shall be considered a substantial breach, in which case this agreement shall immediately terminate.

3.2 Termination

3.2.1. This Agreement may be terminated for any reason by either party by giving the other party thirty (30) days written notice of its intent to terminate. Either party may terminate this agreement immediately by giving the other party written notice in the event of the other's insolvency, fraud, willful misconduct or substantial breach of any of the terms and provisions of this Agreement, or the Contractor has obtained the contract by fraud, collusion, conspiracy, or in conflict with any statutory or constitutional provision of the State of Minnesota.

3.2.2. If MAHUBE-OTWA cancels this Agreement, MAHUBE-OTWA may immediately take possession of the site and may finish the work by whatever method is deemed appropriate. If the cost of finishing the work exceeds the total cost of the Contract, Contractor may be required to pay the difference to MAHUBE-OTWA for time, material, and reasonable expenses.

SECTION IV - INDEMNIFICATION / HOLD HARMLESS / INSURANCE

4. INDEMNIFICATION / HOLD HARMLESS / INSURANCE

4.1 Indemnification / Hold Harmless

4.1.1. The Contractor agrees to defend, indemnify, and hold MAHUBE-OTWA, its employees and officials harmless from any and all claims of action, including reasonable attorney's fees and expenses, rising out of any act or omission on the part of the Contractor or its subcontractors, partners, or independent contractors or any of their agents or employees, in the performance of or with relation to any of the work or services to be performed or furnished by the Contractor or the subcontractors,

partners, or independent contractors or any of their agents or employees under the Agreement.

- 4.1.2. Contractor shall defend, indemnify and hold harmless MAHUBE-OTWA clients; the officers, members of the Board of Directors, and employees of MAHUBE-OTWA; the State of Minnesota; the Department of Energy; and the Department of Human Services from all liability and claims for damages arising from bodily injury, death, property damage, sickness, disease, or loss and expense resulting from or alleged to result from Contractor's operations under this Agreement.
- 4.1.3. Contractor shall protect, defend, and indemnify MAHUBE-OTWA clients and/or MAHUBE-OTWA, from any claims for unpaid work, labor, or materials.

4.2 Insurance: At all times during the term of this Agreement, the Contractor shall maintain insurance coverage as follows:

4.2.1. Minimum Contractor Insurance Coverage:

- 4.2.1.1. Property damage: \$50,000
- 4.2.1.2. Bodily injury and liability: \$100,000/\$300,000
- 4.2.1.3. Basic workers' compensation where required.

4.2.3. Workers' Compensation:

- 4.2.3.1. The policy shall include Employer's Liability Insurance
- 4.2.3.2. The limits shall be statutory per applicable State and Federal laws. Minimum limits of: Bodily Injury by Accident \$100,000 each Accident; Bodily Injury by Disease \$100,000 each Employee; Bodily Injury by Disease \$500,000 Policy Limit.
- 4.2.3.3. Workers' Compensation may only be waived pursuant to State and Federal laws.

4.2.4. Subcontractors:

- 4.2.4.1. If possible, the Contractor shall include all subcontractors and sub-subcontractors as insured under its policies. If this is not possible, the subcontractors and sub-subcontractors shall be required to follow the same criteria and limits as the Contractor.
- 4.2.4.2. The Contractor and/or subcontractor shall furnish separate Certificates of Insurance for each subcontractor.

4.2.5. Certificate of Insurance:

- 4.2.5.1. The Contractor shall furnish original Certificate(s) of Insurance before work commences.
- 4.2.5.2. The Certificate(s) shall be signed by the person authorized by the insurer to bind coverage.
- 4.2.5.3. The Certificate shall include a minimum 60-day written notice of intent to cancel, suspend, or reduce coverage, and shall provide that a copy of said notice shall be forwarded to MAHUBE-OTWA.
- 4.2.5.4. The Certificate shall identify MAHUBE-OTWA as an Additional Insured.
- 4.2.5.5. Insurance shall be placed with insurers with a current A.M. Best rating of no less than A:VII.

SECTION V - MISCELLANEOUS

5. MISCELLANEOUS

5.1 Confidentiality

The Contractor agrees that client names and any other information released to Contractor by MAHUBE-OTWA shall be kept confidential and shall be used only in connection with the performance of said duties for MAHUBE-OTWA. In case of a conflict between this paragraph and the Minnesota Data Practices Act, the Minnesota Data Practices Act shall govern.

5.2 Sub-Contractors

The Contractor shall not subcontract any of the services which Contractor is to provide without the express written approval of MAHUBE-OTWA.

5.3 Independent Contractor

The Contractor is expressly forbidden to act for MAHUBE-OTWA in any other capacity, or to represent itself in any manner as an agent of MAHUBE-OTWA, except under the terms hereof. During the term of this Agreement the Contractor, and the Contractor's employee(s), if any, shall be considered an act as an independent contractor and shall not be considered as employee(s) of MAHUBE-OTWA. The Contractor shall furnish all labor required to perform the services and will have full control and direction over the method and manner of performing those services.

5.4 Non-Waiver and Cumulation of Remedies

The failure by either party at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any

way affect the validity of this Agreement. The waiver of any default by either party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed. The remedies provided under this Agreement shall be cumulative and not alternative, and the election of any one remedy for breach shall not preclude the pursuit of other remedies.

5.4.1. Contractor agrees to pay MAHUBE-OTWA all reasonable attorney fees and costs incurred by MAHUBE-OTWA in enforcing any of the provisions of this Agreement.

5.5 Warranty

Contractor hereby warrants to the clients of the property to be improved that all materials, hardware, fixtures, and utilities of whatever kind or nature, incorporated in said dwelling by the Contractor are of good quality, and free from defects in workmanship of material, and that Contractor shall repair, correct, or replace at no cost, any instance of defective workmanship or materials of deficiencies subject to the warranty contained in this paragraph; provided, however, that the warranty set forth in this paragraph shall apply only to such deficiencies and defects as to which clients shall have given written notice to the Contractor, at its principal place of business, **within one (1) year from the date of the Completion Certificate by all parties hereto.**

The above warranties are in addition to and not in limitation of, any and all rights and remedies to which the client may be entitled, at law or inequity, and shall be binding on the undersigned notwithstanding any provisions to the contrary contained in any instrument heretofore or hereafter executed by the client. The Contractor hereby acknowledges that this warranty has been approved by MAHUBE-OTWA.

5.6 Entire Agreement

This Agreement sets forth the entire agreement and understanding between the Contractor and MAHUBE-OTWA regarding the subject matter hereof and supersedes any prior representations, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter. This Agreement may not be modified or amended except by a writing signed by the party against whom the modification or amendment is sought to be enforced.

5.7 Severability

Every provision of this Agreement shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this agreement so construed is held by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision shall be deemed severed from this Agreement, and all other provisions shall remain in full force and effect.

5.8 Assignment

Neither the Contractor nor MAHUBE-OTWA may assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other.

5.9 Amendments

This Agreement may be altered, extended, changed or amended in writing by mutual agreement of the parties hereto when dated and attached hereto without altering the other terms of this Agreement.

5.10 Controlling Law

This Agreement shall be interpreted in accordance with the substantive laws of the State of Minnesota.

5.11 Notice

Any notice to be given hereunder by either party to the other shall be in writing and may be effectuated by delivery of U.S. certified mail, return receipt requested. Notice hereunder shall be sufficient if properly addressed and made to:

Mahube-Otwa Community Action partnership, Inc., P.O. Box 747, Detroit Lakes, MN 56502-0747, (218) 847-1385,

Liz Kuoppala Executive Director

Contractor: Per the address listed on their Application to Bid form or latest billing, whichever is most current.

5.12 Fact Finding Inquiries

As a condition of entering into this Agreement, Contractor agrees to cooperatively participate in any fact finding inquiries or investigations relative to the subject matter of this Agreement which may be initiated by MAHUBE-OTWA.

The Contractor shall provide access to any books, documents, papers, and records, to the Federal, State, and local sponsoring agencies, the Comptroller General of the United States or any of their duly authorized representatives which are directly pertinent as to this specific project for the purpose of making audit, examination, excerpts, and transcriptions. Contractor shall maintain all required records for three (3) years after MAHUBE-OTWA makes final payment and all other pending matters are closed.

5.13 Certificate of Nondebarment: The Contractor certifies, by execution of this Agreement, that:

5.13.1. They are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (see 24 CFR 24.110) by any Federal department or agency.

- 5.13.2. They have not within a three-year period preceding the date of application submission been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- 5.13.3. They are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with the commission of any of the offenses enumerated in 5.13.2 above.
- 5.13.4. They have not within a three-year period preceding the date of this Agreement had one or more public transactions terminated for cause or default.

5.14 Statement of Nondiscrimination

Contractor acknowledges, by execution of this Agreement, that the Contractor, in providing the services contemplated under the terms of this Agreement, will not discriminate against any person(s) on the basis of age, race, creed, color, national origin, ancestry, sex, physical or mental handicap, marital status, sexual orientation, military status, or status as a public assistance recipient.

5.15 Alternative Dispute Resolution

The parties agree to promptly submit to mediation (within ten [10] working days of reaching an impasse) any dispute or controversy arising under this agreement which cannot be resolved by the parties through direct communication without mediation. The parties further agree to mediate in good faith. The mediator to be selected shall be listed on the Minnesota Roster of Neutrals and shall either be selected by the mutual agreement of the parties or by each party submitting a list of up to three (3) qualified mediators and then alternately striking names. The parties shall flip a coin to determine which party shall strike the first name. The parties shall equally share the costs of mediation. This procedure shall be followed before either party may file an action/complaint with a court of competent jurisdiction or any regulating agency and to that extent this provision supersedes the provisions contained in paragraph 5.4. This procedure shall be governed by the Minnesota Civil Mediation Act as from time to time amended.

SECTION VI - ADDENDA

6. ADDENDA

6.1 This agreement contains the following addenda by reference:

- 6.1.1. Job Work Order
- 6.1.2. Bid
- 6.1.3. Completion Certificate

Contractor:

By: _____

Date: _____

Mahube-Otwa Community Action Partnership, Inc.

By: _____

Date: _____

Dan Josephson, Energy Director