

FY 2022

INDEPENDENT CONTRACTOR AGREEMENT

Between

Northeast Michigan Council of Governments (hereafter referred to as NEMCOG)

And

County of Alpena

WHEREAS, County of Alpena, 720 W. Chisholm Street, Alpena, Michigan, 49707 desires to contract for the performance of services, as hereafter described, of the independent contractor, NEMCOG, 80 Livingston Blvd., Suite U108, PO Box 457, Gaylord, Michigan 49734, whose signature appears hereon (hereafter referred to as Contractor);

I. GENERAL TERMS.

IT IS HEREBY AGREED by and between the County of Alpena and Contractor as follows:

- A. Contractor shall be an independent contractor. Contractor shall not be deemed to be an employee of COUNTY OF ALPENA for any reason and no employee benefits of COUNTY OF ALPENA, including but not limited to 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 COUNTY OF ALPENA 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. COUNTY OF ALPENA shall pay Contractor as follows in exchange for Contractor's satisfactory performance of the services as hereafter set forth:
 - a. \$30,000 annually, as invoiced, based on recycling surcharge for all county residents. Contractor shall be responsible for paying all taxes, including employment taxes, tax withholding payments (e.g., federal and state income taxes), FICA, MESC, etc.
 - b. Payments to Contractor will be contingent upon COUNTY OF ALPENA receiving the funds from its funding source before COUNTY OF ALPENA can release payments to Contractor.
 - c. 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. Fiduciary responsibilities shall include, but are not limited to, all accounting associated with the Resource Recovery facility operations, including any income received from daily

transactions from fees to be deposited in NEMCOG's established account for such purposes at an accredited financial institution.

- D. During the term of this Agreement, the Contractor shall advise and support the Alpena Recycling Board in managing the operations of the Alpena County Transfer Station and the Alpena County Cycling Program, in coordination with the Alpena County Administrator. The Contractor shall perform these services in a competent and thorough manner and to the satisfaction of COUNTY OF ALPENA. The duties shall include, but are not limited to, supporting the Board and the ARR facility Manager in the overall administration, management, and operations, including staffing (hiring, oversight, management) of the Alpena County Transfer Station and the Recycling Operations. The contractor shall perform faithfully any duties assigned to them to the best of its ability and shall make prompt, complete and accurate reports of their work and expenses to COUNTY OF ALPENA. These duties shall be subject to modification, addition and/or deletion by the Alpena County Recycling Board/COUNTY OF ALPENA.
- E. Contractor is responsible for completion of work as agreed upon within the required time constrains during COUNTY OF ALPENA's regular business hours at Resource Recovery Center/COUNTY OF ALPENA's office location.
- F. COUNTY OF ALPENA may terminate this Service Contract if it deems that funding is no longer available to pay for services by the Contractor. COUNTY OF ALPENA shall notify the Contractor of this eventuality two weeks prior to termination.
- G. COUNTY OF ALPENA 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. COUNTY OF ALPENA will promptly notify the Contractor in writing of the effective date of the termination. Payments made to the Contractor or recoveries by COUNTY OF ALPENA will be in accordance with the legal rights and liabilities of the parties concerned.
- H. COUNTY OF ALPENA 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. COUNTY OF ALPENA 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 without cause, which would be effective on the fifteenth (15th) day after the notice to terminate is served on the other party.

- J. Contractor shall not be an agent of COUNTY OF ALPENA, has no authority to act on behalf of COUNTY OF ALPENA in any representative capacity, and shall not represent that he or she has such authority.

For example:

- a. Contractor shall not issue press releases without prior written approval.
 - b. Contractor shall not sign contracts on behalf of COUNTY OF ALPENA.
 - c. Contractor shall make no representations on behalf COUNTY OF ALPENA.
- 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 **eighteen (18) months beginning on or about January 1, 2022 and ending on or about July 31, 2023 (“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 without cause, which would be effective on the fifteenth (15th) day after the notice to terminate is served on the other party.

III. CONFIDENTIAL INFORMATION.

- A. Contractor may have access to information or materials that are considered trade secret, confidential and/or proprietary by COUNTY OF ALPENA (“Information”). Information permits the development and commercialization of competitive and unique products and services or could be used to harm or injure the interests of COUNTY OF ALPENA and is protected by COUNTY OF ALPENA from unauthorized use and disclosure. Information includes, but is not limited to, technical know-how, procedures, technical specifications, designs, software (both object code and source code), results of testing, programmer documentation, protocols, processes, compilations of data, strategic plans, sales and marketing plans, product plans, customer information, supplier information, financial information and proposed agreements. Information also includes “Workproduct” identified and defined in Section IV below. Information relates to the heart of COUNTY OF ALPENA’S operation and is protected from unauthorized use and disclosure. It is important for COUNTY OF ALPENA, and for the entities with whom it has contractual relationships, that the Information be maintained in confidence and only be disclosed at the direction of COUNTY OF ALPENA’S officers and authorized agents.
- B. Contractor agrees that Contractor will keep Information of COUNTY OF ALPENA confidential. Contractor agrees that, unless otherwise directed by COUNTY OF ALPENA, during and after the term of this Agreement, Contractor will not: (i) take, retain or use Information, Workproduct or COUNTY OF ALPENA materials for Contractor’s own benefit;

(ii) disclose Information, Workproduct or MEMCOG materials to any other entity or unauthorized person without the written permission from a COUNTY OF ALPENA officer; (iii) delete, encrypt, password protect, or retain electronic files containing Information, Workproduct or COUNTY OF ALPENA materials (including emails and attachments); or (iv) take any other action that impairs, restricts, limits, or impedes COUNTY OF ALPENA'S ability to have full access to and use of its Information, Workproduct and materials.

- C. Upon the completion of the Services, Contractor agrees not to make COUNTY OF ALPENA materials and data difficult to access. Specifically, Contractor agrees (i) not to delete or alter any COUNTY OF ALPENA documents, or destroy or throw away COUNTY OF ALPENA materials, (ii) not to password protect or encrypt or reformat COUNTY OF ALPENA documents, (iii) not to download COUNTY OF ALPENA information or forward electronic files from COUNTY OF ALPENA computer systems to any other location, (iv) not to access COUNTY OF ALPENA computer system, email system, or voice mail system, including by remote access, (v) not to access any third party computer system, email system, voice mail system, website, social network assets, networking site, or cloud computing site operated for COUNTY OF ALPENA'S use, and (vi) not to solicit the assistance of any COUNTY OF ALPENA employee or contractor to assist Contractor in connection with such actions. Contractor also agrees to take all necessary steps to transition to a COUNTY OF ALPENA designee Contractor's status, if any, as administrator for any third-party websites or software. Upon completion of the Services or as requested by COUNTY OF ALPENA, Contractor agrees to return to COUNTY OF ALPENA all Information, Workproduct, and COUNTY OF ALPENA materials, and otherwise fully cooperate with and assist COUNTY OF ALPENA in ensuring COUNTY OF ALPENA'S ability to have full access to and use of its Information, Workproduct and/or materials. Such cooperation and assistance may include, but is not limited to, removing any password protection, encryption, or other proprietary format on COUNTY OF ALPENA Information, Workproduct and materials, and disclosing to COUNTY OF ALPENA all passwords used or created by Contractor during the term of the Agreement, including passwords to third party websites, social network assets, networking sites, software or cloud computing sites. Upon request from COUNTY OF ALPENA, Contractor agrees to provide within seven (7) days a signed statement certifying under penalty of perjury that Contractor and Contractor's employees have returned all Information and COUNTY OF ALPENA materials, including originals and copies, and have disclosed all passwords used or created by Contractor during the term of the Agreement.
- D. Contractor has no obligation to maintain as confidential any Information that is or becomes entirely in the public domain or is known to Contractor prior to disclosure by COUNTY OF ALPENA as evidenced by written, dated records in Contractor's possession, or is received lawfully by Contractor without the breach of any obligation of confidentiality owed to COUNTY OF ALPENA. The fact that discrete elements of COUNTY OF ALPENA confidential information may be in the public domain does not, by itself, remove from the protections of this Agreement any Information combining such discrete elements with other information and technology.

- E. COUNTY OF ALPENA understands that Contractor may have had access to the trade secrets and proprietary information of third parties (that is, persons or companies other than COUNTY OF ALPENA). These other trade secrets may be owned by these third parties or by clients with whom these third parties did business. COUNTY OF ALPENA does not permit Contractor to disclose, use or incorporate into COUNTY OF ALPENA'S products or services, the unlicensed trade secrets, or proprietary information of third parties. Contractor acknowledges the foregoing and represents and warrants that Contractor will not disclose to COUNTY OF ALPENA or incorporate into COUNTY OF ALPENA Information and/or Workproduct, any trade secrets or proprietary information of third parties.
- F. The confidentiality provisions of this Agreement are effective from the commencement of the Contract Term and shall survive termination of the Agreement and shall survive for so long a period of time as the Information, Workproduct and/or COUNTY OF ALPENA material is maintained by COUNTY OF ALPENA as confidential.

IV. WORKPRODUCT

- A. Contractor agrees to disclose promptly to COUNTY OF ALPENA all ideas, inventions (whether patentable or not), improvements, copyrightable works of original authorship (including but not limited to computer programs, compilations of information, generation of data, graphic works, audio-visual materials, technical reports and the like), trademarks, know-how, trade secrets, processes and other intellectual property, developed or discovered by Contractor during the term of this Agreement relating to the business of COUNTY OF ALPENA, or to the prospective business of COUNTY OF ALPENA, or which utilizes COUNTY OF ALPENA Information or staff services (collectively, "Workproduct"). Workproduct also includes web pages, social media assets, and other COUNTY OF ALPENA Information or materials maintained on third party websites, networking sites, or cloud computing sites.
- B. Workproduct created by Contractor within the scope of the Services under this Agreement, on COUNTY OF ALPENA time, or using COUNTY OF ALPENA resources (including but not limited to facilities, staff, Information, time, and funding), belongs to COUNTY OF ALPENA and is not owned by Contractor. Contractor agrees that all works of original authorship created as described above are "works made for hire" as that term is used in connection with the U.S. Copyright Act. To the extent that, by operation of law, Contractor retains any intellectual property rights in any Workproduct, Contractor hereby assigns to COUNTY OF ALPENA all right, title and interest in all such Workproduct, including copyrights, patents, trade secrets, trademarks, and know-how.
- C. Contractor agrees to cooperate with COUNTY OF ALPENA, at COUNTY OF ALPENA'S expense, in the protection of COUNTY OF ALPENA Information and/or Workproduct and the securing of COUNTY OF ALPENA'S proprietary rights, including signing any documents

necessary to secure such rights, whether during or after the term of this Agreement. The provisions of this Section are effective from the effective date of the Agreement.

V. ENFORCEMENT OF AGREEMENT; INJUNCTIVE RELIEF; ATTORNEYS' FEES AND EXPENSES; INDEMNIFICATION.

- A. Contractor acknowledges that violation of this Agreement will cause immediate and irreparable damage to COUNTY OF ALPENA, entitling it to injunctive relief. Contractor specifically consents to the issuance of temporary, preliminary, and permanent injunctive relief, without having to prove damages or post a bond or other security, to enforce the terms of this Agreement. In addition to injunctive relief, COUNTY OF ALPENA is entitled to all money damages available under the law. If Contractor violates this Agreement, in addition to all other remedies available to COUNTY OF ALPENA at law, in equity, and under contract, Contractor agrees that Contractor is obligated to pay all COUNTY OF ALPENA'S costs of enforcement of this Agreement, including attorneys' fees and expenses.
- B. Contractor acknowledges and agrees that in any action by COUNTY OF ALPENA to enforce its rights under Sections III and IV above, any claims that Contractor may assert against COUNTY OF ALPENA shall not constitute a defense on Contractor's part to the enforcement of such rights by COUNTY OF ALPENA.
- C. The parties agree that any litigation in relation to this Agreement shall be initiated and maintained exclusively in the State of Michigan in the Circuit Court of the County of Otsego. The parties hereby irrevocably submit to the personal jurisdiction and venue of such courts. The parties agree that these courts are convenient forums for any such litigation.
- D. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend COUNTY OF ALPENA with regard to all claims, losses, damages costs and fees (including attorneys' fees) relating to any breach of this Agreement by Contractor or arising from or relating any other act or omission by Contractor in the course of performing services under this Agreement including without limitation all personal injury, property damage or other losses and damages caused in whole or in part by Contractor or any employee of Contractor.

VI. 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., Suite U108
PO Box 457
Gaylord, Michigan 49734

To COUNTY OF ALPENA: Mary Catherine Hannah, County Administrator
County of Alpena
720 W. Chisholm Street, Suite 7
Alpena, Michigan 49707

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 to 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 COUNTY OF ALPENA. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement on ____ March 2022.

Witnesses:

NEMCOG



Witness

By: Diane Rekowski

Its: Executive Director
Address: 80 Livingston Blvd.
PO Box 457
Gaylord, MI 49734
(989)705-3734
drekowski@mencog.org

COUNTY OF ALPENA

Witness

By: Robert Adrian
Chair, County Board of Commissioners
Address: 720 W. Chisholm Street, Suite 7
Alpena, Michigan 49707
Phone: (989) 354- 9500
Email: commissionersoffice@alpenacounty.org