

## CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (“**Agreement**”) is made as of January \_\_\_, 2017 (the “**Effective Date**”) by and between Nevada Affordable Housing Assistance Corporation, a Nevada non-profit corporation (“**NAHAC**”), with an address of P.O. Box 15142, Las Vegas, Nevada 89114, and Ellsworth & Stout, LLC, a Nevada limited liability company, (“**Consultant**”), with a principal place of business at 7881 West Charleston Blvd., Suite 155, Las Vegas, Nevada 89117. NAHAC and Consultant are sometimes hereinafter referred to individually as a “**Party**” or, collectively, as the “**Parties**.”

1. **Services.** Consultant will diligently and proactively furnish NAHAC the following professional accounting services: 1) Chief Financial Officer and Controller Services (the “**CFO and Controller Services**”); and (2) assistance with the Internal Control and Compliance Services (“**Compliance Support Services**”); all as described in more detail in **Exhibit A** (collectively sometimes referred to as the “**Services**”).
2. **Compensation and Payment.** Subject to the terms and conditions of this Agreement, NAHAC will compensate and pay Consultant as follows:
  - (a) For the CFO and Controller Services, the sum of \$7,500.00 per month.
  - (b) For the Compliance Support Services, the sum of \$7,000 per month.
  - (c) Certain out of pocket expenses reasonably and necessarily incurred will be reimbursed, in an amount not to exceed \$50 for a month, subject to records substantiating the expense. Any travel expenses shall be submitted to NAHAC for approval before being incurred.
3. **Payment.** Payment terms are net 30 days, subject to substantiation reasonably requested by NAHAC, and NAHAC’s receipt of documents and back-up as provided in this Agreement.
4. **NAHAC Standard Terms and Conditions.** The NAHAC Standard Terms and Conditions (the “**Terms and Conditions**”) attached as **Exhibit B** are incorporated by this reference.
5. **Term.** This Agreement is effective as of the Effective Date set forth above, and will continue in effect until it is terminated by the Parties in accordance with the Terms and Conditions. Notwithstanding the foregoing, each of the Parties acknowledges that either Party may immediately terminate this Agreement, by written notice to the other Party, in the event that the Hardest Hit Funds Program, which is administered by the U.S. Department of the Treasury (the “**Treasury Department**”), is nullified, discontinued or otherwise made obsolete, in each case in its entirety, by final legislative, judicial or executive action.
6. **Notices.** Each notice, request, demand or other communication required or permitted under this Agreement shall be deemed to have been received when personally delivered, or upon actual receipt of email, fax, or certified U.S. mail, during business hours observed by the State of Nevada, to the Party’s representatives (each, a “**Representative**”) as follows:

**If to NAHAC:**

Michael Holliday, President  
NAHAC  
P.O. Box 15142  
Las Vegas, Nevada 89114  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

**If to CONSULTANT:**

[Name]  
Ellsworth & Stout, LLC  
7881 W. Charleston Blvd., Suite 155  
Las Vegas, Nevada 89114  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

*[Signature Page Follows]*

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**IN WITNESS WHEREOF**, the Parties execute this Consulting Agreement this \_\_\_\_ day of January, 2017, effective as of the Effective Date set forth above.

**NAHAC:**

NEVADA AFFORDABLE HOUSING  
ASSISTANCE CORPORATION,  
a Nevada non-profit corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**CONSULTANT:**

ELLSWORTH & STOUT, LLC,  
a Nevada limited liability company

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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## EXHIBIT A

### SCOPE OF SERVICES; EXCLUSIONS; NAHAC RESPONSIBILITIES

- 1.0 **CFO and Controller Services.** Consultant will furnish, as the “CFO and Controller Services” the professional services, which include, but are not limited to the following:
  - 1.1 Operational accounting and finance department oversight;
  - 1.2 Monthly financial reporting and assistance with financial aspects of compliance reporting;
  - 1.3 Assistance during Treasury Department compliance reviews and reviews/audits by other regulatory agencies, and with the annual audit of NAHAC’s financial statements by its outside auditors;
  - 1.4 Budgeting and forecasting; and
  - 1.5 Policy and procedure comment and review, at least once per year.
- 2.0 **Compliance Support Services.** The foregoing Compliance Support Services will include, without limitation, the following:
  - 2.1 Compliance reporting to the Treasury Department and The Office of the Special Inspector General for the Troubled Asset Relief Program (“**SIGTARP**”), as scheduled or as requested;
  - 2.2 Assist in developing and maintaining an internal control program (the “**Internal Control Program**”) designed to minimize the risk of fraud, mitigate conflicts of interest, maximize operational efficiency and effectiveness, which Internal Control Program shall be designed to ensure NAHAC’s compliance with its obligations, as an Eligible Entity, under Section 4(B) of that certain Commitment to Purchase Financial Instrument and HFA Participation Agreement dated\_\_\_\_, 201\_ , and any amendments, between the Treasury Department, the Nevada Housing Division, as an HFA, and NAHAC, as an Eligible Entity, a copy of which has been previously provided to Consultant (the “**Participation Agreement**”). and applicable laws, all to the satisfaction of the Treasury Department. Consultant acknowledges that the Internal Control Program must include documentation of the control objectives for the services provided in the Participation Agreement, the associated control techniques, and mechanisms for testing and validating the controls. Section 4(B) of the Participation Agreement is hereby incorporated herein by this reference.
  - 2.3 Assist in developing and implementing an antifraud and compliance monitoring program in accordance with guidelines in the Risk and Control Matrix provided by the Treasury Department;
  - 2.4 Performing quarterly performance monitoring services to ensure the continued adequacy of internal control and anti-fraud and compliance programs; and
  - 2.5 Other services reasonably within the scope of services described in this Section 2.0, as reasonably requested by NAHAC.

**3.0 Consultant's Personnel.** Consultant will perform the Services with employees of Consultant reasonably acceptable to NAHAC as having suitable skill, knowledge and experience to perform, and communicate with NAHAC regarding the applicable Service.

**4.0 Exclusions & Qualifications.**

**4.1** Consultant shall not be responsible, or be relied upon, to discover errors, fraud or illegal acts that may exist, nor shall Consultant have any responsibility for identifying deficiencies in NAHAC's internal controls; however Consultant does agree that it will, as part of the Services, inform NAHAC of any material errors and/or any evidence or information that comes to Consultant's attention during the performance of its Services regarding potential fraud, illegal acts, or deficiencies in NAHAC's internal controls.

**4.2** Consultant will be relying on the accuracy and reliability of information provided by NAHAC. Except as expressly set forth herein, Consultant will not include an audit, review or attestation of the accuracy of the information provided to Consultant, nor will Consultant include an opinion with respect to the operating effectiveness of NAHAC's internal controls or policies, or degree of compliance with applicable laws and regulations.

**5.0 NAHAC Responsibilities.** In recognition of the fact that successful performance of the Services will require cooperation from NAHAC, NAHAC will provide: (1) prompt answers to questions from Consultant and prompt, thorough responses to all reasonable requests from Consultant for data, direction, feedback and/or other technical information Consultant reasonably requires in order to properly perform the Services; (2) an employee or independent contractor with suitable skill, knowledge and experience as the primary point of contact for coordinating NAHAC's responses to requests for data, direction, feedback and/or other technical information; and (3) an employee of suitable skill, knowledge and discretion assigned to oversee and coordinate NAHAC's overall performance of its obligations under this Agreement as well as NAHAC's internal evaluation and utilization of the Work Product furnished by Consultant.

## EXHIBIT B

### NAHAC STANDARD TERMS AND CONDITIONS

1. **Consultant's Insurance.** Consultant must obtain and maintain the following insurance during the term of this Agreement: (1) a policy of errors and omissions insurance coverage resulting from any professional acts, errors or omissions of Consultant, or by anyone for whom Consultant may be liable, with a retroactive date not later than the time Consultant first began furnishing Services, with limits of liability of \$1,000,000.00 for each claim and \$2,000,000.00 annual aggregate, and deductible no greater than \$50,000.00; (2) commercial general liability insurance with limits of liability of not less than \$1,000,000.00 per occurrence, and \$2,000,000.00 general aggregate, endorsed to name NAHAC, its officers, directors and employees as additional insureds; and (3) workers compensation insurance in the statutory limits. The carriers shall hold ratings from A.M. Best & Company of at least A-VII or better. Consultant will deliver proof to NAHAC of Consultant's compliance with these insurance requirements including, but not limited to certificates of insurance, endorsements, declaration pages, copies of policies and other verification as reasonably requested by NAHAC. Delivery of the certificate, endorsements and declaration pages will be a condition precedent to any payment otherwise due to Consultant.
2. **Performance; Reviews.**
  - 2.1 Consultant and its personnel will, throughout the term of this Agreement, hold all permits, certificates, licenses and approvals required for the lawful furnishing of the Services; and the Services will be furnished in accordance with the requirements of all applicable federal, state and local laws.
  - 2.2 The Services will be furnished in accordance with the exercise of due diligence adhered to by Certified Public Accounting firms having demonstrated experience in the successful delivery of accounting, audit, and financial services substantially similar to the Services to be furnished.
  - 2.3 Consultant will meet quarterly with NAHAC, or more frequently as reasonably requested by NAHAC, for an in-depth review of Consultant's performance of its obligations under this Agreement Consultant will furnish to NAHAC whatever records of Consultant's performance that NAHAC may reasonably request in connection with such reviews.
3. **Work Product.** The documents generated or arranged for by Consultant and its Subconsultants, including, but not limited to, all preliminary and completed evaluations, programs, memoranda, forms, reports, drawings, plans, schedules, logs, tables, operational documents, or other work product in any electronic or hardcopy media or form that Consultant and its Subconsultants generate, or arrange for, in connection with the Services are collectively referred to as the "**Work Product.**" Consultant hereby irrevocably conveys and assigns to NAHAC the ownership of, and copyrights in, the Work Product generated or arranged for by Consultant in connection with the Services, together with all renewals and extensions of the copyrights (and the right to reproduce, publish, modify, and create and publish derivative works from the Work Product). Consultant further warrants to NAHAC that Consultant's conveyance and assignment to NAHAC of the ownership of, and copyrights in, the Work Product will not infringe on

the contractual or proprietary interests of any other party. Delivery of Work Product generated in connection with the Services for which payment is requested will be a condition precedent to any payment otherwise due for those Services.

#### **4. Service Marks.**

- 4.1** NAHAC operates under the service marks “Nevada Affordable Housing Assistance Corporation,” “NAHAC,” and other associated logos (the “**Service Marks**”).
- 4.2** Consultant will not utilize or refer to any of the Service Marks except only to the extent NAHAC has given written advance approval of the form and content of the form of each proposed communication.
- 4.3** Consultant shall maintain accurate and complete records of all uses Consultant has made of the Service Marks, and shall permit NAHAC access to such records for inspection and copying, at all reasonable times.
- 4.4** If NAHAC determines that Consultant is furnishing the Services and/or is using the Service Marks contrary to Consultant’s obligations under this Agreement, NAHAC may, in addition to any other right or remedy available, terminate this license.

#### **5. Confidentiality; Confidential Information.**

- 5.1** “**Confidential Information**” as used in this Agreement means any and all trade secrets and any and all data or information not generally known outside of NAHAC whether prepared or developed by or for NAHAC or received by NAHAC from any outside source. Without limiting the scope of this definition, Confidential Information includes: any customer files, customer lists, any business, marketing, financial or sales record, data, plan, or survey; and any other record or information relating to the present or future business, product, or service of NAHAC whether it is written, oral, audio tapes, video tapes, computer discs, machines, prototypes, designs, specifications, articles of manufacture, drawings, human or machine readable documents. All Confidential Information and copies thereof are the sole property of NAHAC. Confidential Information shall not include any of the following: (1) such information that is in the public domain at the time of the disclosure, or subsequently comes within the public domain without fault of the Consultant; (2) such information which was in the possession of Consultant at the time of disclosure that may be demonstrated by business records of Consultant and was not acquired, directly or indirectly, from NAHAC; or (3) such information which Consultant acquired after the time of disclosure from a third party who did not require Consultant to hold the same in confidence and who did not acquire such technical information from NAHAC.
- 5.2** Consultant shall: (1) receive and maintain the Confidential Information in confidence; (2) not reproduce the Confidential Information or any part thereof without the express written consent of NAHAC; (3) not, directly or indirectly, make known, divulge, publish or communicate the Confidential Information to any person, firm or corporation without the express written consent of NAHAC; (4) limit the internal dissemination of the Confidential Information and the internal disclosure of the Confidential Information received from NAHAC to

those officers and employees, if any, of the Consultant who have a need to know and an obligation to protect it; (5) not use or utilize the Confidential Information without the express written consent of NAHAC; (6) not use the Confidential Information or any part thereof as a basis for the design or creation of any method, system, apparatus or device similar to any method, system, apparatus or device embodied in the Confidential Information unless expressly authorized in writing by NAHAC; and (7) utilize the best efforts possible to protect and safeguard the Confidential Information from loss, theft, destruction, or the like.

**5.3** All information, including, but not limited to, Confidential Information provided by NAHAC shall remain the property of NAHAC. Consultant agrees to return all Confidential Information to NAHAC within twenty (20) days of written demand by NAHAC.

**5.4** Consultant must obtain NAHAC's prior written consent before disclosing the identity of NAHAC as a customer. Consultant shall specifically advise its employees, agents, consultants and/or subcontractors of this requirement prior to their commencement of any Services. Except as required by law, Consultant will not, without the prior written consent of NAHAC, issue any press release or make any other public statement or disclosure with respect to the Project, the Services or any transaction involving NAHAC.

**5.5** Any failure to comply with the terms of this Section 5 shall constitute a material Default under this Agreement without need for NAHAC to provide any notice or opportunity to cure.

**6. Independent Contractor; No Delegation or Assignment.**

**6.1** Nothing in this Agreement shall be construed to create a joint venture, partnership, employer-employee relationship or other association of any kind between Consultant and NAHAC. Consultant's relationship to NAHAC and its Members shall be solely that of an independent contractor.

**6.2** Consultant will not assign, delegate or subcontract this Agreement or any of Consultant's obligations hereunder without NAHAC's written consent, and any attempted assignment, delegation or subcontract made without NAHAC's prior written consent will be void. This Agreement shall be binding on the Parties and their permitted successors and assigns.

**7. Termination.**

**7.1** Either Party may terminate the Agreement, or any part or it, upon thirty (30) days written notice, which shall specify the date of the termination, and may direct the sequence and manner in which the termination shall be implemented. Upon any such termination NAHAC shall pay Consultant any fees for Services completed through the date of termination and any approved costs.

**8. Arbitration; Litigation Exception; Jury Trial Waiver for Permitted Litigation.**

**8.1** Except as provided in Subparagraph 8.2, any dispute between NAHAC and Consultant arising out of or relating to this Agreement or the Services that cannot be settled through negotiation will be submitted to, and resolved by, binding



arbitration in Las Vegas, Nevada, pursuant to and in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

**8.2** This agreement to arbitrate disputes shall not apply to the prosecution by NAHAC of a civil action for injunction and/or damages arising from any misuse by Consultant of any Service Marks, or Confidential Information.

**8.3** The successful Party in any arbitration or litigation arising out of this Agreement or the Services, shall be awarded its reasonable attorneys' fees, together with its expenses incurred in connection with the arbitration or litigation including, without limitation, expert witness fees.

**9. Integration; Cumulative Remedies; Severability; Counterparts.** The Agreement is the entire Agreement of NAHAC and Consultant, and supersedes all negotiations and any prior agreements between them relating to the Services. No other documents are included unless incorporated in this Agreement by reference. The rights and remedies provided in this Agreement do not waive or limit, but rather are in addition to and cumulative with, any other right or remedy available under the common law, including contract and tort remedies for purely economic loss, which common law remedies in contract and tort are expressly preserved. If any provision of this Agreement is found by a court or arbitrator to be void or unenforceable, such provision shall not affect the validity of the other provisions. The Agreement may be executed in counterparts, and all counterparts together comprise one instrument. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification provision, insurance requirement, and every other right, remedy and responsibility of NAHAC or Consultant under this Agreement shall survive completion of the Services or the earlier termination of this Agreement.