

## **RESOLUTION**

### **A RESOLUTION ACCEPTING CMW, INC. OF LEXINGTON KY AS THE PROJECT ARCHITECT FOR THE MOREHEAD SENIOR CITIZENS CENTER 2018 CDBG PROJECT.**

**WHEREAS**, the City of Morehead (City) intends to submit a 2018 Community Development Block Grant application to the KY Department for Local Government for the Morehead Senior Citizens Center Project (Project); and

**WHEREAS**, in order for the City to make an informed decision and know exactly what the costs associated with the Project, the City asked the Gateway ADD to procure a licensed Architect; and

**WHEREAS**, the Request for Statement of Qualifications (RFQ) was published in the Morehead News on May 22, 2018, was listed with the Kentucky PTAC Bid Notification/Solicitation System and 76 individual Architectural/Engineering firms were individually contacted, included in these were Disadvantaged, Minority and Women-owned firms, resulting in 7 proposals being received by the Committee; and

**WHEREAS**, the Committee appointed by Mayor Trent to receive, qualify and rank the received RFQ's met on June 21, 2018 and after calculating the scores, CMW, Inc. of Lexington, KY received the highest average score of the 7 proposals; and

**NOW, THEREFORE, BE IT RESOLVED THAT** the City of Morehead:

1. accepts the firm of CMW, Inc. of Lexington, KY as the Project Architect for the Morehead Senior Citizens Center Project
2. authorizes Mayor James Thomas Trent to sign a Professional Services Contract with CMW, Inc., which states the following in terms of Compensation (1) \$0.00 (Zero Dollars and Zero Cents) will be paid for a Preliminary Cost Estimate which could be used for future funding applications and (2) the remaining work and compensation for usual and customary Architectural Services, in the amount of \$30,000 (Thirty Thousand Dollars and No Cents) will not begin until the City notifies the Project Architect and is contingent of future funding and the approval of the KY Department for Local Government.

**APPROVED** this 27th day of June 2018.

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James Thomas Trent  
Mayor-City of Morehead

**ATTEST:**

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Crissy Cunningham  
Morehead City Clerk

**CONTRACT FOR PROFESSIONAL SERVICES  
Community Development Block Grant Program**

**PART 1 – AGREEMENT**

This Contract for Professional Services is by and between the City of Morehead, whose address is 314 Bridge Street, Morehead, KY 40351 (hereinafter called the "City"), acting herein by James Thomas Trent, Mayor hereunto duly authorized, and CMW, Inc., whose address is 400 East Vine Street-Suite 400, Lexington, KY 40507 (hereinafter called the "Consultant"), acting herein by Brian C. Hill, President & Principal In Charge, hereunto duly authorized.

**WITNESSETH THAT:**

**WHEREAS**, the City has intentions of entering into an agreement with the State of Kentucky for the implementation of a Community Development Block Grant (CDBG) Program Project pursuant to Title I of the Housing and Community Development Act of 1974; if funding is approved and

**WHEREAS**, the City desires to engage the Consultant to render certain technical assistance services in connection with its Community Development program:

**NOW, THEREFORE**, the parties do mutually agree as follows:

**1. Employment of Consultant**

The City hereby agrees to engage the Consultant, and the Consultant hereby agrees to perform the following Scope of Services:

**2. Scope of Services**

Initially, the City is requesting that a Preliminary Cost Estimate be prepared by the Consultant and submitted to the City which will serve as the basis for the funding application(s).

The Preliminary Cost Estimate should include, but not be limited to, the estimated costs associated with the Project for such items as applicable; (1) Acquisition (2) New Construction, (3) A/E Planning/Design/Inspection (4) Archaeological Surveys (5) Legal Services (6) Planning and Administration (6) Contingencies (7) Printing and Plan Review Fees and (8) Special Geotechnical Investigations.

The following Scope of Services are not, at this time, authorized by the City but can become a part of this Contract upon notification from the City to the Consultant that the application funding sources have agreed to make project funds available:

**A. Schematic Design Phase Services**

- B. Design Development Phase Services
- C. Construction Documents Phase Services
- D. Bidding or Negotiation Phase Services
- E. Construction Phase Services
- F. Evaluations of the Work
- G. Contractor Certificates of Payment Submittals Review
- H. Contractor Schedule Submittals Review

Services in each of the above work areas shall be performed under and at the direction of the City, or their designated representative.

### 3. Time of Performance

The services of the Consultant shall commence on June 27, 2018 and be provided on a per-project basis as requested by the City or their designated representative. Such services shall be continued in such sequence as to assure their relevance to the purposes of this Contract. In any event, all of the services required and performed hereunder shall be completed no later than \_\_\_\_\_.

### 4. Access to Information

It is agreed that all information, data, reports, records and maps as are existing, available and necessary for the carrying out of the work outlined above, shall be furnished to the Consultant by the City and its agencies. No charge will be made to the Consultant for such information, and the City and its agencies will cooperate with the Consultant in every way possible to facilitate the performance of the work described in this Contract.

### 5. Compensation and Method of Payment

The maximum amount of compensation and reimbursement to be paid for the Preliminary Cost Estimate hereunder shall not exceed \$0.00 (Zero Dollars and Zero Cents) for all services required.

Upon notification from the City to the Consultant that the application funding sources have agreed to make project funds available, the maximum amount of compensation and reimbursement to be paid for the Schematic Design Phase Services, Design Development Phase Services, Construction Documents Phase Services, Bidding or Negotiation Phase Services, Construction Phase Services, Evaluations of the Work, Contractor Certificates of Payment Submittals Review and Contractor Schedule Submittals Review hereunder shall not exceed the amount listed in the Preliminary Cost Estimate, which was submitted within the project application and approved or revised by the KY Department for Local Government, or \$ 30,000.00 (Thirty Thousand Dollars and No Cents) for all services required.

All contract work will be performed on a time and materials basis. Consultant time for principals and staff will be provided at their respective rate of compensation.

The Consultant shall submit invoices to the City for payment. These invoices shall coincide with the project draw requests. The City will make payment to the Consultant within five (5) days after the project funds are wire transferred into the City project account.

The Consultant agrees to keep accurate records, including time sheets and travel vouchers, of all time and expenses allocated to the performance of contract work. Such records shall be kept in the offices of the Consultant and shall be made available to the City for inspection and copying upon request.

6. Ownership Documents

All documents, including original drawings, estimates, specifications, field notes and data are the property of the City. Consultant may retain reproducible copies of drawings and other documents.

7. Professional Liability

Consultant shall be responsible for the use of reasonable skill and care befitting the profession in the preparation of particular drawings, plans, specifications, studies and reports and in the designation of particular materials for the project covered by this Contract.

8. Indemnification

The Consultant shall comply with the requirements of all applicable laws, rules and regulations in connection with the services of Consultant and shall exonerate, indemnify and hold harmless the City, its officers, agents and all employees from and against them and local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and Income Tax laws. Further, Consultant shall exonerate, indemnify and hold harmless the City with respect to any damages, expenses or claims arising from or in connection with any of the work performed under this Contract by Consultant. This shall not be construed as a limitation of the Consultant's liability under the Contract or as otherwise proved by law.

9. Terms and Conditions

This Contract is subject to the provisions titled, "Part II – Terms and Conditions," attached hereto and incorporated by reference herein.

10. Address of Notices and Communications

James Thomas Trent  
Mayor-City of Morehead  
314 Bridge Street  
Morehead, KY 40351

Brian C. Hill  
President and Principal In Charge  
400 East Vine Street-Suite 400  
Lexington, KY 40507

11. Captions

Each paragraph of this Contract has been supplied with a caption to serve only as guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application.

12. Authorization

This Contract is authorized by City Resolution No. 22:2018, adopted on June 27, 2018, copies of which are attached hereto and made a part hereof.

**CITY OF MOREHEAD**

**ATTEST**

By: \_\_\_\_\_ 6/27/18  
James Thomas Trent Date  
Mayor

\_\_\_\_\_ 6/27/18  
Crissy Cunningham Date  
Morehead City Clerk

**CMW, Inc.**

By: \_\_\_\_\_  
Brian C. Hill Date  
Principal In Charge

**CONTRACT FOR PROFESSIONAL SERVICES  
Community Development Block Grant Program**

**PART II – TERMS AND CONDITIONS**

**1. Termination of Contract for Cause**

If through any cause, the Consultant shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Consultant shall violate any of the covenant, agreements or stipulations of this Contract, the City shall thereupon have the right to terminate this contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Contract shall, at the option of the City, become its property and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Consultant, and the City may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due the City from the Consultant is determined.

**2. Termination for Convenience of the City**

The City may terminate this Contract at any time by giving at least ten (10) days notice in writing to the Consultant. If the Contract is terminated by the City as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Consultant, Paragraph 1 hereof relative to termination shall apply.

**3. Changes**

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

**4. Personnel**

- A. The Consultant represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City.
- B. All of the 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 and local law to perform such services.
- C. None of the work or services covered by this Contract shall be subcontracted without the prior approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

5. Assignability

The Consultant shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto: provided, however, that claims for money by the Consultant from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

6. Reports and Information

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

7. 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 the prior written approval of the City.

8. Copyrights and Patents

Any copyrightable work resulting from this Agreement is available to the author for such, but the City and the Kentucky Department for Local Government reserve the option for unlimited use and license to such work. Any discovery or invention shall be reported promptly to the City and the Kentucky Department for Local Government for the determination as to whether patent protection should be sought and how the rights of any patent shall be disposed of and administered in order to protect the public interest.

9. Compliance with Local Laws

The Consultant shall comply with applicable laws, ordinances and codes of the State and local governments.

10. Access to Records

The Consultant shall maintain accounts and project records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds, both CDBG and non-CDBG shares. These records will be made available to the City, the Kentucky Governor's Office for Local Development Commonwealth of Kentucky Finance & Administration Cabinet, Commonwealth of Kentucky Auditor of Public Audits, Commonwealth of Kentucky Legislative Research Commission, U.S. Department of Housing and Urban Development, the U. S. Department of Labor, and the Comptroller General of the United States, or any of their duly authorized representatives. These parties shall have access to any books, documents, papers and records of the Consultant, which are directly pertinent to the project for the purpose of making audit, examination, excerpts and transcriptions. All records shall be maintained for five years after project closeout.

11. Title VI, 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.

12. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin or sex 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.

13. Age Discrimination

The Contractor shall comply with the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age. No person shall be excluded from participation in, denied program benefits of, or subject to discrimination on the basis of age under any program or activity funded in whole or in part with Federal funds.

14. Section 504

The Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, which extends the prohibitions against discrimination to individuals with disabilities.

15. Conflict of Interest Clauses

Interest of Members of a City

No member 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 the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Consultant shall take appropriate steps to assure compliance.

Interests of Other Local Public Officials

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Consultant shall take appropriate steps to assure compliance.

Interest of Consultant and Employees

The Consultant covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Consultant further covenants that in the performance of this Contract, no person having any such interest shall be employed.



16. "Section 3" Compliance

- A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work and purchase of services and supplies in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- B. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
- C. The Consultant will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment training.
- D. The Consultant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a *finding* that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

17. Equal Opportunity Clause (Contracts above \$10,000)

During the performance of this Contract, the Consultant agrees as follows:

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.
- B. The Consultant will, in all solicitation or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- D. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
- E. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the City's Department of Housing and Community Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the Consultant's noncompliance with the non-compliance clause of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Consultant may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
- G. The Consultant will include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965 as amended, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the City's Department of Housing and Community Development may direct as a means

of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City's Department of Housing and Community Development, the Consultant may request the United States to enter such litigation to protect the interests of the United States.