

FY 2012

INDEPENDENT CONTRACTOR AGREEMENT

Between

OTSEGO COUNTY)

And

Northeast Michigan Council of Governments (NEMCOG)

WHEREAS, OTSEGO COUNTY desires to contract for the performance of services, as hereafter described, of the independent contractor, NEMCOG whose signature appears hereon (hereafter referred to as Contractor);

I. GENERAL TERMS.

IT IS HEREBY AGREED by and between OTSEGO COUNTY and Contractor as follows:

- (A) Contractor shall be an independent contractor. Contractor shall not be deemed to be an employee of OTSEGO COUNTY for any reason and no employee benefits of OTSEGO COUNTY, including but not limited to worker's compensation, no-fault automobile, medical or disability insurance, leave time, etc., shall be due or owing to Contractor, his heirs, successors or assigns;
- (B) Contractor shall hold harmless and indemnify OTSEGO COUNTY from any and all claims or liability that may arise out of any acts or conduct of the Contractor in the course or scope of the performance of Contractor's services under this Agreement;
- (C) OTSEGO COUNTY shall pay Contractor as follows in exchange for Contractor's satisfactory performance of the services as hereafter set forth:
 - (1) \$84,575.00. Contractor shall be responsible for paying all taxes, including employment taxes, tax withholding payments (*e.g.*, federal and state income taxes), FICA, MESC, etc.
 - (2) Payments to Contractor will be contingent OTSEGO COUNTY receiving the funds from its funding source before OTSEGO COUNTY can release payments to Contractor.
 - (3) Contractor shall be solely responsible for all self-employment taxes and related insurance required for the operation of his/her business and activities, including adequate automobile liability insurance.

- (D) **Service and Duties:** During the term of this Agreement, the Contractor shall provide Hazard Mitigation Plan Updates for Alcona, Alpena, Crawford, Montmorency, Otsego, Oscoda and Presque Isle Counties.. The Contractor shall perform these services in a competent and thorough manner and to the satisfaction of OTSEGO COUNTY. The duties shall include See Attachment A (Grant Proposal) and B (Contract between SOM and Otsego County). NEMCOG will provide a monthly invoice to Otsego County. Documentation of match will accompany the invoice. Otsego County will complete the required State of Michigan forms including monthly financial statements with detailed expenditures and will submit billing statements to Michigan State Police Emergency Management Division.
- (E) The contractor shall perform faithfully any duties assigned to him to the best of his ability and shall make prompt, complete and accurate reports of his work and expenses to OTSEGO COUNTY. These duties shall be subject to modification, addition and deletion by OTSEGO COUNTY.
- (E) Contractor is responsible for completion of work as agreed upon within the required time frame of the project with no control by OTSEGO COUNTY with regards to hours worked, or location.
- (F) OTSEGO COUNTY may terminate this Service Contract if it deems that funding is no longer available to pay for services by the Contractor. OTSEGO COUNTY shall notify the Contractor of this eventuality two weeks prior to termination.
- (G) OTSEGO COUNTY may terminate any Service Contract in whole or part, at any time before the date of completion, whenever it is determined that Contractor has failed to perform any duties or obligations in a fully satisfactory manner (*e.g.*, Contractor fails to timely or completely comply with one or more conditions of the Grant Agreement(s)). OTSEGO COUNTY will promptly notify the Contractor in writing of the effective date of the termination. Payments made to the Contractor or recoveries by OTSEGO COUNTY will be in accordance with the legal rights and liabilities of the parties concerned.
- (H) OTSEGO COUNTY and the Contractor may terminate this Service Contract in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial terminations, the portion to be terminated. Contractor shall not incur new obligations for the terminated portion after the effective date. OTSEGO COUNTY will allow full credit to the Contractor for the noncancelable obligations, properly incurred by the Contractor prior to termination.

- (I) At any time during the Contract Term (see II. below), either party may serve a written notice to terminate this Agreement, which would be effective on the thirty-first (31st) day after the notice to terminate is served on the other party.
- (J) Contractor shall not be an agent of OTSEGO COUNTY has no authority to act on behalf of OTSEGO COUNTY and shall not act in a representative capacity or act as if he can represent OTSEGO COUNTY.

For example:

- (1) Contractor shall not issue press releases without prior written approval.
 - (2) Contractor shall not sign contracts on behalf of OTSEGO COUNTY.
 - (3) Contractor shall make no representations on behalf OTSEGO COUNTY.
- (K) Any additional instructions regarding the performance of said services attached to this Contract shall be deemed to be incorporated herein and be part of this Contract and same shall be signed and dated by the Contractor upon execution of this agreement.

II. TERM OF CONTRACT.

The initial term of this Independent Agreement shall be for twenty-four (24) months beginning on or about September 30, 2011 and ending on or about July 31, 2014 ("Contract Term"). This Agreement may be renewed at the end of the Contract Term by a further written agreement of both parties. At any time during the Contract Term, either party may serve a written notice to terminate this Agreement, which would be effective on the thirty-first (31st) day after the notice to terminate is served on the other party.

III. CONFIDENTIAL INFORMATION:

Contractor shall not disclose information relating to OTSEGO COUNTY's operations or to clients or persons other than (a) members of OTSEGO COUNTY's staff, (b) members OTSEGO COUNTY Board or (c) third party reimbursement agencies and professional organizations, without written consent of OTSEGO COUNTY or duly issued court process or orders.

IV. STANDARD PROVISIONS.

A. **Notices.** Any and all notices or other communications provided for or required by this Agreement shall be directed to the party to be so notified, in writing, by personal service or by registered or certified mail, return receipt requested, and addressed to such party at the respective addresses shown below, unless notice of change of address has been furnished in the manner provided in this section.

To Contractor: Diane Rekowski, Executive Director
Northeast Michigan Council of Governments
80 Livingston Blvd.
PO Box 457
Gaylord, Michigan 49734

To OTSEGO COUNTY: John Burt, Administrator
Otsego County
225 W. Main
Gaylord, MI 49735

B. **Applicable Law.** This Agreement and the rights of the parties hereunder shall be interpreted, construed and performed in accordance with the laws of the State of Michigan.

C. **Entire Agreement.** This Agreement, as it may be modified in writing from time to time, constitutes the entire agreement between the parties, and supersedes any and all other agreements, oral or in writing, with respect to the subject matter contained herein.

D. **Amendments.** This Agreement may be altered, amended or modified at any time, but only by written agreement executed by the parties hereto. No waiver of any provision of this Agreement shall be valid unless made in writing and signed by the party against whom such waiver is sought.

E. **Section Headings.** Any section or paragraph title or caption contained in this Agreement is for convenience only, and shall not be deemed a part of this Agreement.

F. **Invalid Provisions.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect any other provision hereof. This Agreement shall be construed and enforced as if the invalid or unenforceable provision were modified to conform with the applicable law, or if such modification is impossible, then as if the Agreement did not contain that provision.

G. **Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of the successors and assigns, and for purposes of realizing any benefits payable

hereunder to Contractor. In no event shall Contractor assign or delegate any of his rights, powers, duties and obligations under this Agreement without prior written consent of OTSEGO COUNTY. Such consent shall not unreasonably be withheld.

H. **Waiver.** Failure to insist upon strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of such terms, covenants or conditions. Waiver can be accomplished only in writing signed by the party giving the waiver.

I. **Authority.** The undersigned representatives warrant that they are duly authorized to execute the foregoing instrument.

J. **Arbitration.**

1. **All parties specifically and knowingly waive their rights to a jury trial.**

Any dispute or controversy concerning the termination of this Agreement, in whole or in part, or any other disputes concerning this Agreement between the Contractor and OTSEGO COUNTY shall be resolved by arbitration under the laws of the State of Michigan.

2. The arbitration proceeding shall be conducted under the Rules of the American Arbitration Association (AAA) in effect at the time a demand for arbitration of the dispute is made. The decision and award of the arbitrator made under the AAA rules shall be exclusive, final and binding on all parties, their heirs, representatives, successors and assigns. Judgment upon the award rendered by the arbitrator may be rendered in any circuit court having jurisdiction of the matter. In the event the Contractor or OTSEGO COUNTY shall require equitable relief prior to the selection of an arbitrator to resolve the dispute, either party may seek temporary equitable relief from any court having jurisdiction of the dispute, subject to any final relief awarded by the arbitrator.

3. Limited civil discovery shall be permitted for the production of documents and the taking of depositions, provided, however, that no party is permitted to take the deposition of more than three witnesses except by agreement of the other party or upon order of the arbitrator pursuant to the motion of a party. Subject to the foregoing limitations, discovery shall be conducted in accordance with the Federal Rules of Civil Procedure with any enforcement issues resolved by the arbitrator.

4. The arbitration and all proceedings, discovery and any award of the arbitrator, is confidential. Neither the parties nor the arbitrator shall disclose any information gained during the course of the arbitration to any person or entity who is not a party to the arbitration unless permitted by law. Attendance at the arbitration shall be limited to the parties and those called as witnesses.

5. OTSEGO COUNTY and Contractor acknowledge that each has had the opportunity to consult with counsel of choice, before signing this Agreement, and OTSEGO COUNTY and Contractor each hereby knowingly and voluntarily, without coercion, waives all rights to trial by jury of all disputes between them and instead agree to binding arbitration.

6. In the event of dispute under this Agreement, the parties agree pursuant to MCLA 600.5001; MSA 27A.5001, et seq., to binding arbitration in accord with the rules of the American Arbitration Association, further agree that the prevailing party shall be awarded its reasonable attorney fees with said place of arbitration being Gaylord, Michigan which shall render a judgment upon the award made pursuant to said arbitration. It is further agreed that any arbitration award may be certified to the Otsego Circuit Court which shall render a judgment upon the award made pursuant to said arbitration.

IN WITNESS WHEREOF, the parties have executed this Agreement on January 10, 2012.

Witnesses:

Nisha M. Adams
Witness

OTSEGO COUNTY

John Burt
By: John Burt

Its: Administrator
225 W. Main St.
Gaylord, MI 49735
989-731-7500

NEMCOG

Papandute
Witness

Diane Rekowski
By: Diane Rekowski

Its: Executive Director
80 Livingston Blvd.
PO Box 457
Gaylord, MI 49734
989-732-3551