



Bismarck-Burleigh Public Health

DATE: September 14, 2020

FROM: Renae Moch, Public Health Director

ITEM: Burleigh-Morton COVID-19 Task Force Purchase Agreement

REQUEST:

Approval of contract to support the efforts of the Burleigh-Morton COVID-19 Task Force.

Please place this item on the 9/22/2020 City Commission meeting agenda.

BACKGROUND INFORMATION:

The Burleigh-Morton COVID-19 Task Force - vulnerable population subcommittee has identified a need for shelter management service at a shelter identified to house vulnerable individuals who have contracted COVID-19 or need to quarantine due to close contact.

RECOMMENDED CITY COMMISSION ACTION:

Approve the attached agreement.

STAFF CONTACT INFORMATION:

Renae Moch, MBA, FACMPE | Public Health Director, 355-11370 or rmoch@bismarcknd.gov

SHELTER MANAGEMENT AGREEMENT

This SHELTER MANAGEMENT AGREEMENT, made and entered into this 22 day of September, 2020 by and between the parties to this Agreement (Agreement), which are the **City of Bismarck** (CITY) and **Real Church LLC** having its principal place of business at **2222 E Broadway Ave, Bismarck, ND 585030**.

(REAL). This Agreement is entered into pursuant to the Governor's Executive Order 2020-03, Declaring a State of Emergency across the State in response to COVID-19.

SCOPE OF WORK

REAL, in exchange for the compensation paid by CITY under this Agreement, shall provide the following:

See Attachment A Scope of Work

Assignment

CITY shall have the ability to assign this Agreement.

COMPENSATION

Contractual Amount

CITY shall pay for the accepted services provided by REAL under this Agreement an amount not to exceed \$1249.00 per day. The Contractual Amount is firm for the duration of this Agreement and constitutes the entire compensation due REAL for performance of its obligations under this Agreement regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by REAL, except as provided by an amendment to this Agreement. All CDC guideline appropriate PPE gear is supplied to REAL by the city of Bismarck.

Payment

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Agreement and REAL shall not receive any additional compensation hereunder.
- 2) CITY shall make payment under this Agreement within thirty (30) calendar days after receipt of a correct invoice. REAL may submit on a weekly or bi-weekly basis.
- 3) Payment of an invoice by CITY will not prejudice CITY's right to object to or question that or any other invoice or matter in relation thereto. REAL's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by CITY, on the basis of audits conducted in accordance with the terms of this Agreement, not to constitute allowable costs. At CITY's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to REAL.
- 4) For any amounts that are or will become due and payable to CITY by REAL, CITY reserves the right to deduct the amount owed from payments that are or will become due and payable to REAL under this Agreement.

Prepayment

CITY will not make any advance payments before performance by REAL under this Agreement.

Payment of Taxes by CITY

CITY is not responsible for and will not pay local, state, or federal taxes. CITY will furnish certificates of exemption upon request by the REAL.

Purchasing Card

CITY may make a payment using a government credit card. REAL will accept a government credit card without passing the processing fees for the government credit card back to CITY.

TERM OF AGREEMENT

This Agreement term (Term) begins on **September 22, 2020** and ends on **December 31, 2020**.

No Automatic Renewal

This Agreement will not automatically renew, except as listed in the below extension option.

Extension Option

CITY reserves the right to extend this Agreement for an additional period of time, not to exceed **ninety (90) days** beyond the current termination date of this Agreement.

TIME IS OF THE ESSENCE

REAL hereby acknowledges that time is of the essence for performance under this Agreement unless otherwise agreed to in writing by the parties.

TERMINATION**Termination by Mutual Agreement**

This Agreement may be terminated by mutual consent of both parties executed in writing, with fourteen days (14) days notice.

Early Termination in the Public Interest

CITY is entering into this Agreement for the purpose of carrying out the public policy of the CITY of Bismarck, as determined by its City Commission. If this Agreement ceases to further the public policy of the City of Bismarck, CITY, in its sole discretion, by written notice to REAL, may terminate this Agreement in whole or in part.

Termination for Lack of Funding or Authority

CITY by written notice to REAL, may terminate the whole or any part of this Agreement under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.

2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.

3) If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Agreement under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

Termination for Cause.

CITY may terminate this Agreement effective upon delivery of written notice to REAL, or any later date stated in the notice:

1) If REAL fails to provide services required by this Agreement within the time specified or any extension agreed to by CITY; **or**

2) If REAL fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

The rights and remedies of CITY provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God, or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

LIABILITY

The CITY and REAL each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

INSURANCE

REAL shall secure and keep in force during the term of this agreement liability insurance of at least \$1,000,000.00 per instance and list the CITY as additional insured. REAL waives any right to seek compensation from CITY for any covered losses for which this required insurance is to apply.

NOTICE

All notices or other communications required under this Agreement must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

CITY

Name: Keith Hunke
Title: City Administrator
Address: 221 N 5th Street
City, State, Zip: Bismarck, ND
58501

REAL

Name: Real Church LLC
Title: Managing Member
Address:
City, State, Zip

CONFIDENTIALITY

REAL shall not use or disclose any information it receives from CITY under this Agreement that CITY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by CITY. CITY shall not disclose any information it receives from REAL that REAL has previously identified as confidential and that CITY determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of CITY and REAL to maintain confidentiality of information under this section continues beyond the Term of this Agreement.

COMPLIANCE WITH PUBLIC RECORDS LAWS

REAL understands that, in accordance with this Agreement's Confidentiality clause, CITY must disclose to the public upon request any records it receives from REAL. REAL further understands that any records obtained or generated by REAL under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. REAL agrees to contact CITY promptly upon receiving a request for information under the public records law and to comply with CITY's instructions on how to respond to the request.

INDEPENDENT ENTITY

REAL is an independent entity under this Agreement and is not a CITY employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. REAL retains means of carrying out REAL'S activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

ASSIGNMENT AND SUBAGREEMENTS

REAL may not assign or otherwise transfer or delegate any right or duty without CITY's express written consent, provided, however, that REAL may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Agreement, whether by merger, reorganization, operation of law, or otherwise. Should Assignee

be a business or entity with whom CITY is prohibited from conducting business, CITY shall have the right to terminate without cause.

REAL may enter into subcontracts provided that any subcontracts acknowledges the binding nature of this Agreement and incorporates this Agreement, including any attachments. REAL is solely responsible for the performance of any subcontracts with whom REAL Agreements. REAL does not have authority to Agreement for or incur obligations on behalf of CITY.

SPOILIATION – PRESERVATION OF EVIDENCE

REAL shall promptly notify CITY of all potential claims that arise or result from this Agreement. REAL shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to CITY the opportunity to review and inspect such evidence, including the scene of an accident.

MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

This Agreement, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement. This Agreement may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Agreement, the documents must control in this order of precedence:

- a. The terms of this Agreement as may be amended;
- b. Scope of Work (Attachment A)

SEVERABILITY

If any term of this Agreement is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if this Agreement did not contain that term.

APPLICABLE LAW AND VENUE

This Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering into this Agreement, CITY does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The parties may enforce the rights and remedies in judicial proceedings. CITY does not waive any right to a jury trial.

ATTORNEY FEES

In the event a lawsuit is instituted by CITY to obtain performance due under this Agreement, and CITY is the prevailing party, REAL shall, except when prohibited by N.D.C.C. § 28-26-04, pay CITY's reasonable attorney fees and costs in connection with the lawsuit.

NONDISCRIMINATION AND COMPLIANCE WITH LAWS

REAL agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights.

Compliance with Federal Law, Regulations and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Agreement. The REAL will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

No Obligation by Federal Government

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Agreement.

AUDIT

All records, regardless of physical form, and the accounting practices and procedures of REAL relevant to this Agreement are subject to examination by the City's Auditor, the Auditor's designee, or Federal auditors, if required. REAL shall maintain all of these records for at least three (3) years following completion of this Agreement and be able to provide them upon reasonable notice. CITY, City Auditor, or Auditor's designee shall provide reasonable notice to REAL prior to conducting examination.

EFFECTIVENESS OF AGREEMENT

This Agreement is not effective until fully executed by both parties.

REAL

Real Church LLC

BY: 

Chris Chase

Managing Member

Date: 9/14/2020

CITY

City of Bismarck

BY:

Steve Bakken

President, City Commission

Date:

Attachment A-Scope of Work

This is a proposal submitted by Real Church LLC for Shelter Management Service

The Burleigh-Morton COVID-19 Task Force – Underserved Populations Subcommittee is seeking an agency who can provide Shelter Management Services. The agency will be responsible for assisting with the operation of a temporary hotel sheltering site located in the Bismarck-Mandan area for individuals who are homeless or housing insecure and need a quarantine location due to a close contact exposure to someone who is confirmed COVID-19 positive or for individuals who need an isolation location due to testing positive for COVID-19. The service consists of performing rounds, engaging with clients, ensuring safety and a safe environment, communicating updates during shift change and maintaining positive rapport with hotel staff and security (if applicable). This position requires the ability to handle emergency crisis situations that may occur in the hotel. This is a temporary position that shall continue monthly as needed. The Shelter Management Service shall provide coverage of shifts 24 hours per day, 7 days a week.

Essential Responsibilities:

The Shelter Management Service agency will provide 24-hour care and support to individuals or families in quarantine or isolation due to COVID-19. The staff will oversee the day to day operation and needs of the residents to include: onboarding new individuals with expectations and guidelines, food delivery, response to reasonable needs or requests from residents and report to Burleigh County Public Health or necessary responders, provide support with exit process. These duties are subject to change at any time due to the COVID-19 pandemic and needs of the shelter residents.

- Respond to client questions, issues, and emergencies or crisis situations

- Ensure the safety of the living environment of our clients by completing hotel room checks and monitoring the building.
- Run errands and pick up supplies
- Ensure housing rules are followed
- Complete documentation of client encounters and interactions
- Prepare incident reports and documentation of client issues
- Monitor and assure building cleanliness and upkeep
- Be available for on all coverage and emergencies
- Maintain active communication with all staff to preform responsibilities
- Other duties as assigned

Agency Qualifications:

Must be able to provide onsite care and supervision 24 hours a day, have an understanding of vulnerable and homeless populations, ability to work well with people of different backgrounds, experience working with people with substance use and mental health disorders and be able to provide crisis intervention, ability to respond or deescalate a situation effectively, maintain confidentiality and respect for all residents. In addition, the proposing agency for this service must meet the following qualifications.

- Minimum of one year of experience working in a social service, medical or housing related field.
- Prior experience working in a housing program preferred
- Must possess a valid driver's license
- Understanding of diversity and ability to work effectively in a diverse service environment
- Ability to be on call to come on site when called for assistance of coverage by Manager/Director
- Demonstrated capacity to maintain accurate documentation, records and computer competency
- Possess effective verbal and written communication skills
- Must be able to lift 50 pounds in order to perform work responsibilities