

**SERVICE / CONSULTANT AGREEMENT  
FOR GENERAL ADMINISTRATION AND LIMITED HOUSING MANAGEMENT  
SERVICES  
CITY OF LEXINGTON [15-HO-33075]**

THIS AGREEMENT made and entered into this 28<sup>th</sup> day of December, 2017, by and between **CITY OF LEXINGTON, 406 EAST 7<sup>TH</sup> STREET, LEXINGTON, NEBRASKA**, hereinafter referred to as "CITY" and **MILLER & ASSOCIATES, CONSULTING ENGINEERS, P.C., 1111 CENTRAL AVENUE, KEARNEY, NEBRASKA** hereinafter referred to as the "Consultant."

WITNESSES THAT:

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

WHEREAS, the CITY has received CDBG funds under Grant Number 16-HO-33075, and

WHEREAS, it would be beneficial for CITY to utilize the Consultant as an independent entity to accomplish tasks to best accomplish the objectives of the Grant 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 a satisfactory and proper manner as determined by the work activities described in the Scope of Work (Attachment #1 to the contract).
- b. CITY will provide such assistance and guidance as may be required to support the objectives set forth in the Scope of Work (Attachment #2 to the contract) 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 of this contract. The completion date of this contract shall coincide with the end of the Grant Period.

**3. Consideration**

The CITY shall reimburse the Consultant for all allowable expenses agreed upon by the parties to complete the Scope of Work as seen in Attachment #2 to the contract. In no event shall the total amount reimbursed by the CITY exceed the lump sum of \$9,000 for rehabilitation of 10 homes (includes the homes that are in progress).

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 CDBG Funds through the State of Nebraska, is administered by DED and is subject to those regulations and restrictions normally associated with state funded programs and any other requirements that the state may prescribe.

**4. Records**

The Consultant agrees to maintain such records and follow such procedures that 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 Consultant for a period of five years after the final audit of CITY's CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, CITY shall request a longer period for record retention.

CITY, DED, and duly authorized officials of the state 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 CITY 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 CITY and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between CITY and the Consultant.

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

If the Consultant fails to comply with the terms and conditions of this contract 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 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, CITY 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 CITY 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;
  - i. Reasonable, proper and otherwise allowable costs which the Consultant could not avoid during the period of suspension.
  - ii. 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.
  - iii. In the event all or any portion of work prepared or partially prepared by the Consultant be suspended, abandoned, or otherwise terminated CITY shall pay the Consultant for work performed to the satisfaction of CITY, 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:
  - i. The lack of compliance with the provisions of this contract is of such scope and nature that CITY deems continuation of the contract to be substantially detrimental to the interests of CITY.
  - ii. The Consultant has failed to take satisfactory action as directed by CITY or its authorized representative within the time specified by same.
  - iii. The Consultant has failed within the time specified by CITY or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this contract; then, CITY 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:

- i. By CITY, with the consent of the Consultant, or by the Consultant with the consent of CITY, in which case the two parties shall devise by mutual agreement, the conditions of termination in part, that portion to be terminated.
- ii. If the funds allocated by CITY 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.
- iii. In the event CITY fails to pay the Consultant promptly or within 90 days after invoices are rendered, CITY 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, CITY shall then promptly pay the Consultant for all services performed and all allowable expenses incurred.
- iv. CITY 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 CITY as provided herein, the Consultant will be paid for time provided and expenses incurred up to the termination date.

**7. Changes, Amendments, Modifications**

CITY 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 CITY 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 CITY.

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.

Housing management and training services covered by this contract shall be subcontracted to CDS Inspections and Beyond. 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 CITY thereto; provided, however, that claims for money by the Consultant from CITY under this contract may be assigned to a bank, company, or other financial institutions without such approval. Written notice of any such assignment or transfer shall be furnished promptly to CITY.

**10. Reports and Information**

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

**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 hold CITY 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. Conflict of Interest**

No officer, employee, or agent of the Consultant will participate in the selection, or in the award or administration, of a contract supported by CDBG Funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (a) the officer, employee, or agent;
- (b) any member of the immediate family of the officer, employee, or agent;
- (c) any partner of the officer, employee, or agent; or,
- (d) any organization which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award.

The Consultant's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, during office tenure or for one year after the closeout of the CDBG Project.

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 CITY's program or project. These exceptions are granted by DED.

**15. Audits and Inspections**

CITY, DED, the State Auditor 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 Funds project and this contract, by whatever legal and reasonable means are deemed expedient by CITY, DED, and the State Auditor.

**16. Hold Harmless**

The Consultant agrees to indemnify and hold harmless 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 CITY, 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.

**17. Verification of Work Eligibility Status for New Employees**

The Consultant agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. In this context, "new employees" means employees hired on or after the effective date of this contract. A "federal immigration verification system" means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C.

1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

**18. Verification of Lawful Presence for Public Benefits Eligibility (as required of applicants benefited by this contract).**

Pursuant to this contract and Neb. Rev. Stat. §§4-108 through 4-114, the Consultant shall have each applicant for public benefits under this contract complete the United States Citizenship Attestation Form, available on the State of Nebraska Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us). Such form serves as the applicant's attestation that he or she is a U.S. citizen or a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq. (as such federal statute existed on January 1, 2009, or as it may be subsequently amended). If the applicant attests they are a qualified alien, Consultant shall verify the applicant's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

Recipient shall:

1. Retain the attestation form, and retain any additional verification documentation required because the applicant attested they were a qualified alien.
2. Provide such attestation form and other documentation (or copies thereof) to the Department of Economic Development upon the request of such Department.
3. Maintain aggregate records for the duration of the contract showing: (a) the number of applicants for public benefits under this contract; and, (b) the number of applicants rejected pursuant to the lawful presence requirement (which is the subject matter of the procedural, attestation, and verification requirements set forth in the Nebraska statutes and contractual provisions above).
4. Provide a summary report to the Department of Economic Development, no later than December 31st each calendar year, reflecting data for such calendar year (or portion of such year when there is not a full, calendar year of activity under this contract), so as to allow the Department to fulfill its annual reporting obligation to the Nebraska Legislature concerning these "lawful presence" requirements. The Department's annual report to the Nebraska Legislature is due January 31<sup>st</sup> each year.

**19. Federal System for Awards Management and DUNS Participation**

Contractor warrants that it is registered with and will maintain an active status with the Federal System for Awards Management and has been assigned the DUNS number 111758996. Contractor will notify the Grantee if there is a change in the participation with either of these programs.

**20. Force Majeure**

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The Grantee may grant relief from performance of the contract if the Contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the Contractor. To obtain release based on a Force Majeure Event, the Contractor shall file a written request for such relief with the Grantee. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

**21. Drug Free Workplace**

Contractor certifies that it maintains a drug free workplace environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the Grantee.

**22. Notice**

Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth in this contract, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or four (4) calendar days following deposit in the mail. For ease of and efficiency of communication of day-to-day work activities under this contract, email communication is acceptable by both parties.

**23. Special Requirements and Assurances**

The Consultant agrees to comply with all applicable provisions of the Revised Statutes of Nebraska as they are in effect at the time of execution of this contract, and as such statutes as may be amended from time to time, subsequent to execution of the contract. These statutes include, but are not limited to the following:

- Relocation Assistance Act, §§ 76-1214 to 76-1242, Reissue Revised Statutes of Nebraska (1996).
- Nebraska Fair Housing Act, §§ 20-301 to 20-344, Reissue Revised Statutes of Nebraska (1997).
- Uniform Procedures for Acquiring Private property for Public Use, §§ 25-2501 to 25-2506, Reissue Revised Statutes of Nebraska (1995).
- Nebraska Uniform Energy Efficiency Standards, §§ 81-1608 to 81-1626, Reissue Revised Statutes of Nebraska (2011).

Per relevant federal and state statutes, and as per the Guidelines, the Consultant acknowledges it may not discriminate in its operation or in Project activities on the basis of age, religion, sex, race, color, national origin, disability, or familial status.

The Consultant agrees to comply with all provisions of the Americans with Disabilities Act (ADA) with respect to hiring, training, and employment practices, including reasonable accommodation of persons with disabilities in hiring, training, and employment practices; and in assuring access to persons with disabilities to facilities and services by the Consultant to the general public.

The Consultant agrees to comply with all federal and local laws applicable to the Project and applicable to the use of CDBG Funds, including, but not limited to the following:

- Civil Rights Act of 1964.
- Age Discrimination Act of 1975.
- Section 504 of the Rehabilitation Act of 1973.
- Architectural Barriers Act of 1968.
- The Equal Employment Opportunity Act.
- Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.
- The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002).
- The Immigration Reform and Control Act of 1986.
- The Nebraska Fair Employment Practices Act.
- The Housing for Older Persons Act of 1995.
- Flood Disaster Protection Act of 1973.
- National Environmental Policy Act of 1969.
- National Historic Preservation Act of 1966
- Lead-Based Paint Poisoning Prevention Act of 1971, the Residential Lead-Based Paint Hazard Reduction Act, and regulations at 24 CFR Part 35.

- Clean Air and Federal Water Pollution Control Act, as amended.
- Fair Labor Standards Act of 1938, as amended.
- Contract Work Hours and Safety Standards Act.
- Section 3 of the Housing and Urban Development Act of 1968, and 24 CFR Part 135.
- Debarred, Suspended, or Ineligible Contractors under 24 CFR Part 24.

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

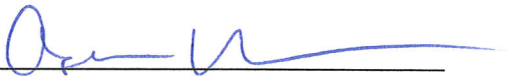
**Attachment #1, Consultant Scope of Work, consisting of one page.**  
**Attachment #2, CITY Scope of Work, consisting of one page.**

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

**CITY OF LEXINGTON**

**MILLER & ASSOCIATES, CONSULTING  
ENGINEERS, P.C.**

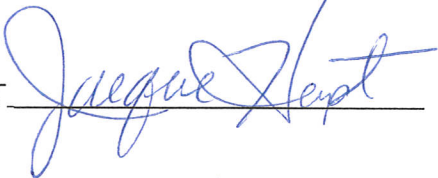
BY \_\_\_\_\_

BY  \_\_\_\_\_

TITLE Mayor

TITLE Grant Administrator

ATTEST \_\_\_\_\_

ATTEST  \_\_\_\_\_

DATE \_\_\_\_\_

DATE 12/18/17

**ATTACHMENT #1**

**CONSULTANT SCOPE OF WORK  
GENERAL ADMINISTRATION SERVICES & ASSISTANCE WITH HOUSING MANAGEMENT  
SERVICES**

1. Provide general administrative services for CDBG program.
2. Coordinate one-day technical support training for CITY Staff
3. Provide guidance to CITY on housing rehabilitation project files.
4. Provide limited technical assistance to CITY staff as questions arise during the project (Estimated 18 Hours)
5. On-Site interim inspections as deemed necessary by CONSULTANT (Estimated Two (2) trips)
6. Provide progress reports to the CITY and Nebraska Department of Economic Development.
7. Attend meetings at the CITY as required.
8. Keep current on Program housing rehabilitation guidelines.



## **ATTACHMENT #2**

### **CITY SCOPE OF WORK HOUSING MANAGEMENT SERVICES**

THE CITY WILL PERFORM SERVICES AS FOLLOWS:

1. Serve as the representative between homeowners, building contractors for rehabilitation projects.
2. Provide preliminary and final loan closing documents to approved applicants.
3. Maintain housing rehabilitation project files.
4. Conduct preliminary inspections of eligible homes.
5. Prepare all work write-ups and bid specifications.
6. Perform regular construction monitoring inspections (interim inspections).
7. Verify work completed and arrange progress payments to contractors.
8. Perform final inspections and certify completion of work.
9. Insure compliance with HUD's Lead-Based Paint Regulations at the direction of CONSULTANT.