

City of Scottsbluff, Nebraska

Tuesday, February 21, 2023

Regular Meeting

Item Reports2

Council to discuss and consider action on the Professional Service Contracts between Panhandle Area Development District (PADD) and the City of Scottsbluff for Housing Management and General Administration for the Owner-Occupied Rehabilitation Grant and authorize the Mayor to sign the Contracts.

Staff Contact: Kevin Spencer, City Manager

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT made and entered into by and between the City of Scottsbluff, 2525 Circle Drive Scottsbluff, Nebraska 69361 (hereinafter referred to as the Community) and Panhandle Area Development District 1620 Broadway, Suite A, Scottsbluff, Nebraska 69361 (hereinafter referred to as Organization).

WITNESSES THAT:

WHEREAS, the Community and ORGANIZATION 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 Community, as part of its 2020 CDBG grant agreement with DED, under **Grant #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 Community's approved CDBG program; and

WHEREAS, it would be beneficial to the Community to utilize ORGANIZATION 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 ORGANIZATION shall complete in a satisfactory and proper manner as determined by the
Community the work activities and services described in the Scope of Services,
(Attachment #1a to this Contract).
- b. The Community 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 Attachment 1B.

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 17th of November 2023 and shall be completed in such sequences to assure the expeditious completion of this contract.

3. Consideration

The Community shall reimburse ORGANIZATION for all allowable expenses agreed upon by the parties to complete the Scope of Work for Housing Management. In no event shall the total amount reimbursed by the Community exceed the sum of **\$50,000 (Fifty 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 Contract. Payments will be made as billed and approved by the Community, typically within 30 days of the billing approval.

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 ORGANIZATION 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 Community 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 ORGANIZATION for a period of **ten (10)** years after the final audit of the Community's CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the Community shall request a longer period of record retention.

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 ORGANIZATION involving transactions to this local program and contract.

5. Relationship

The relationship of the ORGANIZATION to the Community shall be that of an independent Consultant rendering professional services. The ORGANIZATION 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 ORGANIZATION .

6. Suspension, Termination and Close Out

If the ORGANIZATION 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 ORGANIZATION fails to comply with the terms and conditions of this contract, or whenever the ORGANIZATION is unable to substantiate full compliance with the provisions of this contract, the Community may suspend the contract pending corrective actions or investigation, effective not less than 7 days following written notification to the ORGANIZATION or its authorized representative. The suspension will remain in full force and effect until the ORGANIZATION has taken corrective action to the satisfaction of the Community and is able to substantiate its full compliance with the terms and conditions of this contract. No obligations incurred by the ORGANIZATION 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 ORGANIZATION could not avoid during the period of suspension.
 - (2) If upon investigation, the Organization 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 ORGANIZATION be suspended, abandoned, or otherwise terminated by the Community shall pay the ORGANIZATION for work performed to satisfaction of the Community in accordance with the percentage of work completed.
- b. **Termination for Cause:** The Community may terminate its contract with the ORGANIZATION if the ORGANIZATION 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 the continuation of the contract to substantially detrimental to the interests of the Community.
 - (2) The ORGANIZATION has failed to take satisfactory action as directed by the Community or its authorized representative within the time specified by the same:
 - (3) The ORGANIZATION 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 ORGANIZATION of the termination, the reasons therefore, and the effective date provided such effective date shall not be prior to notification of the ORGANIZATION . 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 Community, with the consent of the ORGANIZATION , or by the ORGANIZATION with the consent of the Community, 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 Community 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 Community fails to pay the ORGANIZATION promptly or within 60 days after invoices are rendered, the Community agrees the ORGANIZATION shall have the right to consider said default a breach of this Contract and the duties of the ORGANIZATION under this Contract terminated. In such an event, the Community shall then promptly pay the ORGANIZATION for all services performed and all allowable expenses incurred.
 - (4) The Community or ORGANIZATION may terminate this contract at any given time giving at least 60 days notice in writing to the other ORGANIZATION . If the contract is terminated for convenience of the Community as provided herein, the Organization will be paid for time and 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 increases or decreases in the amount of compensation therefore, which are mutually agreed upon by the Community and ORGANIZATION shall be incorporated in written amendments to this contract.

8. Personnel

The ORGANIZATION 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 Community.

All services required hereunder will be performed by the ORGANIZATION 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 ORGANIZATION 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 Organization 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 ORGANIZATION, 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 ORGANIZATION under this contract is confidential and the ORGANIZATION 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 ORGANIZATION.

13. Compliance With Local Laws

The ORGANIZATION shall comply with all applicable laws, ordinances and codes of the state and local governments and the ORGANIZATION 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.

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 ORGANIZATION 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 ORGANIZATION 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 Organization will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Organization 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 Organization 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 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 ORGANIZATION 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 ORGANIZATION 's and its agents' negligent performance of work associated with this Contract. The ORGANIZATION 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 contract 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 Contract shall be instituted in any court of general jurisdiction in the State of Nebraska.

24. Other Requirements

The ORGANIZATION agrees to comply with all requirements as set forth in the Grant Contract between the Community and the State of Nebraska, Department of Economic Development, for CDBG Contract # **20-HO-31041**. This contract contains all terms and conditions agreed to by the Community and the ORGANIZATION. The attachments to this Contract are identified as follows:

WITNESS WHEREOF, the Community and ORGANIZATION have executed this Contract as of the date and year last written below:

This Contract dated the _____ day of _____ 2023.

Jeanne McKerrigan Mayor

Jeni Mattern PADD president

Kimberley Wright City Clerk

Bryan Venable PADD Executive Director

Attachment #1B

Scope of Services and Fees*

Housing Management

Task 1-Verify Applicant Eligibility

Task 2-Complete Home walk throughs to develop scope of work and determine preliminary feasibility.

Task 3--Schedule lead testing as required.

Task 4-Verification that all project contractors and/or subcontractors are registered and active in the System for Award Management (SAM) prior to award

Task 5 site visits to ensure all minimum HUD rehab standards are being met.

Task 6---Verification of contractor eligibility as being FIRM registered with the EPA, and a registered contractor in the State of Nebraska.

Task 7-Assist homeowners with bid Reviews

Task 8-Present eligible project to the City for approval prior to award.

Task 9-Pre-Construction Conference and Related Compliance items.

***Hourly Rate for PADD members is charged at \$70 per hour**

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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.

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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.

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- b. **Termination for Cause:** The Community may terminate its contract with the ORGANIZATION if the ORGANIZATION 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 the continuation of the contract to substantially detrimental to the interests of the Community.
 - (2) The ORGANIZATION has failed to take satisfactory action as directed by the Community or its authorized representative within the time specified by the same:
 - (3) The ORGANIZATION 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 ORGANIZATION of the termination, the reasons therefore, and the effective date provided such effective date shall not be prior to notification of the ORGANIZATION . After this effective date, no charges incurred under any terminated portion are allowable.
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- (1) By the Community, with the consent of the ORGANIZATION , or by the ORGANIZATION with the consent of the Community, 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 Community 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 Community fails to pay the ORGANIZATION promptly or within 60 days after invoices are rendered, the Community agrees the ORGANIZATION shall have the right to consider said default a breach of this Contract and the duties of the ORGANIZATION under this Contract terminated. In such an event, the Community shall then promptly pay the ORGANIZATION for all services performed and all allowable expenses incurred.
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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.

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- 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 ORGANIZATION 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 ORGANIZATION 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.

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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.

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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.

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

No officer, employee or agent of the Organization 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 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 ORGANIZATION 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 ORGANIZATION 's and its agents' negligent performance of work associated with this Contract. The ORGANIZATION 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 Contract 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 Contract shall be instituted in any court of general jurisdiction in the State of Nebraska.

24. Other Requirements

The ORGANIZATION agrees to comply with all requirements as set forth in the Grant Contract between the Community and the State of Nebraska, Department of Economic Development, for CDBG Contract # **20-HO-31041**. This contract contains all terms and conditions agreed to by the Community and the ORGANIZATION. The attachments to this Contract are identified as follows:

WITNESS WHEREOF, the Community and ORGANIZATION have executed this Contract as of the date and year last written below:

This Contract dated the _____ day of _____ 2023.

Jeanne McKerrigan Mayor

Jeni Mattern PADD president

Kimberley Wright City Clerk

Bryan Venable PADD Executive Director

Attachment #1

Scope of Services 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 OED.

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 OED by deadlines *Hourly Rate for PADD members is charged at \$70 per hour