

West Central Nebraska Development District

PROFESSIONAL SERVICE AGREEMENT
for

Keith County, Nebraska

Zoning Regulation Update

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

WITNESS THAT:

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

WHEREAS, the County has adopted the updated 2018 Keith County Comprehensive Plan and the Planning/Zoning Regulations (hereinafter Regulations) currently in place are required to be updated in order to be in tandem with the Comprehensive Plan; and

WHEREAS, the County and West Central Nebraska Development District, Inc. has entered into an Agreement (see Attachment 1) as part of the Interlocal Cooperation Act as set forth in Nebraska State Statutes; and

WHEREAS, it would be beneficial to the County to utilize the Consultant as an independent entity to accomplish the Scope of Work set forth herein and such endeavor would tend to best accomplish the objectives of the Zoning Regulations (hereinafter Regulations) update.

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

SCOPE OF WORK OF CONSULTANT

Provide an update to the Keith County Planning and Zoning Subdivision Regulations which includes but is not limited to:

1. Consultant will perform duties under the direction of the Keith County Commissioners and/or Liaison Commissioner, and will report to the Commissioners whenever necessary, at a regular meeting.
2. Consultant will council with the Keith County Planning Commission in formulating the update to the Regulations.
3. Consultant will provide research for Statutory requirements specific to the Regulations.
4. If additional duties are requested, Keith County and Consultant will negotiate to include said duties in the scope of work and/or for additional fees as necessary.
5. Consultant will provide the County 15 original copies of the Regulations.
6. Consultant will provide to the County Website Administrator a PDF electronic version of the Regulations.
7. Consultant will store an electronic editable version of the zoning regs which will be housed within the zoning office.

DUTIES OF KEITH COUNTY

1. The County will provide such assistance and guidance as may be required to support the objectives set forth in the Scope of Work and will provide compensation for services as set forth in Section 3 below.
2. The Planning Commission will work with WCNDD for the successful formulation of the Regulations.
3. The County's appointed legal counsel will provide input on Statutory Requirements within the Regulations.
4. Upon completion of the updated Regulations the Planning Commission will at Public Hearing hear public comment and make recommendation to the County Board.
5. Upon recommendation by the Planning Commission, the County Board will at Public hearing hear public comments for the approval and acceptance of the updated Regulations.

2. Time of Performance

The time of performance for this Agreement shall begin upon the full execution of this Agreement by all parties and continue through June 30, 2019.

3. Consideration

PAYMENT SCHEDULE Update to the Keith County Zoning Regulations

The County agrees to reimburse the Consultant the sum of \$7500, said contractual payment shall be due upon increments of work completed.

4. Records

The Consultant agrees to maintain such records and follow such procedures as may be required under OMB Circular A102 and any such procedures that the County may prescribe. In general, such records will include information pertaining to the contract, obligations and unobligated balances.

All current records, and all other records pertinent to this contract and work undertaken under this contract shall be housed by the Consultant at 333 East 2nd Street Suite 20, Ogallala, Nebraska during the period of this contract. All electronic and paper records shall be available at all times and fully released to Keith County at the sunset of this contract for audit purposes and record retention.

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

5. Relationship

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

6. Suspension, Termination and Close Out

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Changes, Amendments, Modifications

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

8. Personnel

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

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

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

9. Assignability

The Consultant shall not assign any interest in this contract, and shall not transfer any interest in this contract (whether by assignment or notation), without prior written consent of the County.

10. Reports and Information

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

11. Findings Confidential

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

12. Copyright

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

13. Compliance with Local Laws

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

14. Title VI of the Civil Rights Act of 1964

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

15. 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.

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

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

17. Open Meetings Act §84-1407

The law provides that the formation of public policy is public business and may not be conducted in secret. Every meeting of the public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

18. Conflict of interest

No officer, employee or agent of the County who will participate in the administration of this contract 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 (if any) to this contract. Upon written request, exceptions may be granted upon a case by case basis when it is determined that such an exception will serve to further the purposes of the Act and the effective and efficient revision of the County's Zoning and Subdivision regulations.

19. Audits and Inspections

The County, 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 update of the Zoning Regulations and this contract, by whatever legal and reasonable means are deemed expedient by the County.

20. Hold Harmless

The Consultant and County both agree to defend indemnify and hold harmless one party to the other, their appointed and elective officers and employees from and against all third-party claims, and associated losses, to the extent arising out of a party's gross negligence or willful misconduct in performing any of its obligations under this Agreement.

This agreement contains all terms and conditions agreed to by the County and the Consultant.

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

Keith County, Nebraska

By Lonnie Peters

Title: Lonnie Peters – Chairman, Keith County Board of Commissioners

Date: 12-26-2018

CONSULTANT (West Central Nebraska Development District, Inc.)

By _____ EIN: 47-0560023 DUNS: 051041994

Title: Jason Tuller – Board Chairman of WCNDD

Date: _____

Approved as to legal Form: (optional)

County Attorney – Randy Fair [Signature]

Date: 12/26/18

WEST CENTRAL NEBRASKA DEVELOPMENT

DISTRICT

INTERLOCAL AGREEMENT

This AGREEMENT, is made and entered into by and between the undersigned county, city or village within the geographical region of Thomas, Logan, Lincoln, McPherson, Hooker, Grant, Arthur, Keith, Perkins, Dawson, Hayes, Chase, Frontier, Dundy, Hitchcock, Red Willow, Furnas, and Gosper Counties in the State of Nebraska (hereinafter "Region"). Said undersigned is made and entered into by and between one or more of those local governments within the above named geographical region (specifically designated in attachment 1 as same may be amended)

RECITALS:

WHEREAS, the Nebraska Legislature adopted the Interlocal Cooperation Act as set forth in Nebraska Revised Statutes §13-801, *et. seq.* as same may be amended; and

WHEREAS, the purpose of the Interlocal Cooperation Act is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities and governmental instrumentalities on a basis of mutual advantage, and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, Nebraska Revised Statutes Section §13-1901, *et. seq.* provides for the formation of a "Planning and Development District" within the Region who shall, as directed by its policy board, serve as regional resource center and provide planning, community, and economic

development, technical assistance to local governments which are members of the district and may ~~provide assistance to industrial development organizations, tourism or promotion organizations,~~ community development groups and similar organizations on request.

and

WHEREAS, West Central Nebraska Development District ("District") was formed as a non-profit corporation pursuant to said statutes and continues to operate therefrom; and

WHEREAS, District performs some or all of the duties stated in the statute; and:

and

WHEREAS, the undersigned County, City, or Village is within the Region and wishes to benefit from services the District provides by entering into this agreement with one or more parties;

and

WHEREAS, the parties to this Interlocal Cooperation Act Agreement wish to enter into such an agreement to enable them to achieve the purposes and goals of the Interlocal Act; and

WHEREAS, the parties desire to continue the District as a joint entity pursuant to the Nebraska Statutes for the purpose of exercising the powers granted and to act on behalf of the Members for their general benefit.

In consideration of the covenants stated herein, the Members mutually agree as follows:

1. ENTITY: The name of the non-profit corporation formed by the mutual agreement of the parties is: West Central Nebraska Development District.
2. DURATION: This agreement is perpetual, but may be terminated as to any party by submitting to the District an Ordinance or Resolution terminating this Agreement and after thirty (30) days notice.
3. OBJECTIVES AND PURPOSE: The objectives and purposes of this Agreement are to

effectively and efficiently provide for a planning and economic development district for the ~~mutual benefit of the parties to this Agreement who, by entering into this Agreement,~~
become Members of the District.

4. **DUES:** There are no dues or financial obligation of a party to this Agreement for membership in the District. A Member is eligible for District services by paying for same and limited voting rights. However, a Member may acquire all of the benefits of District services, full voting rights and the right to serve on the Administrative Board as stated in the Articles, By Laws, and by determination of the Administrative Board by paying its allocated dues.
5. **ADMINISTRATION AND CONTROL:** The administration and control of the District is stated in the Articles and ByLaws of the District as same may be amended from time to time. A copy of the current Articles and ByLaws are attached and marked as attachments 2 and 3 respectively.
6. **REPRESENTATIVES:** Parties to this Agreement of the District appoint representatives and alternative representatives who are either elected officials or employees of the Member.
7. **GOVERNING BODY:** The District shall be governed by a governing body known as the Administrative Board which also serves as the policy board as stated in Neb. Rev. Stat. 13-1903. The governing board is described and identified in the ByLaws of the Corporation.
8. **MEETINGS:** The District will have an annual general member meeting held on the third Wednesday of June of every year and every member will be notified of the meeting at least 10 days prior to the meeting.
9. **SEPARATE COPIES OF THIS AGREEMENT:** Separate copies of this Agreement are executed by the separate parties to the Agreement. The parties agree that the said individual

Agreements are considered the entire Agreement with all of the signing parties subject to the terms of said Agreement.

COUNTY/CITY/VILLAGE of KEITH, Nebraska:

DATED this 10 day of Jan 2007.

Rex Christensen

Mayor/ Chairperson

ATTEST:

Sandra K. Dean

Clerk

APPROVED TO FORM:

County/City/Village Attorney