

West Central Nebraska Development District

PROFESSIONAL SERVICE AGREEMENT
for
CDBG 10ED003

Lincoln County, Nebraska

Greenbrier Rail Expansion Project

THIS AGREEMENT made and entered into by and between the **Lincoln County, Nebraska** (hereinafter referred to as the County and **West Central Nebraska Development District** hereinafter referred to as the Consultant).

WITNESS THAT:

WHEREAS, The County and the Consultant are desirous of entering into a contract to formalize their relationship, and

WHEREAS, pursuant to Title I of the Housing and Community Development Act of 1974, as amended through 1981 and 24 CRF 570, the State of Nebraska Department of Economic Development (the Department) is authorized by the federal Department of Housing and Urban Development (HUD) to provide Community Development Block Grant Program funds (hereinafter referred to as CDBG funds) to units of local government selected to undertake and carry out certain programs and projects under the Nebraska State Community Development Block Grant Program in compliance with all applicable local, state and federal laws, regulations and policies, and

WHEREAS, the County, as part of its 2011 CDBG grant agreement with the **Department**, under contract number 10ED003, has been awarded CDBG funds for the purposes set forth herein, and

WHEREAS, the Scope of Work included in this contract is authorized as part of the County's approved CDBG program, and

WHEREAS, it would be beneficial to the County to utilize the Consultant as an independent entity to accomplish the Scope of Work set forth herein and such endeavor would tend to best accomplish the objectives of the local CDBG program.

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions contained herein and the mutual benefits to be derived therefrom, the parties hereto agree as follows:

1. Services to be Provided by the Parties

a. The Consultant shall complete in satisfactory and proper manner as determined by the County the work activities described in the Scope of Work (**Attachment 1** to the contract).

b. The County will provide such assistance and guidance as may be required to support the objectives set forth in the Scope of Work and will provide compensation for services as set forth in Section 3 below.

2. Time of Performance

The effective date of this contract shall be the date the parties sign and complete execution of the contract. The termination date of the contract shall coincide with the Time of Performance as set forth in the contract between the Nebraska Department of Economic Development and the County.

3. Consideration

The County shall reimburse the Consultant in accordance with the Payment Schedule described in **Attachment 2** to the contract for all allowable expenses agreed upon by the parties to complete the Scope of Work. In no event shall the total amount reimbursed by the County exceed the sum of \$5,000 (Five Thousand and no/100 dollars). Reimbursement under this contract shall be based on billings, supported by appropriate documentation of costs actually incurred. It is expressly understood that claims for reimbursement shall not be submitted in excess of actual, immediate cash requirements necessary to carry out the purposes of this agreement.

It is also understood that this contract is funded in whole or in part with funds through the State of Nebraska Community Development Block Grant program as administered by the Department and is subject to those regulations and restrictions normally associated with federally funded programs and any other requirements that the state may prescribe.

4. Records

The Consultant agrees to maintain such records and follow such procedures as may be required under OMB Circular A102 and any such procedures that the County or the Department may prescribe. In general such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate).

All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the Consultant for a period of three years after the final audit of the County's CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the County shall request a longer period for record retention.

The County, the Department and duly authorized officials of the state and federal government shall have full access and the right to examine any pertinent documents, papers, records, and books of the Consultant involving transactions to this local program and contract.

5. Relationship

The relationship of the Consultant to the County shall be that of an independent Consultant rendering professional services. The Consultant shall have no authority to execute contracts or to make commitments on behalf of the County and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the County and the Consultant.

6. Suspension, Termination and Close Out

If the Consultant fails to comply with the terms and conditions of this contract the County may pursue such remedies as are legally available including, but not limited to the suspension or termination of this contract in the manner specified herein:

a. Suspension: If the consultant fails to comply with the terms and conditions of this contract, or whenever the Consultant is unable to substantiate full compliance with the provisions of this contract, the County may suspend the contract pending corrective actions or investigation, effective not less than seven (7) days following written notification to the Consultant or its authorized representative. The suspension will remain in full force and effect until the Consultant has taken corrective action to the satisfaction of the County and is able to substantiate its full compliance with the terms and conditions of this contract. No obligations incurred by the Consultant or its authorized representatives during the period of suspension will be allowable under the contract except;

(1) Reasonable, proper and otherwise allowable costs which the Consultant could not void during the period of suspension.

(2) If upon investigation, the Consultant is able to substantiate complete compliance with the terms and conditions of this contract, otherwise allowable costs incurred during the period of suspension will be allowed.

(3) In the event all of any portion of the work preformed or partially prepared by the Consultant be suspended, abandoned, or otherwise terminated the County shall pay the Consultant for work preformed to the satisfaction of the County, in accordance with the percentage of the work completed.

b. Termination for Cause: If the Consultant fails to comply with the terms and conditions of this contract and any of the following conditions exist;

(1) The lack of compliance with the provisions of this contract are of such scope and nature that the County deems continuation of the contract to be substantially detrimental to the interests of the County;

(2) The Consultant has failed to take satisfactory action as directed by the County or its authorized representative within the time specified by the same:

(3) The Consultant has failed within the time specified by the County or its authorized representative to satisfactorily substantiate its compliance with the terms or conditions of this contract; then, the County may terminate this contract in whole or in part, and thereupon shall notify the Consultant of the termination, the reasons therefore, and the effective date provided such effective date shall not be prior to notification of the Consultant. After this effective date, no charges incurred under any terminated portions are allowable.

c. Termination for Other Grounds: This contract may also be terminated in whole or in part:

(1) By the County, with the consent of the Consultant, or by the Consultant with the consent of the County, in which case the two parties shall devise by mutual agreement, the conditions of termination including effective date and in case of termination in part, that portion to be terminated.

(2) If the funds allocated by the County via this contract are from anticipated sources of revenue, and if the anticipated sources of revenue do not become available for use in purchasing said services.

(3) In the event the County fails to pay the Consultant promptly or within sixty (60) days after invoices are rendered, the County agrees that the Consultant shall have the right to consider said default a breach of this agreement and the duties of the Consultant under this agreement terminated. In such an event, the County shall then promptly pay the Consultant for all services performed and all allowable expenses incurred.

(4) The County may terminate this contract at any time giving at least ten (10) days notice in writing to the Consultant. If the contract is terminated for convenience of the County as provided herein, the Consultant will be paid for time provided and expenses incurred up to the termination date.

7. Changes, Amendments, Modifications

The County may, from time to time, require changes or modifications in the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of compensation therefore, which are mutually agreed upon by the County and the Consultant shall be incorporated in written amendments to this contract.

8. Personnel

The Consultant represents that he/she has, or will secure at his/her own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees or have any contractual relationship to the County.

All services required hereunder will be performed by the Consultant or under this supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state or local law to perform such services.

None of the work or services covered by this contract shall be subcontracted without prior written approval for the County. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this contract.

9. Assignability

The Consultant shall not assign any interest in this contract, and shall not transfer any interest in this contract (whether by assignment or notation), without prior written consent of the County thereto: Provided, however, that claims for money by the Consultant from the County under this contract may be assigned to a bank, trust company, or other financial institutions without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the County.

10. Reports and Information

The Consultant, at such times and in such forms as the County may require, shall furnish the County such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

11. Findings Confidential

All of the reports, information, data, etc., prepared or assembled by the Consultant under this contract are confidential and the Consultant agrees that they shall not be made available to any individual or organization without prior written approval of the County.

12. Copyright

No reports, maps, or other documents produced in whole or in part under this contract shall be subject of an application for copyright by or on behalf of the Consultant.

13. Compliance with Local Laws

The Consultant shall comply with all applicable laws, ordinances and codes of the state and local governments and the Consultant shall save the County harmless with respect to any damages arising from any tort done in performing any of the work embraced by this contract.

14. Title VI of the Civil Rights Act of 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

15. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied benefits of or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available under this title.

16. Section 3 Compliance in the Provision of Training, Employment, and Business Opportunities

- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area

and the contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

- b. The parties to this contract will comply with the provisions of said Section 3. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these provisions.
- c. The consultant will send to each labor organization or representative or workers with which he/she has collective bargaining agreement or other contract or understand, if any, a notice advising of the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The Consultant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or receipt of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its consultants and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

17. Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101, et.seq.).

The law provides that no person will be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance.

18. Section 504 of the Rehabilitation Act of 1973, As Amended (29 U.S.C. 794).

The law provides that no otherwise qualified individual will, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal assistance funds.

19. Executive Order 11246, As Amended.

This Order applies to all federally assisted construction contracts and subcontracts. The County and subcontractors, if any, will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The County and subcontractors, if any, will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color religion, sex or national origin.

20. Conflict of interest

No officer, employee or agent of the County who will participate in the selection, the award, or the administration of this grant may obtain a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. It is further required that this stipulation be included in all subcontracts to this contract.

Upon written request, exceptions may be granted upon a case by case basis when it is determined that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. These exceptions are granted by the Department.

21. Audits and Inspections

The County, the Department, the State Auditor and HUD or their delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as part of the CDBG project and this contract, by whatever legal and reasonable means are deemed expedient by the County, the Department, the State Auditor and HUD.

22. Hold Harmless

The Consultant agrees to indemnify and hold harmless the County, its appointed and elective officers and employees, from and against all loss and expense, including attorney's fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officers and employees from damages sustained by any person or person, arising out of or in consequence of the Consultant's and its agents' negligent performance of work associated with this agreement. The Consultant shall not be liable for property and bodily injury as may result from the negligence of any construction contractor or construction subcontractor.

This agreement contains all terms and conditions agreed to by the County and the Consultant. The attachments to this agreement are identified as follows:

Attachment 1 – Scope of Work for Lincoln County, Nebraska.

Attachment 2 – Payment Schedule for Lincoln County, Nebraska.

WITNESS WHEREOF, the County and the Consultant have executed this contract agreement as of the date and year last written below.

Lincoln County, Nebraska

By _____

Title: Duane Deterding - Board Chairman

Date: _____

CONSULTANT (West Central Nebraska Development District)

By Dennis Burnside

Title: Dennis Burnside - Chairman of the Board

Date: 8/17/11

Approved as to legal Form:

County Attorney

By _____

Date: _____

ATTACHMENT # 1

SCOPE OF WORK OF WCNDD

1. Assist the County in the preparation and execution of documentation required by the Nebraska Department of Economic Development (DED) in order to obtain release of funds including but not limited to:
 1. Execute contract and/or memorandum of understanding
 2. Financial Management Certification
 3. Authorization to Request Funds
 4. Excessive Force Certification
 5. Antidisplacement and Relocation Assistance Plan
 6. Affirmatively Furthering Fair Housing Plan
 7. Certification of Matching/Leveraged Funds
 8. NEPA Environmental Review
 9. Programmatic Agreement (ACHP & NeSHPO)
 10. Program Schedule and Budget

2. Assist in preparation and maintaining proper documentation for State and Federal Monitoring purposes including but not limited to:
 - A. Sufficient documentation of DED Grantee operations are to be filed and maintained in the County Clerk's Office. Upon request of the County, Consultant will regularly review relevant files, and assist the County staff in insuring that appropriate information is contained in said files, including but not limited to:
 1. Environmental Review.
 2. Federal Labor Standards.
 3. Equal Employment Opportunity/Affirmative Action.
 4. Financial Management.
 5. Performance and Capacity.
 6. Other files required by DED.

 - B. Performance Reports, including but not limited to:
 1. Obtain reporting information from Greenbrier Rail Services and prepare the required semi-annual job creation/retention report and project status report and submit the same to the County and Nebraska Department of Economic Development.
 2. Prepare and submit to the County Commissioners for acceptance by the County final performance reports required by the Nebraska Department of Economic Development.

 - C. Upon request by the County, assist the County in meeting the requirements of the following laws, rules and regulations:
 1. National Environmental Policy Act of 1969 and 24 CFR Part 58.
 2. Title I of the Housing and Community Development Act of 1974, as amended.
 3. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 24 CFR Part 42.
 4. Section 3 of the Housing and Urban Development Act of 1968.

5. Title VI of Civil Rights Act of 1964 and 24 CFR Part 1.
6. Title VIII of the Civil Rights Act of 1968.
7. Age Discrimination Act of 1975.
8. Davis-Bacon Fair Labor Standards Act of 1970, as amended.
9. Contract Work Hours and Safety Standards Act of 1970.
10. Section 504 of the Rehabilitation Act of 1973.
11. Title IV of the Lead Based Paint Poisoning Prevention Act and 24 CFR Part 35.
12. Executive Order 11063 as amended by Executive Order 12259 and 24 CFR Part 35.
13. Executive Order 11246 and 11246 as amended.
14. OMB Circular A-102.
15. OMB Circular A-87.
16. CFR 570.488 to 570.499 (a).
17. Nebraska Community Development Law.
18. Nebraska Environmental Protection Act.
19. Nebraska State Statutes 49-14,103.01 to 49-14,103.07
20. Other laws, regulations and assurances required by DED.

3. Upon request by the County, provide to the County management services directly related to the project activities which include, but not limited to:

1. Prepare Draw Downs for DED payments made directly by the County, as well as prepare Draw Downs for General Administration of the project.
2. Will assist the Clerk with required Grantee file management.

ATTACHMENT 2

PAYMENT SCHEDULE

10ED003

The County shall reimburse the Consultant in accordance with the following Payment Schedule to the contract for all allowable expenses agreed upon by the parties to complete the Scope of Work. In no event shall the total amount reimbursed to WCND for General Administration for the Greenbrier Rail Expansion Project by the County exceed the sum of \$5,000 (Five Thousand and no/00 Dollars). Reimbursement under this contract shall be based on billings, supported by appropriate documentation of costs actually incurred. It is expressly understood that claims for reimbursement shall not be submitted in excess of actual, immediate cash requirements necessary to carry out the purposes of this agreement.

It is also understood that this contract is funded in whole with funds through the State of Nebraska Community Development Block Grant program as administered by the Department of Economic Development, and is subject to those regulations and restrictions normally associated with federally funded programs and any other requirements that the state may prescribe.

The CDBG funds are awarded for Activity 0730 (Working Capital) in the amount of \$250,000; and Activity 0181 (General Administration) in the amount of \$5,000. The County is not required to provide any cash match towards this project.

It is a requirement of the program that the General Administration of this project shall be accomplished by a Certified Grant Administrator which shall be provided by the Consultant.

Consultant shall submit to the County an invoice for General Administration for work completed which shall be used as source documentation to be attached to the proper funding request, approved by the County, and submitted to the Nebraska Department of Economic Development for payment of the same.

All payments received through ACH wire transfer from the Nebraska Department of Economic Development shall be paid out by the County Clerk/Treasurer within ten (10) days of receipt, as per the Guidelines of the Community Development Block Grant program.