

Provider Agreement

AN AGREEMENT WITH THE DES MOINES AREA METROPOLITAN PLANNING ORGANIZATION TO FOR THE PROVISION OF PLANNING CONSULTING SERVICES FOR THE IMPLEMENTATION OF THE HOUSING ACTION PLAN

THIS AGREEMENT (“Agreement”) is entered into by and Between Story County, an Iowa Municipal corporation, whose mailing address and telephone number is 900 Sixth Street, Nevada, Iowa 50201, telephone 515-382-7200, hereinafter referred to as “County”, and the Des Moines Area Metropolitan Planning Organization (DMMPO), hereinafter referred to as “Provider”, whose mailing address and telephone number is 515-334-0075, telephone 420 Watson Powell Jr. Parkway, Suite 200, Des Moines, Iowa 50309.

1. PURPOSE, INTENT AND SCOPE OF SERVICES.

The purpose of the agreement is for the Provider to provide consulting services to the County for the implementation of the Housing Action Plan, with the approach as outlined in Exhibit A, “RFP Response for Planning Consulting Services for the Implementation of the Housing Action Plan” incorporated into this Agreement by reference.

The Provider acknowledges that (1) the source of funding awarded for this project is the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds. (All definitions from “*Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds*” dated February 28, 2022, version 3.0.)

2. FEES, EXPENSES AND COMPENSATION.

- A. Provider may charge a maximum fee of \$191,000 for professional services necessary under the terms of this Agreement. Provider agrees that the maximum fee herein shall be Provider’s sole compensation for professional services and work performed because of this Agreement. Provider understands that the County reserves the right to request additional specific information in accessing the accuracy of claim information.
- B. Annually throughout the duration of this Agreement, on or before June 30, the Provider will provide electronically, itemization of costs incurred. Provider will make available all receipts if requested by the County.

3. METHOD OF PAYMENT.

- A. Payment for services will be made by County according to the following schedule:

January 1, 2023	\$22,000	
April 1, 2023	\$22,000	
July 1, 2023	\$22,000	
October 1, 2023	\$22,000	\$88,000 Year 1 Total
January 1, 2024	\$14,500	
April 1, 2024	\$14,500	
July 1, 2024	\$14,500	
October 1, 2024	\$14,500	\$58,000 Year 2 Total
January 1, 2025	\$11,250	
April 1, 2025	\$11,250	
July 1, 2025	\$11,250	
October 1, 2025	\$11,250	\$45,000 Year 3 Total

- B. The maximum total amount payable by the County under this agreement is \$191,000 as detailed in the FEES, EXPENSES AND COMPENSATION (Section II of this Agreement), and no greater amount shall be paid.

4. INDEPENDENT CONTRACTOR.

It is understood that provider is an independent professional contractor and that Provider will not in any event be construed or hold itself out to be an employee or agent of the County. It is further agreed that at no time will the Provider or the work efforts of the Provider be under the supervision or control of the County, although Provider agrees to comply with all reasonable requests and regulations applicable to any other business invitee of the County. It is also agreed that Provider, as an independent contractor, is not restricted to working exclusively for the County during the term of the Agreement.

5. AFFIRMATIVE COVENANTS.

- (A) **Ratification.** By executing this Agreement, the Provider (i) affirms and ratifies all statements, representations and warranties contained in all written documents that it has submitted to the County in connection with this Agreement (including, without limitation, the Agreement and the Application attached hereto as of the date hereof) and (ii) agrees that on each date, if any, that additional information is attached hereto and made a part hereof, it will be deemed to have affirmed and ratified all such statements, representations and warranties (including, without limitation, those contained or provided in connection with such additional information).
- (B) **No Litigation.** No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, other than as disclosed to the County in writing, is pending or, to the knowledge of the authorized representatives of the Provider executing this Agreement, threatened (1) seeking to restrain or enjoin the execution and delivery of this Agreement, or the undertaking of any Project (defined below) or (2) contesting or affecting the validity of this Agreement; and neither the corporate existence of the Provider nor the title to office of any authorized representatives of the Provider executing this Agreement, is being contested.
- (C) **No Conflicts.** The authorization, execution and delivery of this Agreement, and performance by the Provider of the Project and of its obligations under this Agreement, will not constitute a breach of, or a default under, any law, ordinance, resolution, agreement, indenture or other instrument to which the Provider is a party or by which it or any of its properties is bound.
- (D) **SAM.gov Registration.** Provider shall inform the County whether or not they are actively registered with the System for Award Management (“SAM”) and confirms that the Unique Entity Identifier (“UEI”) or Taxpayer Identification Number (“TINS”) herein listed is the correct number for the Provider as of the date hereof. If Provider is not registered with the System for Award Management (“SAM”) they will be required to register and provide the County with their Unique Entity Identifier (“UEI”) before awarded funds will be released to the Provider.
- a. Unique Entity Identifier (“UEI”) or Taxpayer Identification Number (“TINS”) _____
- (E) **Reporting and Compliance with Laws.** The Provider shall comply with all reporting requirements as determined by Story County. In addition, the Provider agrees that all work products shall be constructed or undertaken and shall be expended in full compliance with all applicable provisions of federal, state and local law and all regulations thereunder. Without limiting the generality of the foregoing, the Provider covenants to comply in all respects with all applicable law, regulation and rule regarding bidding, procurement, employment and anti-discrimination.

- a. **Quarterly Reporting.** Using the forms provided and, in the manner as provided by Story County, the Provider shall provide quarterly reports as of the end of each fiscal quarter. Such reports shall be delivered to the County not later than the third (3rd) business day following the end of each quarter.
 - b. **Status Meetings.** For the first six months of this Agreement, the Provider and County staff shall meet weekly for status updates. From the seventh month until the termination of this Agreement, the frequency of status meeting updates shall switch to a biweekly basis.
 - c. **Annual Reporting.** On an annual basis, the Provider will attend the Board of Supervisors for an Annual Report.
 - d. **Close Out Reporting.** The Provider shall provide a final close-out report after the final expenditure (or return to the County) related to this Agreement. Such report shall be delivered to the County not later than 60 days following the quarter in which such final expenditure (or return) occurred and shall contain all such items as are reasonably requested by the County or its agents.
- (F) **Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public 6.

6. INSURANCE & TAXES.

Provider is responsible for Workers Compensation, Disability, Unemployment, Automobile Insurance, and any other insurance required by the State of Iowa and will provide certificates of insurance to the County. County reserves the right to require complete, certified copies of all required insurance policies, at any time. Provider is also responsible for any payment of State and Federal taxes and any other applicable tax. Provider is not eligible for any benefits the County may provide for its employees.

To the fullest extent permitted by law, the Provider shall indemnify and hold harmless the County, their agents, and employees from and against all claims, losses, expenses, including, but not limited to attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Provider, anyone directly or indirectly employed by Provider or anyone for whose acts any of them may be liable.

7. CONFIDENTIALITY.

Provider agrees to hold in trust and confidence and confidential information and/or proprietary information or data relating to County business and shall not disseminate or disclose such confidential information to any individual or entity, except Provider's employees or subcontractors performing services hereunder (who shall be under a duty of confidentiality), and any other individuals specifically

permitted in each instance by the County. This shall include compliance with all laws and regulations regarding protected health information.

8. TERMINATION AND REMEDIES. This agreement is effective on the 15th day of November 2022 .

A. Termination.

- a. **Termination by the County.** The County, in its sole and absolute discretion, may terminate this Agreement:
 - i. if the Provider has breached any provision of this Agreement or has failed to comply with any applicable state or federal law or regulation applicable to any Project; or
 - ii. if any representation or warranty made by the Provider in any Proposal, this Agreement, or any certification or other supporting documentation thereunder or hereunder shall prove to have been incorrect in any material respect at the time made.
- b. **Notice of Termination.** The County shall provide the Provider with written notice of termination of this Agreement, setting forth the reason(s) for termination. The termination of this Agreement shall be effective as of the date such notice of termination is sent by the County. The County may terminate this agreement without penalty to the County, at any time, without cause, by giving written notice to the Provider at least fifteen (15) days before the effective date of such termination.
- c. **Effect of Termination.** Upon termination of this Agreement, the Provider shall reimburse the County for all costs and disbursements of the project terminated on a schedule to be negotiated in good faith between the County and the Provider, but in no event more than 60 days from the date of such termination.

B. Term. This Agreement shall be in full force and effect from and after December 1, 2022, through December 1 2025, or until one of the following events has occurred:

- a. The Provider and the County replace this Agreement with another written agreement;
- b. All of the Provider's obligations under this Agreement have been discharged, including, without limitation, any obligation to reimburse the County for disbursements; or
- c. This Agreement has been terminated pursuant to the provisions of Section 8.A hereof.

9. ACCESS TO BOOKS AND RECORDS.

Unless otherwise required by applicable laws, Provider shall allow the County access to all books and records for purposed of auditing or reviewing Provider's claims, upon request by the County. Provider's failure to provide access under this section shall constitute a material breach of the agreement.

- (A) **Recordkeeping.** The Provider shall maintain accounts and records with respect to the Project in accordance with generally accepted accounting principles as issued from time to time by the Governmental Accounting Standards Board (GASB). Provider shall keep and maintain all financial records and supporting documentation related to the Project for a period of seven years after all proceeds have been expended or returned to the County. Wherever practicable, Provider shall collect, transmit, and store such records in open and machine-readable formats. Provider agrees to make such records available to the County or the United States Treasury upon request, and to any other authorized oversight body, including but not limited to the Government Accountability Office (GAO), the Treasury's Office of Inspector General (OIG) and the Pandemic Relief Accountability Committee (PRAC). Provider agrees to make such accounts and records available for on-site inspection during regular business hours of the Provider and permit the County, the United States Treasury or any other such authorized oversight body to audit, examine, and reproduce such accounts and records, and to make audits of all contracts,

invoices, materials, payrolls, records of personnel, data, and other information relating to all matters covered by this agreement.

10. REQUIREMENTS.

Provider hereby agrees to perform all duties in accordance with all state and federal laws and regulations. This provision includes but is not limited to Iowa Code Section 144.32. Provider assures that no person shall be on the grounds of race, color, national origin, or sex, as provided by Title VI of the Civil Rights Act of 1964 be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this program or activity. Failure to perform duties in accordance with the applicable laws and regulations shall be considered a material breach of this agreement by the Provider.

11. EXTENSION.

If mutually agreeable to County and Provider, this Agreement may be extended. Such extension will be documented by written amendment, duly signed and dated by both parties.

12. ASSIGNMENT.

Neither party to this Agreement may assign, sell or transfer any part thereof to any other firm or entity without first obtaining the written permission of the other party hereto.

13. APPLICABLE STATE LAW AND WAIVER OF FEDERAL REMOVAL.

This Agreement has been negotiated, executed and delivered in the State of Iowa. The parties hereto agree with all questions pertaining to the validity and interpretation of this agreement will be determined in accordance with the laws of the State of Iowa in Story County, Iowa, with venue in Story County District Court. The parties hereby waive removal of any issue hereunder to the federal courts.

This Agreement and referenced attachments constitute the entire Agreement of the parties hereto and supersedes any prior agreement between the parties.

14. MISCELLANEOUS.

- (A) **Notices.** All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing and delivered,
 - a. in the case of the County, to Leanne A. Harter, County Outreach and Special Projects Manager, Story County Administration, 900 6th Street, Nevada, Iowa 50201, and
 - b. in the case of the Provider, to the address specified in this Agreement; or
 - c. as to either party, at such other address as shall be designated by such party in a notice to each other party. Unless otherwise provided herein, receipt of all such communications shall be deemed to have occurred when personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein.
- (B) **No Waiver.** No failure or forbearance on the part of the County to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by the County of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. Conditions, covenants, duties and obligations contained in this Agreement may be waived only by written agreement between the parties.
- (C) **Headings.** The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

- (D) **Severability.** If any term, provision or condition, or any part thereof, of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.
- (E) **Further Assurances.** Provider agrees that it will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement.
- (F) **Third-Party Beneficiaries.** This Agreement is exclusively between the County and the Provider, and does not nor is intended to create any privity of contract with any other party not a party hereto other than the Indemnified Persons, nor to imply a contract in law or fact. The County is not obligated to disburse grant funds on any contract, or otherwise, between the Provider and any other party, nor intends to assume, at any time, direct obligations for payment for work, goods, or other performance under such contracts. The obligation to pay any amounts due under such contracts is solely the responsibility of the Provider. Nothing herein, express or implied, is intended to, or shall confer upon, any other person any right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement between the County, the Provider and the Indemnified Persons.

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This agreement and referenced attachments constitute the entire Agreement of the parties hereto and supersedes any prior agreement between the parties.

STORY COUNTY, IOWA (County)

DES MOINES AREA MPO

By: _____

By: _____

Chairperson of the Board of Supervisors

Executive Director

Dated: _____

Dated: _____