

City of Scottsbluff, Nebraska

Monday, December 21, 2020

Regular Meeting

Item Reports4

Council to discuss and consider action on an Agreement between the City of Scottsbluff & Panhandle Area Development District for scope of work administration regarding the Community Development Block Grant awarded for Owner Occupied Housing Rehabilitation & authorize the Mayor to sign the Agreement.

Staff Contact: Starr Lehl, Economic Development Director

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into by and between the City of Scottsbluff, Nebraska (hereinafter referred to as the City) and Panhandle Area Development District (hereinafter referred to as PADD).

WITNESSES THAT:

WHEREAS, the City and PADD 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(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 City , as part of its 20202 CDBG grant agreement with DED, under contract number # 20-HO-31041 awarded CDBG funds for the purposes set forth herein; and

WHEREAS, the Scope of Services included in this contract is authorized as part of the Village's approved CDBG program; and

WHEREAS, it would be beneficial to the City to utilize PADD 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, the parties hereto do mutually agree as follows:

1. Services to be Provided by the Parties

- a. The PADD shall complete in a satisfactory and proper manner as determined by the City the work activities and services described in the Scope of Services, (Attachment #1 to this agreement).
- b. The City will provide such assistance and guidance as may be required to support the objectives set forth in the Scopes of Services, 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 _____ of _____ 2022 and shall be completed in such sequences to assure the expeditious completion of this contract.

3. Consideration

The City of Scottsbluff shall reimburse PADD for all allowable expenses agreed upon by the parties to complete the General Administration Scope of Work. In no event shall the total amount reimbursed by the City not to exceed the sum of **\$20,000.00 (Twenty Thousand Dollars and zero cents.)** Reimbursement under this contract shall be based on billings that are 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 restriction normally associated with federally funded programs and any other requirements that the State may prescribe.

4. Records

The PADD agrees to maintain such records and follow such procedures as may be required under 24 CFR 85.42(b)(c) and any such procedures that the City or DED 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 PADD for a period of **ten (10) years** after the final audit of the City 's CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the City shall request a longer period of record retention.

The City, 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 PADD involving transactions to this local program and contract.

5. Relationship

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

6. Suspension, Termination and Close Out

If the PADD fails to comply with the terms and conditions of this contract, the City 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 PADD fails to comply with the terms and conditions of this contract, or whenever the PADD is unable to substantiate full compliance with the provisions of this contract, the City may suspend the contract pending corrective actions or investigation, effective not less than 7 days following written notification to the PADD or its authorized representative. The suspension will remain in full force and effect until the PADD has taken corrective action to the satisfaction of the City and is able to substantiate its full compliance with the terms and conditions of this contract. No obligations incurred by the PADD or its authorized representatives during the period of suspension will be allowable under the contract except:
 - (1) Reasonable, proper and other wise allowable costs with the PADD 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 the contract, otherwise allowable costs incurred during the period of suspension will be allowed.
 - (3) In the event all of any of the portion of the work prepared or partially prepared by the PADD be suspended, abandoned, or otherwise terminated by the City shall pay the PADD for work performed to satisfaction of the City in accordance with the percentage of work completed.

- b. **Termination for Cause:** The City may terminate its contract with the PADD if the PADD 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 City deems the continuation of the contract to substantially detrimental to the interests of the City.
 - (2) The PADD has failed to take satisfactory action as directed by the City or its authorized representative within the time specified by the same:
 - (3) The PADD has failed within the time specified by the City or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this contract; then, the City may terminate this contract in whole or in part, and thereupon shall notify the PADD of the termination, the reasons therefore, and the effective date provided such effective date shall not be prior to notification of the PADD. After this effective date, no charges incurred under any terminated portion are allowable.
- c. **Termination for Other Grounds:** This contract may also be terminated in whole or in part:
- (1) By the City, with the consent of the PADD, or by the PADD with the consent of the City, in which case the two parties shall devise by mutual agreement. The conditions of termination including the effective date and in case of termination in part, that portion to be terminated.
 - (2) If the funds allocated by the City via this contract are from anticipated sources of revenue, and if the anticipated sources do not become available for use in purchasing said services.
 - (3) In the event the City fails to pay the PADD promptly or within 60 days after invoices are rendered, the City agrees the PADD shall have the right to consider said default a breach of this agreement and the duties of the PADD under this agreement terminated. In such an event, the City shall then promptly pay the PADD for all services performed and all allowable expenses incurred.
 - (4) The City may terminate this contract at any given time giving at least 30 days notice in writing to the PADD. If the contract is terminated for convenience of the City as provided herein, the Consultant will be paid for time and provided and expenses incurred up to the termination date.

7. Changes, Amendments, Modifications

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

8. Personnel

The PADD represents that it has, or will secure at its own expense, all qualified personnel required in performing the services under this contract. Such personnel shall not be employees, or have any contractual relationship with the City.

All services required hereunder will be performed by the PADD 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 City. 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 PADD 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 City thereto: provided, however, that claims for money by the Consultant from the City 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 City.

10. Reports and Information

The PADD, at such times and in such forms as the City may require, shall furnish the City 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 PADD under this contract is confidential and the PADD agrees that they shall not be made available to any individual or organization without prior written approval of the Village.

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 PADD.

13. Compliance With Local Laws

The PADD shall comply with all applicable laws, ordinances and codes of the state and local governments and the PADD shall save the City 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 the 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 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. 1701 u). 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 this 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 PADD will send to each labor organization or representative or workers with which they have a collective bargaining agreement or other contract or understanding, if any, a notice advertising the said labor organization or worker's 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 PADD 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 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 23 CFR 135.

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

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)

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 Grantee will not discriminate against any employee or applicant for employment because of race, color, religion, sex 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 or national origin.

20. Conflict of Interest (24 CFR85.36(b)(3))

No officer, employee or agent of the Grantee 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.

Upon written request, exceptions may be granted on 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 City, 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 agreement, by whatever legal and reasonable means are deemed expedient by the Village, DED, the State Auditor and HUD.

22. Hold Harmless

The PADD agrees to indemnify and hold harmless the City, 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 City, its elected or appointed officers and employees from damages sustained by any person or persons, arising out of or in consequence of the PADD's and its agents' negligent performance of work associated with this agreement. The PADD 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 the 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.

24. Other Requirements

The PADD agrees to comply with all requirements as set forth in the Grant Contract between the City and the State of Nebraska, Department of Economic Development, for CDBG Contract # **20-HO-31041**. This agreement contains all terms and conditions agreed to by the City and the PADD.

The attachments to this agreement are identified as follows:

WITNESS WHEREOF, the City and PADD have executed this agreement as of the date and year last written below:

This agreement dated the _____ day of _____ 202_____.

Jeanne McKerrigan, Mayor
City of Scottsbluff, Nebraska

Janine Schmidt, President
Panhandle Area Development District

Attest: Kim Wright, City Clerk
City of Scottsbluff, Nebraska

Bryan Venable, Executive Director
Panhandle Area Development District

Attachment #1

Scope of Work and Fees*

GENERAL ADMINISTRATION

Task 1—Prepare special condition documents as outlined in the CDBG contract.

Task 2—Preparing Documentation for Financial Drawdown Requests.

Task 3—Ensure that grantee meets the requirements of all statues, state rules, and federal regulations relevant to the project

Task 3—Prepare and submit mandated progress reports and all other necessary correspondence to DED.

Task 4—On-going Monitoring of Grant.

Task 5—Monitor all job creation/retention requirements over the course of the project/ (if applicable)

Task 6—Complete the necessary requirements of the National Environmental Policy Act of 1969

Task 7—Ensure that the grantee meets all federal and state requirements with procuring professional services and construction services

Task 8 —Prepare and submit all close-out reporting to DED by deadlines