



M E M O R A N D U M

**City of Austin
Financial Services Department
Purchasing Office**

DATE: July 22, 2016
TO: Memo to File
FROM: Jonathan Dalchau, Senior Buyer Specialist
RE: MA 7200 NG160000051

This MA was created as a payment mechanism only. The original contract is administered, maintained, and located with Austin Housing Finance Corporation (AHFC).

**CONTRACT BETWEEN THE AUSTIN HOUSING FINANCE CORPORATION
AND
CEN-TEX Certified Development Corporation dba Business & Community Lenders (BCL) of Texas
FOR
Credit Counseling Services for Flood Victims**

This Contract is made by and between the **AUSTIN HOUSING FINANCE CORPORATION (AHFC)** a Texas public, non-profit corporation ("AHFC"), and **CEN-TEX Certified Development Corporation dba Business & Community Lenders (BCL) of Texas** ("Consultant"), having offices at 2212 S. Congress Avenue, Austin, TX 78704.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 Engagement of the Consultant. Subject to the general supervision and control of the AFHC and subject to the provisions of the Terms and Conditions contained herein, the Consultant is engaged to provide the services set forth in Section 0500, Scope of Work.

1.2 Responsibilities of the Consultant. The Consultant shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Consultant to perform services beyond those stated in the Scope of Work, the Consultant and the AHFC shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 Responsibilities of the AHFC. AHFC's Program Consultant or their designee will be responsible for exercising general oversight of the Consultant's activities in completing the Scope of Work. Specifically, the Program Consultant will represent AHFC's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Consultant, and shall approve all invoices for payment, as appropriate. AHFC's Program Consultant or their designee shall give the Consultant timely feedback on the acceptability of progress and task reports.

1.4 Designation of Key Personnel. The Consultant's Contract Manager for this engagement shall be Raquel Valdez, Phone: (512) 383-0025 x103 Email: rvaldez@bcloftexas.org. The AHFC's Program Consultant for the engagement shall be Letitia Brown, 512.974.3132; Email: letitia.brown@austintexas.gov. AHFC and the Consultant resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Consultant to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Consultant will promptly notify the AHFC representative and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 Consultant's Obligations. The Consultant shall fully and timely provide all deliverables described in the Scope of Work as described, the Consultant's Proposal in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION

3.1 Contract Amount. The Consultant will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Consultant shall be paid in accordance with fees included in Scope of Work not-to-exceed \$172,000.00. Contract funds are not guaranteed and are subject to funding availability.

3.2 Invoices.

3.2.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the Request for Qualifications number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Consultant's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Consultant's registration with the City of Austin. Invoices received without all required information

cannot be processed and will be returned to the Consultant. Invoices shall be mailed to the below address:

	Austin Housing Finance Corporation
Attn:	Letitia Brown
Address:	1000 E. 11 th Street, Suite 200
City, State, Zip Code	Austin TX 78702

3.2.2 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The AHFC will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.1 All properly submitted invoices received by the AHFC will be paid within thirty (30) calendar days of AHFC's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which AHFC may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 AHFC may withhold or set off the entire payment or part of any payment otherwise due the Consultant to such extent as may be necessary on account of;

3.3.3.1 delivery of defective or non-conforming deliverables by the Consultant;

3.3.3.2 third party claims, which are not covered by the insurance which the Consultant is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Consultant to pay Subconsultants,

3.3.3.4 damage to the property of the AHFC or the AHFC's agents, employees or contractors, which is not covered by insurance required to be provided by the Consultant;

3.3.3.5 reasonable evidence that the Consultant's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual damages for the anticipated delay;

3.3.3.6 failure of the Consultant to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Consultant to comply with any material provision of the Contract.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the AHFC to offset indebtedness owed the City of Austin.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Consultant agrees that there shall be no additional charges, surcharges, or penalties to AHFC for payments made by credit card or electronic transfer of funds.

3.4 **Final Payment and Close-Out.**

3.4.1 The making and acceptance of final payment will constitute:

3.4.1.1 a waiver of all claims by the AHFC against the Consultant, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Consultant to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Consultant's

continuing obligations under the Contract, including but not limited to indemnity obligations, or (5) arising under AHFC's right to audit; and

3.4.1.2 a waiver of all payment claims by the Consultant against AHFC other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** This Contract shall become effective on the date executed by the AHFC ("Effective Date") and shall remain in effect until the earliest of when the deliverables set forth in the Scope of Work are complete or the AHFC terminates the Contract. The Contract shall be in effect for a term of 24 months. Specific deliverable due dates are shown in the Scope of Work. Consultant agrees to extend thereafter for up to 120 days.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Consultant shall be in default under the Contract if the Consultant (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Consultant's Proposal, or in any report or deliverable required to be submitted by Consultant to the AHFC.

4.4 **Termination For Cause.** In the event of a default by the Consultant, AHFC shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Consultant, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the AHFC's reasonable satisfaction that such default does not, in fact, exist.

4.5 **Termination Without Cause.** AHFC shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar day's prior written notice. Upon receipt of a notice of termination, the Consultant shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. AHFC shall pay the Consultant, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Consultant on any Offer or in any report or deliverable required to be submitted by the Consultant to AHFC shall be grounds for the termination of the Contract for cause by the AHFC and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance.** The following insurance requirements apply.

5.1.1 General Requirements

5.1.1.1 The Consultant shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Consultant shall provide a Certificate of Insurance as verification of coverages required below to the AHFC at the below address prior to contract execution and within seven (7) calendar days after written request from the AHFC.

5.1.1.3 The Consultant must also forward a Certificate of Insurance to the AHFC whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Consultant shall not commence work until the required insurance is obtained and has been reviewed and approved by AHFC. Approval of insurance by the AHFC shall not relieve or decrease the liability of the Consultant hereunder and shall not be construed to be a limitation of liability on the part of the Consultant.

5.1.1.5 The Consultant must submit certificates of insurance to the AHFC for all subconsultants prior to the subconsultants commencing work on the project.

5.1.1.6 The Consultant's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The AHFC will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

5.1.1.7 All endorsements naming the AHFC as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the Consultant's email address, and shall be mailed to the following address:

Austin Housing Finance Corporation
AHFC's Program Consultant
Street-Jones Building
1000 E. 11th Street, Suite 200
Austin, Texas 78702

5.1.1.8 The "other" insurance clause shall not apply to the AHFC where AHFC is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the AHFC and the Consultant, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified, the Consultant shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 AHFC shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 AHFC reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the AHFC based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Consultant.

5.1.1.12 The Consultant shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Consultant shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Consultant shall endeavor to provide AHFC thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 Specific Coverage Requirements. The Consultant shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Consultant.

5.1.2.1 Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project

5.1.2.1.2 Independent Consultant's Coverage

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

5.1.2.1.5 Thirty (30) calendar day's Notice of Cancellation, Endorsement CG 0205, or equivalent coverage

5.1.2.1.6 Austin Housing Finance Corporation listed as an additional insured, Endorsement CG 2010, or equivalent coverage

5.1.2.2 Business Automobile Liability Insurance. The Consultant shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage

5.1.2.2.3 Austin Housing Finance Corporation listed as an additional insured, Endorsement TE 9901B, or equivalent coverage

5.1.2.3 Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Consultant's policy shall apply to the State of Texas

5.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage

5.1.2.5 Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the AHFC's review and approval.

5.1.2.6 **Certificate.** The following statement must be shown on the Certificate of Insurance.

"Austin Housing Finance Corporation is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the Austin Housing Finance Corporation for general liability, auto liability and workers compensation policies."

5.2 **Ownership And Use Of Deliverables.** Consultant does hereby transfer and assign to AHFC a royalty free license to reproduce, publish, or otherwise use for GHFI Austin purposes GHFI patented copyrighted materials that are provided by the Consultant to AHFC.

5.2.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Consultant agrees to disclose such patentable subject matter to AHFC. Further, if requested by AHFC, the Consultant agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to AHFC and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by AHFC, to the AHFC upon request by AHFC.

5.2.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Consultant agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Consultant for AHFC and AHFC shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate AHFC's sole or joint ownership of any such deliverables arising by virtue of AHFC's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Consultant hereby assigns to AHFC (and agrees to cause each of its employees providing services to the AHFC hereunder to execute, acknowledge, and deliver an assignment to AHFC of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Consultant agrees to execute, acknowledge, and deliver and cause each of its employees providing services to AHFC hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by AHFC, to the AHFC upon delivery of such deliverables to AHFC or at such other time as the AHFC may request.

5.2.3 **Additional Assignments.** The Consultant further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which AHFC might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to AHFC, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Consultant's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event AHFC should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Consultant agrees to treat the same as Confidential Information under the terms herein.

5.3 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. MISCELLANEOUS

6.1 **Place and Condition of Work.** AHFC shall provide the Consultant access to the sites where the Consultant is to perform the services as required in order for the Consultant to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Consultant acknowledges that it has satisfied itself as to the nature of AHFC's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials,

equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Consultant's obligations under the contract.

6.2 Right To Audit.

6.2.1 The Consultant agrees that the representatives of the Office of the City of Austin's Auditor or other authorized representatives of AHFC shall have access to, and the right to audit, examine, or reproduce, any and all records of the Consultant related to the performance under this Contract. The Consultant shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the AHFC has brought to the attention of the Consultant are resolved, whichever is longer. The Consultant agrees to refund to AHFC any overpayments disclosed by any such audit.

6.2.2 The Consultant shall include this provision in all subcontractor agreements entered into in connection with this Contract.

6.3 Indemnity.

6.3.1 Definitions:

6.3.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

6.3.1.1.1 damage to or loss of the property of any person (including, but not limited to AHFC, the Consultant, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

6.3.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of AHFC, the Consultant, the Consultant's subconsultants, and third parties),

6.3.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

6.3.2 The Consultant shall indemnify and hold AHFC, its successors, assigns, officers, employees and elected officials harmless from and against all Indemnified Claims Directly arising out of, incident to, concerning or resulting from and to the extent caused by the negligence of the Consultant, or the Consultant's agents, employees or subconsultants, in the performance of the Consultant's obligations under the Contract. Nothing herein shall be deemed to limit the rights of AHFC or the Consultant (including, but not limited to, the right to seek contribution) against any third party who may be liable for an indemnified claim.

6.4 **Claims.** If any claim, demand, suit, or other action is asserted against the Consultant which arises under or concerns the Contract, or which could have a material adverse effect on the Consultant's ability to perform hereunder, the Consultant shall give written notice thereof to AHFC within ten (10) calendar days after receipt of notice by the Consultant. Such notice to AHFC shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to AHFC and to the City of Austin's Attorney. Personal delivery to the City of Austin's Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

6.5 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to AHFC and the Consultant shall be addressed as follows:

To the AHFC:

Austin Housing Finance Corporation
ATTN: John Hilbun, Contract Development Analyst
Street-Jones Building
1000 E. 11th Street, Suite 200
Austin, TX 78702

To the Consultant:

Business & Community Lenders (BCL) of Texas
ATTN: Raquel Valdez, Chief Operating Officer
2212 S. Congress Ave.
Austin, TX 78704

6.6 **Advertising.** The Consultant shall not advertise or publish, without AHFC's prior consent, the fact that the AHFC has entered into the Contract, except to the extent required by law.

6.7 **Prohibition Against Personal Interest In Contracts.** No officer, employee, independent consultant, or elected official of the City of Austin or AHFC who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Consultant shall render the Contract voidable by AHFC.

6.8 **Assignment-Delegation.** The Contract shall be binding upon and ensure to the benefit of the AHFC and the Consultant and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Consultant without the prior written consent of AHFC. Any attempted assignment or delegation by the Consultant shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

6.9 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Consultant or AHFC of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

6.10 **Modifications.** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Consultant invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

6.11 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

6.12 **Dispute Resolution.**

6.12.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

6.12.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the AHFC and the Consultant agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Mediation shall be administered by the American Arbitration Association in accordance with its construction industry mediation procedures. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The AHFC and the Consultant will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

6.13 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the AHFC to seek and secure injunctive relief from any competent authority as contemplated herein.

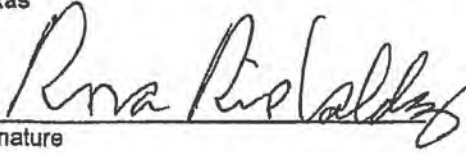
6.14 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

6.15 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

6.16 **Non-Suspension or Debarment Certification.** AHFC is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a contract with AHFC, the Consultant certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

**CEN-TEX Certified Development Corporation
dba Business & Community Lenders (BCL) of
Texas**

By: 
Signature

Name: _____
Rosa Rios Valdez
Title: President & CEO

Date: 5/19/16

Austin Housing Finance Corporation (AHFC)

By: 
Signature

Name: _____
Elizabeth A. Spencer
Title: Treasurer

Date: 6/8/16

List of Attachments

- Scope of Work
- Consultants Proposal

Scope of Work

SOLICITATION NO. 2016AHFC003

Credit Counseling Services for Flood Victims

1.0 Purpose

The purpose of this contract is to provide credit counseling services for persons affected by the 2015 Memorial Day and Halloween floods, as well as the 2013 Halloween Flood.

2.0 Background

2.1 Historic flash and river flooding occurred on Thursday October 31st, 2013, Saturday, May 23rd, 2015, and Friday October 31st, 2015 across portions of South-Central Texas. Southeast Austin was especially affected and many homes in southeast Austin were flooded. This area also experienced serious flooding in 1998, 2001, and 2013. The neighborhoods were built in the 1970s, when most of the area was not thought to be in a floodplain. Since the houses were built, the floodplain maps have been revised to show the potential for dangerous flooding. As a public safety measure, the Watershed Protection Department is buying out flood-prone homes near William Cannon Drive and South Pleasant Valley Road. However, many homeowners that will be or have been bought out are having difficulty finding comparable homes in the area, or are unable to secure financing to afford those that are available. There are a variety of barriers facing these homeowners in a home purchase including the ongoing shortage of affordable housing in the Austin area and inability to obtain financing because of bad credit. The AHFC is seeking proposals in response to this Request for Proposals (RFP) for credit counseling agencies to provide credit counseling classes and individual one-on-one credit counseling to these flood victims to serve this need.

3.0 Tasks/Requirements

3.1 *Contractor's Minimum Qualifications & Experience*

- 4.1.1 Contractor shall have at least two (2) years of experience providing credit counseling services that assist consumers with credit improvement, debt repayment, and improving credit reports and scores.
- 4.1.2 Contractor shall have knowledge of The Fair and Accurate Credit Transactions Act of 2003 (FACTA) and The Fair Credit Reporting Act (FCRA).

4.2 *Contractor's Responsibilities*

- 4.2.1 Contractor shall assist up to two hundred forty (240) unduplicated, eligible clients with in-person and telephone credit counseling sessions including homebuyer counseling, credit counseling and credit improvement services. Services will need to improve the borrower's ability to qualify for and repay a mortgage loan. An unduplicated client shall be defined as a client who is reported/counted only once during the agreement term which is the 24-month contract, regardless of the number of times assistance was provided by the contractor.
- 4.2.2 The curriculum will be taught in either three (3) three-hour sessions constituting one class or one (1) eight-hour class. The class shall be taught approximately once a month minimum depending upon demand. Class sessions shall be held on weekday evenings or Saturdays.
- 4.2.3 Contractor shall provide one-on-one in-person and phone credit counseling services.

The initial in-person counseling session shall not exceed two (2) hours with a minimum of thirty (30) minutes. Follow-up sessions may be held. In person counseling sessions shall be held in southeast Austin at Perez Elementary, Dove Springs Recreation Center, or a local church or business in the area. Contractor shall also accept phone calls from qualified individuals seeking counseling and shall spend a minimum of thirty (30) minutes and a maximum of one and a half (1½) hours for each phone counseling session. A qualified individual client is one who is a victim of the 2015 Memorial Day flood or 2013 Halloween Flood.

- 4.2.4 Contractor must make phone and in-person sessions available to clients during a regular eight-hour business day, which coincides with the AHFC business day (8:00 am – 5:00 pm CST). In addition, Contractor could provide counseling services in the evening and on Saturdays. Contractor has the option to match the City of Austin holiday schedule for days in which services are not available.
- 4.2.5 All counseling sessions including phone calls must be held in an enclosed office to provide the maximum privacy for clients and their personal information. An enclosed office is one that has a door for privacy and walls to the ceiling that prevent direct conversations from being heard by other staff members or clients on site.
- 4.2.6 Contractor shall serve as a liaison between the client and AHFC staff and shall be available to answer any questions from the client throughout the term of the contract. Contractor shall mediate any issues or concerns between the client and AHFC and communicate any discovered issues or problems to AHFC.
- 4.2.7 Contractor shall conduct specific and focused biannual information campaigns at the community level including, but not limited to, renting a booth at a community event, posting fliers at local schools, faith-based institutions, community centers, and non-profits. AHFC will also provide a list of affected households for the Contractor to contact directly via mail. Contractor shall submit detailed campaign information to AHFC Contract Manager at least thirty (30) days prior to the event. Contractor shall provide an annual report with graphic evidence including not limited to event's advertisements, sign-in sheets, and event's pictures.
- 4.2.7 Contractor shall set up and maintain unduplicated client files that will be monitored periodically by the AHFC Contract Manager. Files shall be kept on Contractor's premises using a secure filing system. At minimum, the file shall include:
 - 4.2.7.1 Name of client
 - 4.2.7.2 Application date
 - 4.2.7.3 Residential address and phone number
 - 4.2.7.4 Income eligibility determination/documentation including the last two pay stubs, copies of income tax returns for the last two years and clients' identifications (Driving license, passport, etc.)
 - 4.2.7.5 Ethnicity or race of head of the household
 - 4.2.7.6 Gender and age of persons in household
 - 4.2.7.7 Service(s) provided/additional service(s) rendered during the year
- 4.2.8 Contractor shall submit to AHFC the list of unduplicated individuals served in the monthly demographic report (Attachment 2). The demographic report shall be submitted to AHFC within ten (10) calendar days after the end of the reporting month. At minimum, the report shall include:
 - 4.2.8.1 Reporting Period
 - 4.2.8.2 Preparer's Name
 - 4.2.8.3 Household Size (# of Persons in Household)
 - 4.2.8.4 Household Type/Head of Household (HOH)
 - 4.2.8.5 Household Income of HOH

4.2.8.6 Ethnicity of HOH

4.2.8.7 Race of HOD

4.2.9 Contractor shall submit to AHFC, a Monthly Performance Report (Attachment 1) detailing the Agreement activities and accomplishments during each reporting month. The performance report shall be submitted to AHFC within ten (10) calendar days after the end of the reporting month.

4.2.10 Contractor shall maintain a file for each client documenting the nature and disposition of each phone call, a calendar of in-person counseling sessions, the disposition of the phone and in-person sessions, and the final determination of the client's account.

4.3 AHFC's Responsibilities

4.3.1 AHFC will review and approve all work and documentation.

4.3.2 AHFC will appoint a Contract Manager to act as point-of-contact:

Dawn Perkins
Austin Housing Finance Corporation
1000 E. 11th St., Suite 200
Austin, TX 78702
(512) 974-3122

5.0 Deliverables/Milestones

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
Credit Counseling Classes	homebuyer counseling, credit counseling and credit improvement services in classroom setting	Classes for up to 240 clients over 24 months, as needed	Complete classes	4.2
Individual Counseling	One-on-one homebuyer counseling, credit counseling and credit improvement	Up to 240 clients over 24 months	Complete session(s)	4.2
Outreach	Community level recruiting and information campaigns	Twice annually over 24 months	AHFC approval	4.2
Reporting	Client and demographic reports	Monthly and at close-out	AHFC approval of reporting	4.2

6.0 Appendices/Exhibits

The Fair and Accurate Credit Transactions Act of 2003 (FACTA):

<https://www.gpo.gov/fdsys/pkg/PLAW-108publ159/pdf/PLAW-108publ159.pdf>

The Fair Credit Reporting Act (FCRA) (15 U.S. Code § 1681):

<https://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0111-fair-credit-reporting-act.pdf>