



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
July 9, 2020

Department Administration

Director Approval Kelly Passauer

AGENDA ITEM Consider an Administration Agreement with Southeast Kansas Regional Planning Commission to prepare the application and provide administrative services for the EDA grant for Whiskey Creek Drainage Improvements from Sycamore to the Union Pacific Railroad.

SUMMARY RECOMMENDATION Authorize administration agreement.

BACKGROUND The City Commission previously authorized staff to pursue an EDA grant for Whiskey Creek Drainage Improvements that would reduce potential flooding of businesses. Although the disaster funding will likely have been exhausted, there is a potential for a second round. Even if the disaster funds are exhausted, this could then be rolled over into the Fall EDA funding round of their regular program.

The Whiskey Creek drainage improvement project was developed due to the repeated occurrences of flooding in that area. Specific instances of water entering the nearby businesses have occurred. Due to the impact on the businesses, this project is eligible for application to the EDA Disaster Assistance program. EDA grant administration services would be needed if the project is awarded. The Southeast Kansas Regional Planning Commission will prepare the application for free and, if awarded, the grant would pay for the grant administration fees. If the grant is not awarded the contract is null and void. This will show “project readiness” by having the required professional services (engineer/administration) hired and ready to go once the project is awarded.

BUDGET IMPACT Administration fees would be paid from grant funds.

SUGGESTED MOTION I move to authorize an agreement with Southeast Kansas Regional Planning Commission to prepare the application and provide administrative services for the EDA grant for Whiskey Creek Drainage Improvements from Sycamore to the Union Pacific Railroad, subject to the City Attorney’s approval.

SUPPORTING DOCUMENTS Proposed agreement with Southeast Kansas Regional Planning Commission

**AGREEMENT FOR ADMINISTRATIVE CONSULTING SERVICES
FOR A 2020 ECONOMIC DEVELOPMENT ADMINISTRATION
GRANT PROJECT FOR DRAINAGE IMPROVEMENTS
(EDA PROJECT NO. TBD)**

THIS AGREEMENT is made this _____ day of _____, **2020**, by and between the Southeast Kansas Regional Planning Commission, hereinafter referred to as Administrative Consultant, and the **City of Independence**, Kansas, hereinafter referred to as City.

WHEREAS, the City desires to engage in a community improvement project described as the **Whiskey Creek Drainage Improvement** project.

WHEREAS, the project is being funded in part by a 2020 Economic Development Grant (EDA), awarded on TBD.

NOW, THEREFORE, the City engages the services of an Administrative Consultant to administer the project based upon the following terms and conditions:

1. UTILIZATION OF EDA FUNDS

The Administrative Consultant shall be familiar with pertinent Federal laws and regulations concerning the administration of projects involving the utilization of Economic Development Administration Grant funds for the purpose of making community improvements.

II. TERMINATION OF CONTRACT

A. WITHOUT CAUSE

This contract may be terminated by either party, at any time, without cause and upon giving no less than 30 days written notice. The Administrative Consultant, upon receipt of notice of a termination without cause, shall have ten days to request a hearing before the City's Governing Body regarding said termination. If the termination is affirmed by the City, any unpaid balance due, pursuant to the terms and condition of Paragraph 8, shall be paid immediately upon written request.

The City shall be entitled to a prorated refund of fees actually paid the Administrative Consultant upon termination of the Agreement by the Administrative Consultant without cause. Such prorated refund shall be according to the following formula: (1). all amounts actually paid to the Administrative Consultant, less 20% of the total agreement amount, if termination shall become effective within the first ninety days of this agreement. (2). All amounts actually paid to the Administrative Consultant, less 30% of the total agreement amount, if termination shall become effective within the 91st through 180th days of this agreement. (3). All amounts actually paid to the Administrative Consultant, less 40% of the total agreement amount, if termination shall become effective within the 181st through 270th days of this agreement. (4). All amounts actually paid to the Administrative Consultant, less 50% of the total agreement amount after the 271st day of this agreement.

B. FOR CAUSE

Termination for cause shall mean:

- (1.) The successful completion of the project becomes impractical for any reason; or
- (2.) A material breach in the performance of the requirements of this Agreement.

Upon the termination of this Agreement for cause, the Administrative Consultant shall be entitled to receive any funds still due and owing pursuant to Paragraph 8, subject to the following terms and conditions. If the termination for cause is a result of the Administrative Consultant's failure to appropriately perform any obligation of this Agreement, the result of which causes the City to receive a penalty or fine, or incur damages or un contemplated expenses, then the City shall have the right to retain sufficient funds to cover the fine, penalty, damages or expenses, including a reasonable

attorney's fee.

C. AFTER TERMINATION

In the event of termination of this agreement by either party, all finished or unfinished documents, studies and reports prepared by the Administrative Consultant under this Agreement shall, at the option of the City, become the property of the City.

III. CHANGES

The City may, from time to time, request changes in the scope of the services of the Administrative Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Administrative Consultant's compensation, which are mutually agreed upon by and between the City and the Administrative Consultant, shall be incorporated in written amendments to the Agreement.

However, upon completion of the initial FORMAT II Environmental Assessment for the captioned project, the Administrative Consultant shall be entitled to additional compensation if an additional FORMAT II Environmental Assessment(s) shall be required. For each completed additional FORMAT II Environmental Assessment for the captioned project, the Administrative Consultant shall be entitled to an additional amount of \$2,500.

IV. PERSONNEL AND ASSIGNABILITY

- A. The Administrative Consultant complies with, and shall maintain compliance with, the Administrator Certification Requirements established by the Economic Development Administration.
- B. The Administrative Consultant represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of, or have any contractual relationship with, the City.
- C. All of the services required hereunder will be performed by the Administrative Consultant personnel and all such personnel shall be fully qualified to perform such services.
- D. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. However, any claims for money by the Administrative Consultant from the City, under this Agreement, may be assigned to a bank, trust company or other financial institution without such approval. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

V. SERVICES PROVIDED BY THE ADMINISTRATIVE CONSULTANT

Services outlined in this Agreement are those necessary to effectively administer an Economic Development Administration grant for community improvements. The following summary of services is not intended to limit the scope of services, but is intended to illustrate the work and services to be provided by the Administrative Consultant. The services are divided into five phases, which are the Grant Award, Environmental, Preconstruction, Construction and Close-Out.

A. GRANT AWARD

- 1. Provide assistance with the execution and required documents associated with the EDA contractual grant agreement with the City.
- 2. Assist the City in the preparation of the Financial Management Checklist and Signature Forms.
- 3. Prepare the Project Budget.
- 4. Prepare any other documents that EDA may require from time to time.

B. ENVIRONMENTAL

1. Prepare an initial FORMAT II Environmental Assessment in compliance with EDA Program Requirements.
 - a. Upon completion of the initial FORMAT II Environmental Assessment for the captioned project, and in the event that additional FORMAT II Environmental Assessment(s) shall be required, then the Administrative Consultant shall be entitled to additional compensation in the amount of \$2,500 upon completion of each additional FORMAT II Environmental Assessment.
 - b. The Administrative Consultant shall not be required to perform environmental assessment activities that exceed the scope of FORMAT II Environmental Assessment.
 - c. The Administrative Consultant shall assist the City in developing procurement documents and completing the procurement process for specialized services necessary to complete and EIS or other specialized environmental studies, surveys and/or reports as may be required for the completion of the captioned project.
2. Draft and furnish the City all legal notices required to meet EDA's environmental requirements.
3. Inform and advise the City staff throughout the environmental review process.
4. Send to all appropriate agencies the necessary environmental information so that those agencies may review and comment on the EDA project as part of the environmental review process. Maintain a list of all agencies which received the environmental information.
5. Conduct, with the City, any hearings that may be necessary.
6. Prepare, for the City, the Finding of No Significant Impact public notice.
7. Prepare, for the City, the Request for Release of Funds public notice.
8. Prepare, for the City, the Environmental Certification Form and the Request for Release of Funds.

C. PRECONSTRUCTION

1. Assist the City with the preparation and adoption of the required procurement policy and resolution.
2. Assist the City in the procurement of architectural and/or engineering services, if necessary.
3. Assist in the preparation of those bid documents that are not normally prepared by the engineer or architect.
4. Furnish the required labor, civil rights and other federal regulations to be included with the bid documents.
5. Review bid documents prior to their release for federal compliance.
6. Send notices of the Invitation to Bid to several minority and/or women-owned construction firms.
7. Review legal notices and monitor the bid procedure to assure federal compliance.
8. Attend bid opening and report to the City.
9. Review all contracts for compliance with EDA regulations.

10. Notify all necessary parties of the required preconstruction conference, and establish with contractor, City and other, the date, time and place for the conference.
11. Conduct the portion of the preconstruction conference that concerns EDA regulations and funding.
12. Prepare all EDA required notices and forms covering bids, preconstruction conference, contract awards and construction start dates.
13. Perform the duties of Labor Standards Officer.
14. Assist the City in the establishment of a EDA project filing system.
15. Apply for and furnish Davis-Bacon wage rates for all required construction contracts.
16. Should the City perform any or all engineering/architectural services and/or construction activities with its own employees, the Administrative Consultant will advise and review the procurement of materials, equipment and employee time sheets to help insure compliance with EDA regulations.

D. CONSTRUCTION

1. Prepare all requests for EDA funds (drawdowns) for City action.
2. Prepare the Estimated Cash Disbursements Report required to be submitted along with drawdown requests.
3. Prepare all quarterly Progress Reports for the City's review and approval.
4. Review all payment requests to assure compliance with the EDA rules and regulations.
5. Monitor the project site for federal labor standards compliance.
6. Serve as the City's liaison with EDA.
7. Attend all EDA monitoring visits and assist the City with responses to EDA compliance letters.
8. Report any major changes in project schedule to the City that are made known to the Administrative Consultant.

E. CLOSE-OUT

1. Upon completion of the project, prepare the EDA close-out packet to fulfill the requirements set out by EDA.
2. Assist in the final inspection of the project.
3. Assist the City in securing a qualified auditing firm, if necessary, that satisfies EDA regulations.

VI. RECORDS AND AUDITS

The Administrative Consultant shall assist the City in maintaining EDA project records, including property and financial records, adequate to identify and account for all costs pertaining to the project to assure proper accounting for all project funds, both Federal and non-Federal shares.

The Administrative Consultant shall assist the City in developing a financial management system which will comply with the U.S. Office of Management and Budget (OMB) Circular A-102 (Revised).

The City will be responsible for having the records audited by a Certified Public Accountant at the completion of the project. The expense for this audit will be a responsibility of the City. At the discretion of the City, the Administrative

Consultant will assist the City in procuring auditing services and with preparing the agreement for such services.

VII. COMPLIANCE WITH LAWS

The Administrative Consultant shall comply with all applicable laws, ordinances and codes of the State and local governments. This includes, but is not limited to:

A. EXECUTIVE ORDER 11246, AS AMENDED

During the performance of this Agreement, the Administrative Consultant agrees to comply with the following Equal Employment Opportunity provisions:

1. The Administrative Consultant will not discriminate against any employee or qualified applicant for employment because of race, creed, sex, color, national origin, or mental or physical handicap. The Administrative Consultant will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment without regard to their race, creed, sex, color, national origin, or mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Administrative Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause.
2. The Administrative Consultant will, in all solicitation or advertisements for employees placed by or on behalf of the Administrative Consultant, state all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, national origin, or physical or mental handicap.
3. The Administrative Consultant will cause the foregoing provision to be inserted in all subcontracts for any work covered by this Agreement so said provisions will be binding upon each subcontractor.
4. The Administrative Consultant will comply with all provisions of the Davis-Bacon Act, and of the rules, regulations and relevant orders of the United States Secretary of Labor.

B. 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.

C. TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968 (FAIR HOUSING ACT)

Prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or nation origin. Title VIII was amended in 1988 (effective March 12, 1989) by the Fair Housing Amendments Act, which: expanded the coverage of the Fair Housing Act to prohibit discrimination based on disability or on familial status (presence of child under age of 18, and pregnant women); established new administrative enforcement mechanisms with HUD attorneys bringing actions before administrative law judges on behalf of victims of housing discrimination; and revised and expanded Justice Department jurisdiction to bring suit on behalf of victims in Federal district courts.

D. 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, sex or handicap, 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.

E. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The Administrative Consultant must comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual shall, solely by reasons of his or her handicap, be excluded from participation (including employment), be denied program benefits or be subjected to discrimination under any program or activity receiving Federal funds.

- F. **AGE DISCRIMINATION ACT OF 1975, AS AMENDED**
No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- G. **FAIR HOUSING AMENDMENTS ACT OF 1988**
The Administrative Consultant shall comply with all provisions of the Fair Housing Amendments Act of 1988, which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status.
- H. **EXECUTIVE ORDER 11063**
No person shall, on the basis of race, color, religion, sex or national origin, be discriminated against in regards to housing and related facilities provided with Federal assistance or in lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal Government.
- I. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968, AS AMENDED**
The Administrative Consultant shall, to the greatest extent feasible, provide that opportunities for training and employment shall be given to lower-income residents of the project area, and that contracts, in connection with the project, be awarded to business concerns located in, or owned in substantial part, by residents of the project area.
- J. **KANSAS ACT AGAINST DISCRIMINATION**
The Administrative Consultant shall comply with the provisions of Articles 10 and 11 of the K.S.A. Chapter 44, which prohibits discrimination in employment, public accommodations or housing, on the basis of race, religion, color, sex, physical handicap, national origin or ancestry.
- K. **COPYRIGHT RESTRICTION**
No report, maps or other documents produced in whole or in part under this Agreement shall be subject of an application for a copyright by or on the behalf of the Administrative Consultant.
- L. **INTEREST OF MEMBERS OF A City GOVERNMENT**
No members of the governing body of the City and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of this project, shall have any personal financial interest, direct or indirect, in the Agreement, and the Administrative Consultant shall take appropriate steps to insure compliance.
- M. **INTEREST OF ADMINISTRATIVE CONSULTANT AND EMPLOYEES**
The Administrative Consultant covenants that it presently has no interest and shall not acquire interest, direct or indirect, in the project area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Administrative Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed.
- N. **SECTION 503 OF THE REHABILITATION ACT OF 1973**
The Administrative Consultant must comply with Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance employment of mentally and physically disabled individuals.
- O. **SECTION 912 OF THE CRANSTON-GONZALES NATIONAL AFFORDABLE HOUSING ACT OF 1990**
The Administrative Consultant must comply with Section 912 of the Cranston-Gonzales National Affordable Housing Act which prohibits discrimination on the basis of religious preference.

VIII. FEES

The City agrees to pay the Administrative Consultant the sum of **Twenty Thousand** Dollars (\$20,000) as the total agreement amount charged for the services outlined in Section V. of this Agreement. As prescribed by the

requirements of the EDA Program, the City will be billed incrementally for this total Agreement amount as follows:

- \$3,000** upon completion of the environmental review
- \$5,000** upon the City's approval of the first construction pay estimate.
- \$5,000** when project construction is 50% complete.
- \$5,000** upon the City's approval of the Notice of Substantial Completion and prior to close-out.
- \$2,000** upon submission of the close-out packet after the close-out public hearing.

In the event that one year has passed from the date the City and EDA have a fully-executed contract, the Administrative Consultant will be entitled to additional compensation in the amount of \$500.00 if no funds have been drawn from the above schedule. Also if at anytime during this contract period, a one year period of time should elapse again, the Administrative Consultant will be entitled to additional compensation in the amount of \$500.00 if no funds have been again been drawn from the above schedule. This maintenance fee cannot be paid with grant proceeds.

If after grant award, the City should decide to return the grant to EDA before construction begins, the City will incur a \$3,000 fee, less any administration charges already incurred.

IX. NON-EXECUTION OF EDA AGREEMENT

The City and the Administrative Consultant mutually agree that, in the event that EDA Agreement # TBD is not executed between the City and EDA, this Agreement will be immediately terminated and that the City will not be assessed any fees for services performed by the Administrative Consultant in accordance with this Agreement prior to the date of termination.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year first written above.

SOUTHEAST KANSAS REGIONAL PLANNING COMMISSION

CITY OF INDEPENDENCE, KANSAS

Chairman

Mayor

ATTEST:

ATTEST:

Secretary/Treasurer

City Clerk