

West Central Nebraska Development District

PROFESSIONAL SERVICE AGREEMENT  
for

Keith County, Nebraska

**Planning/Zoning Administration**

**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 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**, the County, as part of Keith County, Nebraska Zoning and Subdivision Regulations, adopted by the Keith County Board of Commissioners on March 27, 2004, and amended by Change of Zone No. 04-02 by the Keith County Board of Commissioners on August 11, 2004, and text changes through February 2016, and subsequent Policy and Procedure as incorporated into said document as required, to set forth an administrative system that is established to administer the Zoning Regulations as set forth in Keith County, and

**WHEREAS**, the Scope of Work included in this contract is authorized as part of the County's Planning/Zoning Regulations, 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 Administrator.

**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 technical assistance and administrative services as outlined in the Keith County, Nebraska, Zoning and Subdivision Regulations which includes but is not limited to:

1. Consultant will perform the administrative duties as set forth in the Keith County, Nebraska, Zoning and Subdivision Regulations, and will be considered by name as Zoning Administrator; and
2. Consultant will perform duties under the direction of the Keith County Commissioners and/or Liaison Commissioner, and will report to the Commissioners monthly, at a regular meeting; and
3. Consultant will perform the administrative Performance Requirements as set forth in the Regulations, provide proper legal publications, notices, written evaluations as necessary; and
4. Consultant will provide research specific to items brought to the Zoning office; and

5. Consultant will act as a Staff Representative to the Planning Commission, prepare and publish meeting notices for the same, create an administrative report for meeting agenda items, produce and email/mail board meeting packets, attend Planning Commission meetings, and prepare meeting minutes; and
6. Consultant will provide to the Commissioners on a yearly basis, a record of meeting attendance by the Planning Commission for their mileage reimbursement; and
7. Consultant will receive all applications for permits, and provide an accounting/monthly statement of permits to the Keith County Assessor's office, and publish said statement of permits as required in the newspaper of record; and
8. Consultant will work with the Board of Zoning Adjustments (BOZA) as necessary, and will coordinate, organize, and take minutes at the BOZA annual meeting; and
9. Consultant will work in association with the Floodplain Administrator as necessary in floodplain development; and
10. Consultant will work in association with the Building Inspector as necessary. Receiving reports for assurances of permitted uses, minimum area, yard setbacks, and height requirements in all land uses, and will receive and file building inspection reports, site plans, footing, framing, and dry wall inspections, all presented by the Building Inspector; and
11. Consultant will, upon final clearance approval made by the Building Inspector, prepare a Certificate of Occupancy (where necessary), for approval and signature by the Building Inspector; and
12. Consultant will maintain a Planning and Zoning office located off campus at 333 East 2<sup>nd</sup> Street, Ogallala, NE 69153 with business hours of 8:00 a.m. to 4:00 p.m. Monday through Thursday (excluding holidays); and
13. Consultant will maintain all maps utilized by the Planning and Zoning office located within the Keith County Courthouse; and
14. Consultant will not man the Zoning office located within the Keith County Courthouse, but will make available in the Courthouse office, Applications for Permits; and
15. Consultant will be responsible for file maintenance (paper/electronic), which will be available for review by state or local authorities and Auditor; and
16. Consultant will, at the expense of Keith County, attend the yearly NPZA planning and zoning conference; and
17. Consultant will work with the existing contractor to coordinate the completion of the update on the Keith County Comprehensive Plan.
18. 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.

#### **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; and
2. The County and or appointed legal counsel will enforce the terms of the planning/zoning regulations; and
3. The County will provide electronic/paper records in support of the Scope of Work provided by the Consultant; and
4. The County will provide a Planning and Zoning cell phone (phone number of 308-289-6724) for direct calling the off campus Zoning office located at 333 East 2<sup>nd</sup> Street; and
5. The County will provide any equipment necessary to accomplish the Scope of Work (i.e. laptop, backup drive etc.); and
6. The County will provide direct oversight to the Floodplain Administrator; and
7. The County will provide direct oversight to the Building Inspector; and
8. The County will make available for use when necessary, the county Zoning vehicle.

**2. Time of Performance**

The effective date of this contract shall be for an eight (8) month period; commencing on November 1, 2017 through June 30, 2018.

**3. Consideration**

**PAYMENT SCHEDULE**  
Keith County Planning/Zoning Administration

The County shall reimburse the Consultant in accordance with the following Payment Schedule to the contract for all allowable expenses agreed upon by the parties to complete the Scope of Work.

The County agrees to reimburse the Consultant the sum of \$3000 per month, said contractual payment shall be due and payable on a monthly basis beginning on December 5, 2017 for work performed the previous month and shall continue for an eight (8) month period thereafter.

In addition to the monthly contract sum, office supplies, legal publications, travel expenses both local and to the NPZA Conference, specific to perform the administration duties, shall be presented for reimbursement and shall be based on billings, 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.

**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, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate).

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 2<sup>nd</sup> Street, 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 all of 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 10 days 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 thereto: Provided, however, that claims for money by the Consultant from the County 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 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 administration 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 Planning/Zoning Regulations and this contract, by whatever legal and reasonable means are deemed expedient by the County.

**20. Hold Harmless**

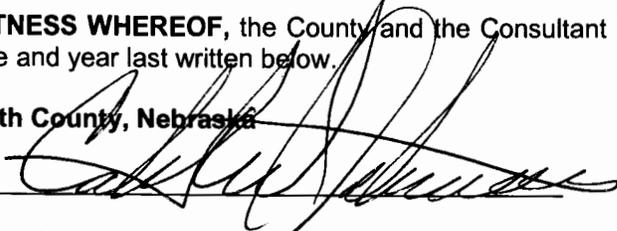
The Consultant and County both agree to defend indemnify and hold harmless one party to the other, their appointed and elective officers and employees from and against all third-party claims, and associated losses, to the extent arising out of a party's gross negligence or willful misconduct in performing 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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--see signature page 7--

**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 

Title: Caleb W. Johnson – Chairman, Keith County Board of Commissioners

Date: Nov 1, 2017

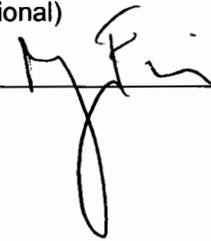
**CONSULTANT (West Central Nebraska Development District, Inc.)**

By \_\_\_\_\_ EIN: 47-0560023 DUNS: 051041994

Title: Michael Tuttle – Board Chairman of WCNDD

Date: \_\_\_\_\_

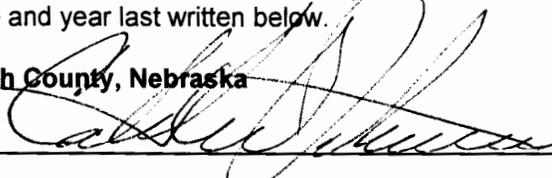
**Approved as to legal Form: (optional)**

County Attorney – Randy Fair 

Date: 11/1/17

**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 

Title: Caleb W. Johnson – Chairman, Keith County Board of Commissioners

Date: Nov 1, 2017

**CONSULTANT (West Central Nebraska Development District, Inc.)**

By  EIN: 47-0560023 DUNS: 051041994

Title: Michael Tuttle – Board Chairman of WCNDD

Date: 11-16-2017

**Approved as to legal Form: (optional)**

County Attorney – Randy Fair 

Date: 