

Professional Services Contract Staff Report

DATE:**TO:** DOUGLAS COUNTY BOARD OF COUNTY COMMISSIONERS**THROUGH:** DOUGLAS J. DEBORD, COUNTY MANAGER**FROM:** TERENCE T. QUINN, AICP, DIRECTOR OF COMMUNITY DEVELOPMENT **CC:** DAN AVERY, AICP, CHIEF PLANNER
KATI RIDER, AICP, PLANNING MANAGER
JENNIFER EBY, AICP, ASSISTANT DIRECTOR OF COMMUNITY AND RESOURCE
SERVICES**SUBJECT:** PROFESSIONAL SERVICES CONTRACT OF \$150,000 BETWEEN DOUGLAS COUNTY
AND NORTHWEST DOUGLAS COUNTY ECONOMIC DEVELOPMENT
CORPORATION

BOARD OF COUNTY COMMISSIONERS MEETING:**AUGUST 25, 2020 @ 1:30 p.m.**

I. EXECUTIVE SUMMARY

In support of the Board's Economic Foundations Core Priority, Douglas County contracts with economic development organizations (EDO) to provide services within the County. For services to be provided for the period between October 1, 2020, and September 30, 2021, the Northwest Douglas County Economic Development Corporation (NWDCEDC) has requested increased contractual support totaling \$150,000.

II. REQUEST

Approval of professional services contract between Douglas County and NWDCEDC for \$150,000.

III. DESCRIPTION

Services provided by the County's contracted economic development partners include programs focused on primary job recruitment, business retention, and marketing Douglas County to site selectors. This includes promotion of community assets, site location assistance, and advocacy on legislative policy.

The requested contract amount is an increase of \$125,000 from the prior year. Services to be rendered by NWDCEDC are detailed in Exhibit A and reflect a more robust approach

to economic development activities in a large and growing part of the County. This contract places a greater emphasis on development of a business attraction program for target industries, establishment of a marketing plan and program, and implementation of a business retention and expansion program. NWDCEDC will also have an expanded role in collaborating with the business community to identify economic development and infrastructure needs in northwest Douglas County. NWDCEDC will continue to participate in the Economic Development Forum, provide a written report annually, and share resources with other partners to ensure a unified approach for supporting economic development in the County.

IV. BACKGROUND

Douglas County contracts with four major EDO partners:

- Metro Denver Economic Development Corporation which serves the greater Denver region;
- Castle Rock Economic Development Council which serves the Town of Castle Rock;
- Denver South Economic Development Partnership which serves Lone Tree and unincorporated areas in the northeastern portion of the County; and
- NWDCEDC which serves unincorporated portions of the County including Highlands Ranch, Roxborough, and Sterling Ranch.

These organizations represent the varying interests of the region or specific parts of the County, private sector businesses, and their membership base. These investments enable the County to leverage economic development tools aptly delivered by our partners and provide an efficient approach to meet various business needs.

V. RECOMMENDED ACTION

It is staff’s recommendation that the professional services contract with Northwest Douglas County Economic Development Corporation be approved by the Board of County Commissioners as it complies with all County approval standards and procedural guidelines.

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MEMO

To: Douglas County Board of County Commissioners

CC: Doug DeBord, Douglas County Manager

From: Amy Sherman, President & CEO
Northwest Douglas County Chamber & EDC

Date: July 13, 2020

Re: Funding for Northwest Douglas County Chamber & EDC

Thank you for your increased partnership during the first half of 2020. Our consistent communication and strategic planning have positioned us well to work closer in the future and build a stronger economic foundation for our region. We respectfully ask Douglas County to amend our annual contract for services to \$150,000 per year to be able to achieve our common goals of economic recovery and economic development for the region. We must stand strong in helping our business community recover.

With today's uncertain economic situation, it's more important than ever for an increased partnership. The economic crisis we are facing includes:

- The Unemployment Rate in Denver is 10.2% and Douglas County 8.2%
- Commercial and Retail Market vacancy rates are rising and the future leasing market is unknown and could take years to recover
- Companies hiring is down 21% in the Denver Metro area
- Many local businesses are struggling or closing. Recent examples in Northwest Douglas County are Shred415 Gym and 24Hour Fitness closed, Grist Brewing and Living the Dream Brewing are struggling at 50% capacity.

In an effort to recover quickly and to sustain a thriving economy, we propose to increase our efforts listed below. With additional funding, we will be able to accomplish these goals:

- Economic Recovery Efforts, including tracking commercial and retail market data.
- Development of an Aerospace Industry Cluster Program, including U.S. Space Force efforts.
- Development of a robust Business Attraction Program and increased efforts on business retention and expansion.
- Build relationships with Site Selectors and create a Real Estate and Development Program.
- Build the identity of Douglas County to a national level as the best place to locate and run a business.

The next few years will be a time when people are looking for new career opportunities, employers will be looking for locations with lower costs of doing business, with remote working quickly trending upwards. We have a great opportunity to market Douglas County as a region to prospective employers and talent, highlighting our infrastructure, workforce and thriving industry clusters to attract new business.

For comparison purposes, we researched what other private-sector organizations in the region received from their local government partners to execute their mission.

- Jefferson County EDC – Receives \$275,000 from Jefferson County.
- Castle Rock EDC – Receives \$200,000 from the Town of Castle Rock and an additional \$170,000 for the Downtown Alliance.
- Aurora EDC – Receives \$500,000 from the City of Aurora, \$200,000 from Aurora Water, and \$100,000 from Arapahoe County.
- Aurora Chamber – Received a \$75,000 contract for U.S. Space Force recruitment efforts.

Thank you for your consideration of our contract for services amendment. We appreciate and value our relationship with the Board of County Commissioners and Douglas County staff.

PUBLIC CONTRACT FOR SERVICES

THIS PUBLIC CONTRACT FOR SERVICES (the “Contract”) is made and entered into this _____ day of _____, 20___, by and between the **BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO** (the “County”), and **NORTHWEST DOUGLAS COUNTY ECONOMIC DEVELOPMENT CORPORATION**, a Colorado Corporation authorized to do business in Colorado (the “Consultant”).

RECITALS

WHEREAS, the County is undertaking certain activities for fostering the growth of local businesses and the local economy by maintaining contacts and communication with local business leaders; and

WHEREAS, the County desires to engage the Consultant to render certain professional services and assistance in connection with such undertakings of the County; and

WHEREAS, the Consultant has the ability to assist the County through its professional expertise, knowledge, and experience and is ready, willing and able to provide such services, subject to the conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the parties agree as follows:

1. LINE OF AUTHORITY: Kati Rider, (the “Authorized Representative”), is designated as Authorized Representative of the County for the purpose of administering, coordinating and approving the work performed by the Consultant under this Contract.

2. SCOPE OF SERVICES: All services described in Exhibit A, attached hereto and incorporated herein, shall be performed by Consultant.

The County may, from time to time, request changes to the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant’s compensation, which are mutually agreed upon between the County and Consultant, shall be in writing and shall become part of this Contract upon execution.

The Consultant agrees to diligently and professionally perform all the services described herein in a manner satisfactory to the Authorized Representative. It is also understood and agreed that the Consultant shall not, in performing services hereunder, undertake any action or activity prohibited by the terms of any lease, permit, license or other agreement in effect during the term hereof between the Consultant and the County for the use and occupancy by the Consultant of any County facilities or space.

3. COMPENSATION: Subject to the maximum contract liability and all other provisions of this Contract, the County agrees to pay to the Consultant, and the Consultant agrees to accept payment as described in Exhibit B, attached hereto and incorporated herein, during the term hereof, in accordance with the terms set forth herein.

4. MAXIMUM CONTRACT EXPENDITURE: Any other provision of this Contract notwithstanding and pursuant to Section 29-1-110, C.R.S., the amount of funds appropriated for this Contract is **One Hundred Fifty Thousand Dollars (\$150,000.00)**. In no event shall the County be liable for payment under this Contract for any amount in excess thereof. The County is not under obligation to make any future apportionment or allocation to this Contract nor is anything set forth herein a limitation of liability for Consultant. Any potential expenditure for this Contract outside the current fiscal year is subject to future annual appropriation of funds for any such proposed expenditure.

5. TERM: It is mutually agreed by the parties that the term of this Contract shall commence as of 12:00 a.m. on October 1, 2020, and terminate at 11:59 p.m. on September 30, 2021. This Contract and/or any extension of its original term shall be contingent upon annual funding being appropriated, budgeted and otherwise made available for such purposes and subject to the County's satisfaction with all products and services received during the preceding term.

6. INVOICING PROCEDURES: Payments shall be made to the Consultant based upon invoices submitted by the Consultant, provided such invoices have been approved by the Authorized Representative. Payments will be made to the Consultant within thirty (30) days, or within a mutually agreed upon period after County has received complete invoices from the Consultant. The County reserves the right to require such additional documentation, including monthly activity reports detailing the Consultant's activities and services rendered, as the County deems appropriate to support the payments to the Consultant. The signature of an officer of the Consultant shall appear on all invoices certifying that the invoice has been examined and found to be correct.

7. CONFLICT OF INTEREST: The Consultant agrees that no official, officer or employee of the County shall have any personal or beneficial interest whatsoever in the services or property described herein, and the Consultant further agrees not to hire, pay, or contract for services of any official, officer or employee of the County. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interest of any party with whom the Consultant has a contractual arrangement, in conflict with those of County.

8. The County cannot and by this Contract does not agree to indemnify, hold harmless, exonerate or assume the defense of the Consultant or any other person or entity whatsoever, for any purpose whatsoever. Provided that the claims, demands, suits, actions or proceedings of any kind are not the result of professional negligence, the Consultant shall defend, indemnify and hold harmless the County, its commissioners, officials, officers, directors, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including Workers' Compensation claims, in any way resulting from or arising from the services rendered under this Contract; provided, however, that the Consultant need not indemnify or save harmless the County, its officers, agents and employees from damages resulting solely from the negligence of the County's commissioners, officials, officers, directors, agents and employees.

9. INDEPENDENT CONTRACTOR: The Consultant is an independent contractor and is free to perform services for other clients. Notwithstanding any provision of this Contract, all personnel assigned by the Consultant to perform work under this Contract shall be and remain at all times, employees of the Consultant for all purposes. **THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION OR UNEMPLOYMENT BENEFITS THROUGH THE COUNTY AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP.**

10. ILLEGAL ALIENS: If Consultant has any employees or subcontractors, the Consultant shall comply with §§ 8-17.5-101, *et seq.*, C.R.S., regarding Illegal Aliens - Public Contracts for Services, and this Contract. By execution of this Contract, the Consultant certifies that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and that the Consultant will participate in either the E-Verify Program or Department Program in order to confirm the eligibility of all employees who are newly hired for employment to perform work under this Contract.

A. Consultant shall not:

- (i) Knowingly employ or contract with an illegal alien to perform work under this Contract; or
- (ii) Enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.

B. The Consultant has confirmed the employment eligibility of all employees who are newly hired for employment to perform Work under this Contract through participation in either the E-Verify Program or Department Program.

C. The Consultant shall not use either the E-Verify Program or Department Program to undertake pre-employment screening of job applicants while this Contract is in effect.

D. If the Consultant obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Consultant shall:

- (i) Notify the subcontractor and the County within three (3) days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- (ii) Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to the preceding sub-subparagraph of this subparagraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

E. The Consultant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in § 8-17.5-102(5), C.R.S.

F. If the Consultant violates this provision of this Contract, the County may terminate the Contract for a breach of contract. If the Contract is so terminated, the Consultant shall be liable for actual and consequential damages to the County as required by law.

G. The County will notify the Office of the Secretary of State if the Consultant violates this provision of this Contract and the County terminates the Contract for such breach.

11. NO WAIVER OF GOVERNMENTAL IMMUNITY ACT: The parties hereto understand and agree that the County, its commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Contract, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the County.

12. ASSIGNMENT: The Consultant covenants and agrees that it will not assign or transfer its rights hereunder, or subcontract any work hereunder, either in whole or in part without the prior written approval of the Authorized Representative. Any attempt by the Consultant to assign or transfer its rights hereunder shall, at the option of the Authorized Representative, void the assignment or automatically terminate this Contract and all rights of the Consultant hereunder.

13. COUNTY REVIEW OF RECORDS: The Consultant agrees that, upon request of the Authorized Representative, at any time during the term of this Contract, or three (3) years thereafter, it will make full disclosure to the County and make available for inspection and audit upon request by the Authorized Representative, the County Director of Finance, or any of their authorized representatives, all of its records associated with work performed under this Contract for the purpose of making an audit, examination or excerpts. The Consultant shall maintain such records until the expiration of three (3) years following the end of the term of this Contract.

14. OWNERSHIP OF DOCUMENTS: Drawings, specifications, guidelines and any other documents prepared by the Consultant in connection with this Contract shall be the property of the County.

15. ASSIGNMENT OF COPYRIGHTS: The Consultant assigns to the County the copyrights to all works prepared, developed, or created pursuant to this Contract, including the right to: 1) reproduce the work; 2) prepare derivative works; 3) distribute copies to the public by sale, rental, lease, or lending; 4) perform the works publicly; and 5) to display the work publicly. The Consultant waives its rights to claim authorship of the works, to prevent its name from being used wrongly in connection with the works, and to prevent distortion of the works.

16. TERMINATION: The County shall have the right to terminate this Contract, with or without cause, by giving written notice to the Consultant of such termination and specifying the effective date thereof, which notice shall be given at least ten (10) days before the

effective date of such termination. In such event, all finished or unfinished documents, data, studies and reports prepared by the Consultant pursuant to this Contract shall become the County's property. The Consultant shall be entitled to receive compensation in accordance with this Contract for any satisfactory work completed pursuant to the terms of this Contract prior to the date of notice of termination. Notwithstanding the above, the Consultant shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Consultant.

17. NOTICES: Notices concerning termination of this Contract, notices of alleged or actual violations of the terms or provisions of this Contract, and all other notices shall be made as follows:

by the Consultant to: Kati Rider, Planning Manager
Department of Community Development
100 Third Street
Castle Rock, CO 80104
Email: krider@douglas.co.us

with a copy to: Douglas County Attorney's Office
100 Third Street
Castle Rock, CO 80104
(303) 660-7414
attorney@douglas.co.us

and by the County to: Northwest Douglas County Economic
Development Corporation
300 Plaza Dr, Suite 225
Highlands Ranch, CO 80129
Attn: Amy Sherman
Email: asherman@nwdouglascounty.org

Said notices shall be delivered personally during normal business hours to the appropriate office above, or by prepaid first-class U.S. mail, via facsimile, or other method authorized in writing by the Authorized Representative. Mailed notices shall be deemed effective upon receipt or three (3) days after the date of mailing, whichever is earlier. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification.

18. NONDISCRIMINATION: In connection with the performance of work under this Contract, the Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

19. GOVERNING LAW; VENUE: This Contract shall be deemed to have been made in, and construed in accordance with the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado. The

Consultant expressly waives the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

20. COMPLIANCE WITH ALL LAWS AND REGULATIONS: All of the work performed under this Contract by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado. The Consultant shall also comply with all applicable ordinances, regulations, and resolutions of the County and shall commit no trespass on any public or private property in the performance of any of the work embraced by this Contract.

21. SEVERABILITY: In the event any of the provisions of this Contract are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions shall not be affected. Should either party fail to enforce a specific term of this Contract it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.

22. NO THIRD-PARTY BENEFICIARIES: The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the County and the Consultant, and nothing contained in this Contract shall give or allow any such claim or right of action by any other or third person under such Contract.

23. ADVERTISING AND PUBLIC DISCLOSURE: The Consultant shall not include any reference to this Contract or services performed pursuant to this Contract in any of Consultant's advertising or public relations materials without first obtaining the written approval of the Douglas County Public Affairs Director. Nothing herein, however, shall preclude the transmittal of any information to officials of the County, including without limitation, the County Manager, Assistant County Manager, and the Board of County Commissioners.

24. PRIORITY OF PROVISIONS: In the event that any terms of this Contract and any Exhibit, attachment, or other referenced document are inconsistent, the following order of priority shall control:

- 1st This Contract, Sections 1 through 29
- 2nd Request for Proposal (if applicable)
- 3rd Exhibit C- Insurance Requirements
- 4th Exhibit A- Scope of Services
- 5th Exhibit B- Method of Payment
- 6th Response to Request for Proposal (if applicable).

25. HEADINGS; RECITALS: The headings contained in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of this Contract. The Recitals to this Contract are incorporated herein.

26. ENTIRE AGREEMENT: The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any commissioner, official, officer, director, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Contract, except those which are expressly reserved herein to the

Authorized Representative, shall be valid unless they are contained in writing and executed by all the parties with the same formality as this Contract.

27. INSURANCE: The Consultant shall be required to maintain the insurance requirements provided in Exhibit C, attached hereto and incorporated herein by reference. The Consultant shall provide evidence that such requirements have been met and shall provide updated information to the County in the event any changes are made to the Consultant's insurance coverage during the term of this Contract.

28. COUNTY EXECUTION OF AGREEMENT: This Contract is expressly subject to, and shall not be or become effective or binding on the County, until execution by all signatories of the County.

29. FORCE MAJEURE: No party shall be liable for failure to perform hereunder if such failure is the result of *force majeure*. Any time limit shall be extended for the period of any delay resulting from any *force majeure*, or this Contract may be terminated if such delay makes performance of the Contract impossible or impracticable. *Force majeure* shall mean causes beyond the reasonable control of a party such as, but not limited to, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty or action of government authorities.

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IN WITNESS WHEREOF, the County and the Consultant have executed this Contract as of the above date.

NORTHWEST DOUGLAS COUNTY ECONOMIC DEVELOPMENT CORPORATION

BY: Amy Sherman

ATTEST: (if a corporation)

Printed Name Amy Sherman

Title: President & CEO

Title: _____

DATE: 8/4/2020

Signature of Notary Public Required:

STATE OF Colorado)

ss.

COUNTY OF Douglas)

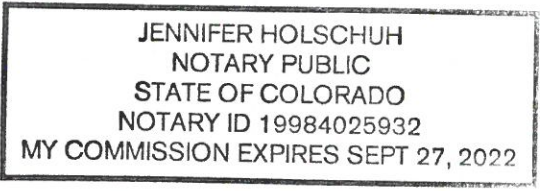
The foregoing instrument was acknowledged before me this 4th day of August, 2020, by Amy Sherman.

Witness my hand and official seal

[Signature]

Notary Public

My commission expires: 9/27/2022



**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS**

BY: _____

DATE: _____

APPROVED AS TO FISCAL CONTENT:

APPROVED AS TO LEGAL FORM:

Andrew Copland
Director of Finance

County Attorney

DATE: _____

DATE: _____

Exhibit A
SCOPE OF SERVICES

Services to be provided include:

1. Provide an annual written progress report to the County no later than December 1, 2020. The report will summarize efforts to implement the Northwest Douglas County Economic Development Corporation Strategic Plan, reassess and identify priorities for the upcoming year, and summarize progress towards achieving the tasks and services outlined in this Agreement.
2. Develop a robust business attraction program; identify targeted industries, develop a marketing plan, and respond to business prospects considering relocation to northwest Douglas County.
3. Implement a business retention and expansion program; identify business needs and organizational strategies to meet those needs.
4. Collaborate with the business community, development community and service providers to identify projects that support the real estate, development, and economic development needs (for instance, attainable housing, infrastructure, or industry master plans) in Northwest Douglas County.
5. Develop and share resources, information, and technical capabilities (e.g. web site enhancements, data analysis, and business intelligence);
6. Cooperate and participate in the Economic Development Forum, a committee of the Partnership of Douglas County Governments, whose purpose is to explore and clarify economic goals and service delivery within the County, including ways to collaborate efforts and service delivery within the County, and ways to collaborate on efforts that result in mutually beneficial outcomes, for the purpose of promoting a viable and sustainable economy in Douglas County; and
7. Cooperate and collaborate with other economic development-related agencies and organizations in Douglas County to ensure a unified approach for supporting economic development in the County, while respecting the needs and desires of the individual organizations, agencies, and communities.

Exhibit B

The Consultant shall submit invoices to the County. The County shall pay the Consultant within thirty (30) days of the receipt of invoices, pursuant to Section 6 of the Contract.

Total not to exceed amount of Contract: \$150,000,00