

**NORTHEAST NEBRASKA ECONOMIC DEVELOPMENT DISTRICT  
CONSULTANT AGREEMENT  
FOR CONSTRUCTION MANAGEMENT**

**THIS AGREEMENT** made and entered into by and between Dodge County Nebraska, hereinafter referred to as the "Community" and the Northeast Nebraska Economic Development District, hereinafter referred to as the Consultant.

**WITNESSES THAT:**

**WHEREAS**, the Community 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 CFR 570, the State of Nebraska Department of Economic Development (DED) 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 CDBG Program in compliance with all applicable local, state and federal laws, regulations and policies, and

**WHEREAS**, the Community as part of its CDBG grant agreement with the Department, under contract number 19-EM005, has been awarded CDBG funds for the purposes set forth herein, and **WHEREAS**, the Community, for the purposes set forth herein, and

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

**WHEREAS**, it would be beneficial to the Community 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 there from, the parties hereto agree as follows:

**1. Services to be Provided by the Parties**

- a. The Consultant shall complete in a satisfactory and proper manner as determined by the Community the work activities described in the Scope of Work (Attachment #1 to the contract).
- b. The Community 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 be the date of the Certificate of Completion letter from DED.

**3. Consideration**

The Community shall reimburse the Consultant 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 Community exceed the sum of \$10,000. Reimbursement under this contract shall be based on monthly billings, supported by appropriate documentation and billed at the current board approved hourly rate see Exhibit #1. 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.

Should the project scope be expanded, additional fees shall be negotiated for the additional basic services needed. The additional services shall be provided as authorized by the Community with compensation as a negotiated lump sum fee determined at the time of authorization.

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

**4. Record Maintenance, Record Retention & Access to Records**

The Consultant agrees to maintain such records and follow such procedures as may be required under 2 CFR {200.300-345 and any such procedures that the Community 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), and performance.

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

The Community, DED 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 Community 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 Community and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the Community and the Consultant.

**6. Suspension, Termination and Close Out**

If the Consultant fails to comply with the terms and conditions of this contract the Community 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 Community may suspend the contract pending corrective actions or investigate effective not less than 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 Community and is able to substantiate its full compliance with these 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 avoid 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 or any portion of work prepared or partially prepared by the Consultant be suspended, abandoned, or otherwise terminated the Community shall pay the Consultant for work performed to the satisfaction of the Community, 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 Community deems continuation of the contract to be substantially detrimental to the interests of the Community.
- 2) The consultant has failed to take satisfactory action as directed by the Community or its authorized representative within the time specified by same.
- 3) The consultant has failed within the time specified by the Community or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this contract;

then, the Community 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 Community, with the consent of the Consultant, or by the Consultant with the consent of the Community, in which case the two parties shall devise by mutual agreement, the conditions of termination in part, that portion to be terminated.
  - 2) If the funds allocated by the Community 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 Community fails to pay the Consultant promptly or within 60 days after invoices are rendered, the Community 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 Community shall then promptly pay the Consultant for all services performed and all allowable expenses incurred.
  - 4) The Community may terminate this contract at any time giving at least 10 days' notice in writing to the Consultant. If the contract is terminated for convenience of the Community as provided herein, the Consultant will be paid for time provided and expenses incurred up to the termination date.

**7. Changes, Amendments, Modifications**

The Community 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 Community 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 Community.

All services required hereunder will be performed by the Consultant or under his 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 of the Community. 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 on this contract, and shall not transfer any interest on this contract (whether by assignment or notation), without prior written consent of the Community thereto; provided, however, that claims for money by the Consultant from the Community 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 Community.

**10. Reports and Information**

The Consultant, at such times and in such forms as the Community may require, shall furnish the Community 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 Community.

**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 Community harmless with respect to any damages arising from any tort done in performing any of the work embraced by this contract and from failure to comply with any condition or term of this contract.

**14. Title VI of the Civil Rights Act of 1964**

The law provides that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits or, 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**

The law provides that 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 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 federal financial assistance from the Department of Housing and Urban Development through the State of Nebraska's CDBG Program as administered by DED 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 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 provision 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 understanding, if any, a notice advising 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 other 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 Grantee and subcontractors, if any, will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Grantee 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, sexual orientation, gender identity, or national origin.

**20. Conflict of Interest (2CFR200.318)**

No officer, employee or agent of the Consultant 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, exception 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 DED.

**21. Audits and Inspections**

The Community, DED, 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 Community, DED, the State Auditor and HUD.

**22. Hold Harmless**

The Consultant agrees to indemnify and hold harmless the Community, 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 Community, its elected or appointed officers and employees from damages

sustained by any person or persons, 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.

**23. Governing Law**

This agreement will be governed by the laws of the State of Nebraska, without regard to that body of law controlling conflicts of law. Any legal proceeding arising out of or relating to this agreement shall be instituted in any court of general jurisdiction in the State of Nebraska.

This agreement contains all terms and conditions agreed to by the Community and the Consultant. The attachment(s) to this agreement are identified as follows:

ATTACHMENT #1

SCOPE OF WORK AND FEES for Dodge County, Nebraska consisting of 2 pages.

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


**COMMUNITY**

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

**CONSULTANT**

BY  \_\_\_\_\_

TITLE Executive Director

DATE March 25, 2021

**APPROVED as to legal form:**

Community Attorney

BY \_\_\_\_\_

DATE \_\_\_\_\_

## ATTACHMENT 1

### CONSTRUCTION MANAGEMENT SCOPE OF WORK

The duties and responsibilities of the Consultant under this scope of work include following:

1. Provide construction management services for CDBG Davis Bacon and Related Acts (DBRA) compliance
2. Activities include, but not limited to the following:
  - Ensuring all applicable wage rates and labor standard provisions are included in the bid specifications and contract documents;
  - Bid opening and related compliance items;
  - Pre-Construction Conference and Related Compliance Items;
  - Payroll verifications, or the receipt and review of signed weekly payrolls submitted by all project contractors and/or subcontractors
  - Monitoring contractor compliance
  - Site visits to conduct employee interviews and ensure all federal and state informational posters are displayed
  - Verification of eligibility for all project contractors and/or subcontractors in the System for Award Management prior to award



EXHIBIT #1

As of January 1, 2021, the new hourly billing rate is \$75 per hour as approved by the Board of Directors on December 16, 2020. Below is an excerpt of those meeting minutes.

BY: *Thomas L. Higginbotham Jr.*  
TITLE Board Chairman  
DATE December 16, 2020

D. Consideration to approve a billing rate increase. NENEDD Executive Director Thomas L. Higginbotham Jr. presented. NENEDD has been charging \$60 per hour for approximately the past 10 years. As operating costs continue to increase on an annual basis, staff has determined that it is time to raise the rate to \$75 per hour for member communities and \$125 per hour for non-member communities. Staff obtained the billing rates from the other economic development districts for a comparison and the considered rate increase is in line with what the other districts are charging. Charlie Bahr made a motion to approve a billing rate increase. Gary Jackson seconded that motion. **AYES:** Gary Jackson, Judy Mutzenberger, Loren Kucera, Dan Kathol, Glen Ellis, Tina Biteghe Bi Ndong, Charlie Bahr, and Carl Peatson. **NAYS:** None. **ABSENT:** Troy Uhlir. Motion carried.

