

## CONSULTANT AGREEMENT

**THIS CONSULTANT’S AGREEMENT** (the “Agreement”) is effective this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the TOWN OF UNIVERSITY PARK (the “Town”), a municipal corporation of the State of Maryland, whose address is 6724 Baltimore Avenue, University Park, Maryland 20782 and hereinafter referred to as “Consultant,” whose address is 4313 Tuckerman Street, University Park, MD 20782.

**WHEREAS**, the Town is implementing the Small Town Energy Program for University Park (“STEP-UP”), a 3-year effort designed to achieve energy efficiency market transformation within University Park and to serve as a roadmap for energy transformation in small towns across the United States; and

**WHEREAS**, the Town desires to engage a technical consultant to provide ongoing assistance to STEP-UP. The technical consultant will be primarily responsible for providing technical assistance to STEP-UP, as directed by the STEP-UP Energy Coach or designee(s) from the STEP-UP Advisory Committee, with respect to home energy audits and energy efficiency improvements; and

**WHEREAS**, Consultant desires to act for the Town as STEP-UP’s technical consultant; and

**WHEREAS**, the Town desires that Consultant provide such technical consulting services.

**NOW, THEREFORE**, in consideration of the premises and mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Appointment.** The Town hereby engages Consultant, as an independent contractor, who will be primarily responsible for providing technical assistance to STEP-UP, as directed by

the STEP-UP Energy Coach or designee(s) from the STEP-UP Advisory Committee, with respect to home energy audits and energy efficiency improvements, and Consultant hereby accepts such work, subject to the terms and provisions of this Agreement.

**2. Scope of Services.** Pursuant to the Agreement, Consultant agrees to furnish all the material and equipment and perform all of the work in compliance with the requirements and standards contained in the Contract Documents, as defined herein. The work will be provided by David Brosh, member of Consultant. Consultant shall provide technical consulting services with respect to home energy audits and energy efficiency improvements in consultation with the STEP-UP Energy Coach or designee, as and when needed, which shall include the following:

- a. Attend whole-house energy audits, to ensure proper procedures are followed by the auditor.
- b. Review whole-house energy audit reports and supporting documentation delivered to STEP-UP participants (the "Audit Reports")
- c. Provide feedback on the Audit Reports with respect to specific issues raised, including but not limited to: the significance of test results, the efficacy and efficiency of particular recommendations, and alternative methods for achieving more cost effective results.
- d. Provide feedback on proposals for implementing recommended energy efficiency improvements with respect to specific issues raised, including but not limited to: consistency between multiple proposals for the same work, the efficacy and efficiency of particular work scopes, and the reasonableness of costs.
- e. Review work undertaken to ensure proper installation procedures were followed and accurate test-out results were achieved.
- f. Demonstrate audit procedures and tests at neighborhood gatherings.

Consultant shall not be eligible to solicit or accept any compensated engagement to perform home performance services of any type from Town residents during the term of this Agreement.

**3. Dates of Work.** Consultant agrees to commence work on September 15, 2011 and shall complete all contract work on or before June 30, 2012. All work shall be performed pursuant to a work schedule as follows:

a. As agreed by the parties, but not less than 15 billable hours per week during the period of September 15 through December 15, 2011.

b. As agreed by the parties, but not less than 7.5 hours per week - December 15, 2011 through June 30, 2012.

It is understood by the parties hereto that time is of the essence in the completion of the services to be provided pursuant to this Agreement.

**4. Contract Price.** The Town agrees to pay Consultant, as consideration for the Consultant's satisfactory performance of all obligations under this Agreement, at the rate of \$per hour for time and materials only.

Additional services related to STEP-UP shall be provided by Consultant on an as-needed basis as directed by the Town in writing. Such services shall be billed to the Town at the hourly rates of \$. In the event that the scope is changed, the parties to this Agreement will negotiate a change in the payment schedule accordingly. Invoices for payment of services shall be submitted on a monthly basis and must be accompanied by daily time sheets detailing the work done, and any other documentation required by the Town. Invoices will be paid after approval by the Town. Except as noted herein, in no event shall the amount billed by Consultant exceed that amount attributed to the work completed as of the date of the bill.

**5. Contract Documents.** This Agreement and the following enumerated documents, which are incorporated by reference as if fully set forth herein, form the contract and are termed the Contract Documents:

Required affidavits and certifications  
Schedule of Work

**6. Other Payments; Expenses; Taxes.** The Town will not be responsible for any cost or expenses of operation of any kind associated with Consultant's provision of services pursuant to

this Agreement, except as set out herein. Consultant shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered hereunder except as set out herein. The parties hereto further agree that the Town shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of Consultant in connection with the performance of his obligations under this Agreement.

It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in the gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The parties hereto further recognize that Consultant, as an independent Consultant of the Town, is responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, Social Security payments, unemployment compensation payments, and any other fees, taxes, and expenses whatsoever. In the event that Consultant is deemed not to be an independent Consultant by any local, state or federal governmental agency, Consultant agrees to indemnify and hold harmless the Town for any and all fees, costs and expenses, including, but not limited to, attorneys' fees incurred thereby.

7. **Insurance.** Consultant will purchase and maintain during the entire term of this Agreement, comprehensive general liability insurance, and (if required by the State of Maryland) workers' compensation insurance with limits of not less than those set forth below. Consultant

A. Comprehensive General Liability Insurance with limits of \$1,000,000/\$2,000,000 each occurrence/aggregate. Insurance shall include completed operations and contractual liability coverage.

B. Automobile Liability Coverage Automobile fleet insurance

\$50,000.00/\$100,000.00 for each occurrence/ aggregate; property damage - \$50,000.00 for each occurrence/aggregate.)

C. Workers' Compensation Insurance. Consultant shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation insurance. All Corporations are required to provide Workers' Compensation Certificates of Insurance.

Consultant covenants to maintain insurance in these amounts, which will insure all activities undertaken by Consultant on behalf of the Town under this Agreement and will name the Town as an insured under each such policy, except Workers Compensation Insurance. Copies of the certificates of insurance for all required coverage shall be furnished to the Town prior to beginning work.

Provision of any insurance required herein does not relieve Consultant of any of the responsibilities or obligations assumed by Consultant in this Agreement, or for which the Consultant may be liable by law or otherwise. Provision of such insurance is not intended in any way to waive the Town's immunities or any damage limits applicable to municipal government as provided by law.

**8. Indemnification.** Consultant shall indemnify and save harmless the Town, its officers, employees and agents, from all suits, actions and damages or costs of every kind and description, including attorneys' fees, arising directly or indirectly out of the performance of work under this Agreement, whether caused by the negligent or intentional act or omission on the part of Consultant, its agents, servants, employees and subcontractors.

**9. Licenses, Applicable Laws.** Consultant will be responsible for obtaining any and all licenses pertaining to performance of work under this Agreement. The Consultant agrees to keep current the following certifications and/or licenses:

- a. BPI certification as a Building Analyst.
- b. BPI certification as an Envelope & Shell Specialist.
- c. Participation in Maryland Home Performance with ENERGY STAR or in a local utility Home Performance with ENERGY STAR program, as a Participating Contractor or as an employee of a Participating Contractor.

All services, equipment and materials provided by Consultant shall conform to all applicable laws and regulations.

**10. Materials and Standard of Work.** All work performed and equipment and material provided pursuant to this Agreement shall be in conformance with standards and specifications applicable in the industry. All work shall be performed in a neat and workmanlike manner by trained and experienced personnel. Defective or unsuitable materials or workmanship shall be rejected and shall be made good by Consultant at Consultant's expense, notwithstanding that such deficiencies have been previously accepted or were due to no fault of Consultant.

**11. Subcontracting.** Consultant may not subcontract any work required under this Agreement without the consent of the Town. If Consultant wishes to subcontract any of the said work, it must provide subcontractor names, addresses, and telephone numbers and a description of the work to be done. Consultant is not relieved of primary responsibility for full and complete performance of any work identified to the subcontractor. There shall be no contractual relationship between the Town and the subcontractor.

**12. Accurate Information.** Consultant certifies that all information provided in response to the invitation to bid or other requests for information is true and correct. Any false or misleading information is grounds for the Town to reject the bid and terminate this Agreement.

**13. Errors in Specifications.** Consultant shall take no advantage of any error or omission in the specifications or scope of work. The Town shall make such corrections and interpretations as may be deemed necessary and that decision shall be final.

**14. Construction and Legal Effect.** This Agreement, including all Contract Documents, constitutes the entire understanding between the parties. No modification or addition to this Agreement shall have any effect unless made in writing and signed by both parties hereto.

**15. No Assignment.** This Agreement shall not be assigned or transferred by Consultant, whether by operation of law or in any other manner, without prior consent in writing from the Town. In the event of insolvency of either party, this Agreement shall terminate immediately at the election of the other party.

**16. Relief.** Consultant recognizes the substantial and immediate harm that a breach or threatened breach of this Agreement will impose upon the Town, and further recognizes that in such event monetary damages may be available to the Town. Accordingly, in the event of a breach or threatened breach of this Agreement, Consultant consents to the Town's entitlement to seek ex parte, preliminary, interlocutory, temporary or permanent injunctive, or any other equitable relief, protecting and fully enforcing the Town's rights hereunder and preventing Consultant from further breaching any of its obligations set forth herein. Nothing herein shall be construed as prohibiting the Town from pursuing any other remedies available to the Town at law or in equity for such breach or threatened breach, including the recovery of damages from Consultant.

**17. Termination for Default.** Notwithstanding anything to the contrary herein, this Agreement may be terminated upon the failure of Consultant to deliver work, supplies, materials or services in a timely manner, to correct defective work or materials. This is a standard boilerplate provision designed to cover the waterfront. If you want to narrow it down based on your understanding of the full extent of the work or want to add equipment then you can do so to act in good faith, or to carry out the work in accordance with the Contract Documents, each of which shall constitute a breach of this Agreement. In such event, the Town may give notice to Consultant to cease work until the cause for such order has been eliminated. Should Consultant fail to correct such default within 24 hours after receipt of notification, the Town may terminate this Agreement. This provision shall not limit the Town in exercising any other rights or remedies it may have.

**18. Termination for Convenience.** The performance of work or delivery of services under this Agreement may be terminated in whole or in part at any time upon written notice when the Town determines that such termination is in its best interest. The Town will be liable only for labor, materials, goods, and services furnished prior to the effective date of such termination.

**19. Notices.** All notices shall be sufficient if delivered in person or sent by certified mail to the parties at the following addresses:

John Rogard Tabori, Mayor  
6724 Baltimore Avenue  
University Park, MD 20782

**20. Costs.** In the event of any breach or failure by a party to fulfill any term, covenant or provision of this Agreement, the breaching party shall be responsible for any and all costs and expenses, including reasonable attorneys' fees, incurred on account of such breach.

**21. Enforcement Provisions.** The failure of the Town or Consultant, at any time, to enforce any of the provisions of this Agreement, or any right with respect thereto, will in no way be construed to be a waiver of such provisions or right, or in any way to affect the validity of this Agreement. The exercise by either party of any rights under this Agreement shall not preclude or prejudice the subsequent exercise of the same or any other rights under this Agreement.

**22. Governing Law.** This Agreement shall be governed by the laws of the State of Maryland, excluding its conflict of law rules, as if this Agreement were made and to be performed entirely within the State of Maryland.

**23. Severability.** If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

**24. Set-Off.** In the event that Consultant shall owe an obligation of any type whatsoever to the Town at any time during the term hereof or after termination of the relationship created hereunder, the Town shall have the right to offset any amount so owed by the Consultant against any compensation due Consultant from the Town.

**25. Materials.**

A. Information contained in documents that may be given to Consultant for review remain the property of the Town and may not be duplicated or distributed or otherwise published without the express consent of the owner. Material provided to Consultant for review shall be returned to the Town upon completion of the task.

B. Consultant understands that information and records provided to or made available about participants and clients or services during the performance of this Agreement are considered confidential and shall not be used for any purpose other than to perform the

required services. Regardless of the data format, Consultant agrees that it, and any of its employees, shall not disclose or allow disclosure of any such data or derivatives of it to any third party without the written permission of the Town. Any copies of such records made during performance of this Agreement shall be returned to the Town upon the expiration of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement under seal the day and year first above written.

ATTEST:

TOWN OF UNIVERSITY PARK, MARYLAND

By: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor John Rogard Tabori

By: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Suellen M. Ferguson, Town Attorney