
**MEMORANDUM OF UNDERSTANDING
COMMUNITY DEVELOPMENT BLOCK GRANT
20-EMCV-008**

**(with respect to a special economic development activity involving
the City of LEXINGTON, Nebraska,
and public facilities thereof,
with Saint Ann’s Catholic Church as the benefited non-profit corporation
principally benefiting from the public facilities)**

This Memorandum of Understanding ("MOU") is entered into among the State of Nebraska, Department of Economic Development ("Department"), the City of Lexington, Nebraska ("Grantee"), and Saint Ann’s Catholic Church ("Non-profit"); upon the date of signature by all parties.

RECITALS

PART I: IDENTIFICATION OF PARTIES.

Department: Nebraska Department of Economic Development
P.O. Box 94666
Lincoln, Nebraska 68509-4666

City: City of Lexington, Nebraska

Non-profit: The benefited Non-profit – Saint Ann’s Catholic Church
1003 Taft St, Lexington, NE 68850

PART II: PROJECT SUMMARY DESCRIPTION.

The CDBG-EMCV project involves a CDBG award of Four Hundred Eighty-Five Thousand Dollars (\$485,000) from the Department to the City of Lexington.

The *Nebraska Community Development Block Grant Program Administration Manual* ("Administration Manual") describes many restrictions governing the receipt of CDBG funds from the Department. Included among those restrictions are limitations on the amount of CDBG funds the City is allowed to use for administration expenses. Only Twenty-Five Thousand Dollars (\$25,000) of CDBG funds may be used for approved administrative and audit expenses. The remaining CDBG funds granted to the City must be conditionally granted to the Non-profit used to fund the Project as detailed in the Application. The Project generally involves St. Ann’s Parish Center for renovation and upgrading the facility’s electrical, HVAC system, building code compliance, and with Americans with Disabilities Act (ADA) accommodations compliance for social distancing for meeting Covid-19 prevention/preparation for Lexington, Nebraska.

CDBG funding requires the Non-profit to satisfy a CDBG national objective of benefitting low-moderate income (LMI) persons through the subcategory area benefit (LMA). Various other provisions in this MOU more particularly address the requirements of satisfying the CDBG national objective and the consequences of not doing so.

AGREEMENT:

Premised on the Recitals above and in consideration of the mutual promises and understandings of the parties set forth below, the parties agree as follows:

PART III: DEFINITIONS; FEDERAL FUNDING SOURCES; GOVERNING FEDERAL LAW CITED; INCORPORATION OF RECITALS.

§3.01 *Full-Time Equivalent Position (FTE)*: An FTE position represents a culmination of 2,080 work hours per annum per position by a person in a permanent position of employment with Non-profit at its facility in Lexington, Nebraska.

§3.02 *Low-to-Moderate Income Person (LMI)*: LMI persons are defined as members of a family (single-person or multi-person) where the family has an income equal to or less than the most recent HUD-established income limits for the family residence location. These income limits may be found generally via the HUD national website. The specific webpage address (subject to change by HUD) at the time of this writing is:

→<http://www.huduser.org/datasets/il.html>←

§3.03 Specifics about how an employment position is considered to be "*held by*" or "*made available to*" an LMI person, and other related definitional matters, may be found in the HUD CDBG regulations in 24 C.F.R. Part 570.

§3.04 The Grantee submitted an application ("Application") to undertake community development activities ("Project") authorized under the Housing and Community Development Act of 1974 ("HCDA" or "Act") and its corresponding federal regulations (24 C.F.R. Part 570) using CDBG funds. The Application was submitted pursuant to the allocation of CDBG-CV funds under the CARES Act. The allocations are available on HUD's website at:

https://www.hud.gov/program_offices/comm_planning/budget/fy20/.

§3.05 The following referenced Federal Register Notice, applicable August 7, 2020, and published August 20, 2020, applies to this Grant Agreement:

Federal Register Notice ("Notice"): 85 FR 51457, Pages: 51457-51475, Docket No. FR-6218-N-01: Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs

This Notice describes the program rules, statutory and regulatory waivers, and alternative requirements applicable to supplemental Community Development Block Grant (CDBG) funds made available to prevent, prepare for, and respond to coronavirus (CDBG-CV funds) and to annual formula CDBG grants awarded in fiscal years 2019 and 2020. Except as otherwise described in this Notice and the CARES Act, the statutory and regulatory provisions governing the CDBG program apply to CDBG-CV and CDBG grants. This Notice also describes conforming waivers and alternative requirements for other formula programs included in the consolidated planning regulations in 24 C.F.R. part 91.

The United States Department of Housing and Urban Development ("HUD") has designated the Department as administrator of and has awarded the Department funds for the Community Development Block Grant Program ("CDBG"). Funding for this Agreement was made available through the Coronavirus Aid, Relief and Economic Security Act (CARES Act)(Public Law 116-136) for grants to prevent, prepare for, and respond to coronavirus (CDBG-CV grants).

§3.06 Duplication of Benefits.

The CARES Act requires HUD to ensure that there are adequate procedures in place to prevent any duplication of benefits as required by section 312 of the Stafford Act, as amended by section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115-254; 42 U.S.C. 5121 et seq.), which amended section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155). Grant funds may not be used to pay for a particular cost if another source of financial assistance is available to fully pay for that same cost.

Duplication of benefits occurs when Federal financial assistance is provided to a person or entity through a program to address losses resulting from a Federally-declared emergency or disaster, and the person or entity has received (or would receive, by acting reasonably to obtain available assistance) financial assistance for the same costs from any other source (including insurance), and the total amount received exceeds the total need for those costs.

§3.07 Procurement Standards.

The Grantee must submit documentation to the Department evidencing adoption of appropriate procurement standards in compliance with provisions of federal law including, but not limited to, 24 C.F.R. Part 85, 24 C.F.R. §570.489, and 2 C.F.R. §§200.318 through 200.327 (with emphasis on the provisions in 2 C.F.R. §200.323 regarding procurement of recovered materials). Such procurement standards must include written standards of conduct covering conflicts of interest and governing the actions of the Grantee's employees engaged in the selection, award, and administration of contracts.

§3.08 The Department approved the Application with the authorized use of CDBG funds premised upon and conditioned on the Grantee utilizing funding for use in preventing, preparing for and/or responding to the outbreak of coronavirus in Nebraska. Projects shall also fulfill a listed CDBG national objective as a result of the CDBG-assisted activity:

1. *LMI Area Benefit*: This national objective is usually satisfied in the context of community development projects involving *public facilities* or *public improvements* that serve a primarily residential area with at least 51% low to moderate income (“LMI”) residents.
2. *LMI Limited Clientele*: N/A
3. *SBA Prevention/Elimination*: N/A
4. *Urgent Need*: N/A

§3.09 In the event of changes in any applicable Federal regulations and/or law, this contract shall be deemed to be amended when required to comply with any law so amended.

§3.10 Based upon the Application, the following is the proposed LMI beneficiary data that was established at the time of Project approval and that is being used by the Department to ascertain the LMI national objective proposed to be met by the Project:

1. The subcategory of LMI benefit being utilized for the Project is:
 LMI Area Benefit —or— *LMI Limited Clientele*.
2. The data for proposed beneficiaries is → 9,975 persons, of whom 5,365 (53.78%) are LMI persons.

Failing to fulfill a national objective will result in the disallowance of CDBG funding for the Project, and CDBG regulations require the Grantee to repay all CDBG funds to the Department.

§3.11 All provisions of the RECITALS above are incorporated as agreed provisions of the MOU.

PART IV: ADDITIONAL TERMS AND CONDITIONS OF THE CDBG FUNDING.

§4.01 CDBG Grant Amount, Grant as *Conditional*, and Program Income Use Requirement.

The amount of CDBG funds to be granted from the Department to the City will not exceed \$485,000. \$25,000 of the \$485,000 is to be *unconditionally* granted to the City for the City's costs of administration of the grant. \$10,000 of the \$485,000 is to be *unconditionally* granted to the City for the City's costs of construction management of the grant. \$450,000 of the \$485,000 is to be *conditionally* granted to the City for a portion of the costs of the Project. If the CDBG national objective requirement (through the subcategory area benefit (LMA) is not fulfilled by the benefiting Non-profit, the conditional

portion of the grant will not be declared as unconditional, but rather, the benefiting Non-profit will be obligated to repay the City, and the City will be obligated to repay the Department, the conditional portion of the grant. This repayment obligation is required by CDBG HUD regulations.

Program income generally means any gross income received by the Grantee or a subrecipient of the Grantee that was generated from the use of CDBG funds; however, some exceptions are detailed in 24 C.F.R. §570.489(e)(2). Program income includes, but is not limited to, the following:

- payments of principal and interest on loans made using CDBG funds,
- proceeds from the disposition (by sale or long-term lease) of real property purchased or improved with CDBG funds,
- proceeds from the disposition of equipment purchased with CDBG funds,
- interest earned on program income pending its disposition, and
- interest earned on CDBG funds held in a revolving loan fund's cash balance interest-bearing account.

All program income received prior to the completion of the approved grant activities must be applied to those activities prior to requesting additional CDBG funds from the Department. In other words, the Grantee's pool of program income must be the "first out" and must be fully depleted before it may request "new" CDBG funds from the Department.

The Grantee agrees to treat all received and/or retained program income as additional CDBG funds subject to all requirements applicable to the CDBG Program. Additionally, the Grantee agrees to submit regularly occurring reports to the Department regarding program income and agrees, upon the Department's request, to maintain a contractual relationship with the Department for the duration of the time period in which the Grantee maintains program income.

§4.02 Sources and Uses of Funds.

SOURCES→	CDBG	OTHER	TOTAL
USES (Activities)↓			
03E Neighborhood Facilities	\$450,000	\$14,820	\$464,820
03E Neighborhood Facilities (construction management)	\$10,000	\$0	\$10,000
21A General Administration	\$25,000	\$0	\$25,000
TOTAL	\$485,000	\$14,820	\$499,820

The Sources and Uses of Funds table above reflects:

- The anticipated total costs of the CDBG-assisted Project.

- The CDBG-assisted activities being funded.
- The sources and amounts of other matching funds required for each activity.
- The maximum authorized CDBG funds for each CDBG-assisted activity.
- The ratio (derived by computation, not expressly shown) of CDBG funds to other matching funds for each CDBG-assisted activity that is a further limitation upon the maximum authorized CDBG funds which may be paid for each activity. The ratio is invoked as a limitation if the actual total costs of the activity are less than anticipated.

[An example illustrates this point: If the anticipated cost of an activity, such as the acquisition of equipment, was \$100,000—with \$40,000 to be from CDBG funds and \$60,000 to be from the benefited Non-profit—but the actual cost of the equipment turned out to be \$90,000, then the 40% ratio limits CDBG funding to \$36,000 rather than the \$40,000 originally anticipated.]

- The proportionality (derived by computation, not expressly shown) of funding from all funding sources for each activity and for the Project in total. Disbursement of CDBG funds will be made only on a pro rata basis with all other funding sources for each activity and for the Project in total. CDBG funds will not be the first funds invested in the Project, but rather CDBG funds will flow into the Project in proportion to all other funding sources.
- The timing of CDBG funds flowing into the project is such that CDBG funding is reimbursement funding after-the-fact of the expense having been incurred. This timing may well result in the benefited Non-profit having to temporarily carry the costs which are then later reimbursed through CDBG funding.

[An example illustrates this point: If the actual cost of an activity such as the acquisition of equipment was \$100,000—with \$40,000 to be from CDBG funds as the source and \$60,000 to be from the benefited Non-profit as the source—then the benefited Non-profit would have to first pay the entire \$100,000 cost of acquisition and then seek reimbursement of \$40,000 from CDBG funding.]

§4.03 Prohibition on Duplication of Benefits

Grantee is required to document in their files that there is no duplication of benefits for each activity or program and to develop and maintain adequate procedures, and to prevent a duplication of benefits that address (individually or collectively) each activity or program. Grantee agrees to provide their policies and procedures to the Department. Grantee's policies and procedures are not adequate unless they include, at a minimum:

- (1) a requirement that any person or entity receiving CDBG-CV assistance (including subrecipients and direct beneficiaries) must agree to repay assistance that is determined to be duplicative; and
- (2) a method of assessing whether the use of CDBG-CV funds will duplicate financial assistance that is already received or is likely to be received by acting reasonably to evaluate need and the resources available to meet that need.

Where there is a duplication of benefit, Grantee shall be subject to repayment and recovery of the duplicated funds, whether this grant has been closed out or not. In other words, the Department may disallow costs and recover funds where there is a duplication of benefit. For Projects involving emergency housing assistance, Grantee may not require the benefiting recipient or household to repay the duplication of benefit.

§4.04 Non-profit's Agreement to Fulfill a CDBG National Objective Requirement; and Obligation to Repay the City:

(a) Non-profit's Agreement to Fulfill a CDBG National Objective.

The Non-profit acknowledges and agrees that it is receiving a substantial, direct benefit from the Project, and in consideration of that substantial benefit and as is required by the national objective fulfillment requirements in the CDBG federal statutes and regulations, the Non-profit agrees to aid in the elimination of slum & blight in the designated area and provide benefit to low-and moderate income persons.

(b) Non-profit' Obligation to Repay the City in the Event of a Failure to Fulfill the CDBG National Objective Requirement.

If there is a failure to meet the CDBG required national objective involved in this Project, then the grant will not be unconditionally granted to the City, and the City will be required to repay the grant to the Department. If this contingent obligation of the City occurs, the Non-profit will be required to repay to the City, ***and does hereby agree via this instrument*** to repay to the City the entire amount of the conditional grant funds which have been advanced to the City by the Department for the Project.

§4.05 City's Repayment Obligation in the Event of a Failure to Fulfill the CDBG National Objective Requirement.

If there is a failure to meet the CDBG required national objective involved in this Project, then the grant will not be unconditionally granted to the City, and the City will be required to repay the entire amount of the conditional grant funds which have been advanced to the City by the Department for this Project.

§4.06 "Reserved"

§4.07 Reporting Requirements.

(a) Employment Reporting. The Non-profit will have each employee for which LMI status is relevant (normally this includes employees for created jobs, and employees for retained jobs, but not employees forming the measuring baseline of present employment by the Non-profit), complete the Department's Employee Certification Form (such form to be provided to the Non-profit by the City). Such form requests information from the employee concerning the employee's income status, race, gender, and handicap status. The information from such forms, and

other pertinent employment data reasonably required by the City, will be provided by the Non-profit, at least semi-annually. Such information is for use by the City and the Department in assembling and reporting LMI and other employment data to meet HUD requirements for the CDBG program.

- (b) Financial Reporting. The Non-profit will provide to the City or to the Department, in a timely manner, the Non-profit' financial statements, including balance sheets and income statements, in such form as may be reasonably required by the City or by the Department, following the close of the Non-profit' fiscal year. This obligation will continue so long as there remains outstanding any balance of the CDBG loan, unless waived by the Department. This obligation will continue so long as the CDBG grant made pursuant to this MOU remains conditional, unless waived by the Department.

§4.08 Due on Sale.

Repayment of the entire amount of the conditional grant funds which have been advanced to the City by the Department for the Project may be declared (by the City) immediately due and payable upon any material change in the ownership control of the principal assets of the Non-profit, or of the Non-profit itself, including mergers and/or consolidations with other persons or entities. This provision exists to protect the interests of the City and the Department in seeing to it that the obligations of the Non-profit as set forth in this MOU are completely fulfilled, as they must be to comply with HUD CDBG statutes and regulations permitting CDBG funds to be used for financial assistance to the Non-profit in the first place.

§4.09 Maintain Location of Project.

Until all the requirements of this MOU are satisfied, the Non-profit agrees to keep its facility in Lexington, Nebraska, located in Lexington, Nebraska. Repayment of the entire amount of the conditional grant funds which have been advanced to the City by the Department for the Project may be declared immediately due and payable (by the City) upon a failure to adhere to this requirement.

§4.10 “Reserved”

PART V: “Reserved”

PART VI: OTHER TERMS AND CONDITIONS OF THIS MOU.

§6.01 Events of Default.

In addition to other events or fact settings where other remedies may be specified elsewhere in this MOU, the following are (but are not exclusively the only) events of default, each of which triggers the general default remedy set forth in §6.02 (or the remedies specified elsewhere in this MOU associated with such event or fact setting):

- (a) Failure by the Non-profit to meet the CDBG required national objective involved in this Project, to aid in the elimination of slum & blight in the designated area and provide benefit to low-and moderate income persons.
- (b) A breach of the Maintain Location of Project provisions in Part IV.
- (c) Bankruptcy or insolvency of the Non-profit.
- (d) Failure by Non-profit to provide, in a timely manner, reports and other administrative documentation identified in this MOU.
- (e) Any other failure by the Non-profit to substantially comply with the terms and conditions of this MOU.
- (f) If the Non-profit, or its officers or employees, engage in:
 - 1) material misrepresentation concerning CDBG funds; or,
 - 2) unauthorized use or theft of CDBG funds.

§6.02 General Default Remedy (applicable to events of default where remedies for specific events or fact settings are not specified elsewhere in this MOU).

If an event of default occurs, then CDBG funding will be disallowed, and immediate repayment to DED of the entire amount of the conditional grant funds which have been advanced to the City by the Department for the Project will be required to be repaid by the City. In such an event, the City may look to the Non-profit to repay to the City what has been repaid to DED by the City.

If this contingent obligation of the City occurs, the Non-profit will be required to repay to the City, ***and does hereby agree via this instrument*** to repay to the City the entire amount of the conditional grant funds which have been advanced to the City by the Department for the Project.

§6.03 No Legal Actions.

The Non-profit warrants there are no legal actions, suits, or other proceedings, pending or threatened, before any court or administrative agency, which, if determined adversely to the Non-profit, would have a material adverse effect on the financial condition of the Non-profit or on the ability of the Non-profit to complete the project which is the subject of this MOU.

§6.04 Authorization of Representative Signing for the Benefited Non-profit.

The Non-profit, by and through the officer or other representative accepting this MOU by signing below on behalf of the Non-profit, has entered into this MOU with the full knowledge and authorization of the Non-profit, under proper procedures prescribed by the articles of incorporation, bylaws, and other organizing documents applicable to the governance of the Non-profit.

§6.05 This MOU is *NOT* a Notice of Approval of the Project.

Project funding approval by DED is neither expressed nor implied by DED's execution of this MOU, and ***project costs should not be incurred based solely upon this MOU.*** Additional approval steps beyond the MOU are required before a project receives a Notice of Approval, including satisfying other steps of the application and approval process at DED, and obtaining the approval of the Governor of the State of Nebraska.

§6.06 Conditions Precedent to Drawdown of CDBG Funds.

Certain conditions must be satisfied before any requests for funds (so-called "drawdowns") by the City would be paid by DED, in the event a Notice of Approval for the Project is ultimately issued by DED. The conditions are emphasized here so that all parties to this MOU will be aware of, and can appropriately plan for, the requirements for drawdowns, should the Project be approved.

- (a) The requirements set forth in the *Sources and Uses of Funds* must be strictly observed. These requirements include CDBG-activity maximum payments; the injection of matching funds; and CDBG funds payments being limited and governed by the ratio, proportionality, and reimbursement timing requirements detailed in §4.02.
- (b) Documentation, in such form as DED may prescribe, showing disbursement by other project funding sources for qualified expenditures, will be required by the DED.
- (c) Compliance with the environmental review process pertaining to the project, established by the National Environmental Policy Act of 1969 (NEPA), and other provisions of federal law as specified in 24 C.F.R. Part 58 which further the purposes of NEPA, is required.
- (d) Proper execution, by the Non-profit, of this MOU and any other required documents is required.
- (e) Compliance with the Davis-Bacon Act (and related acts) is required.

§6.07 Severability, Binding Effect, Counterparts, and Governing Law.

If any provision of this MOU or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity will not affect other provisions of this MOU.

This MOU will be binding upon, and will inure to the benefit of, the successors, assigns, and legal representatives of the parties.

This MOU may be signed in any number of counterparts, each of which will be an original, but all of which taken together will constitute one agreement.

This MOU will be governed by; construed according to the laws and regulations of; and subject to the jurisdiction of; the State of Nebraska.

ACCEPTANCE PROVISIONS.

The parties acknowledge they have read and understand this MOU and agree to its provisions, and that it will be effective on the date when all parties have signed.

<p>DED—NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT</p> <p>By: _____ (Signature of Director or Designee)</p> <p>_____ (Typed or Printed Name/Title)</p> <p>_____ (Date)</p>	<p>City—City of Lexington, Nebraska</p> <p>By: _____ (Signature of Chief Elected Official)</p> <p>_____ (Typed or Printed Name/Title)</p> <p>_____ (Date)</p> <p>_____ (Federal Identification Number)</p>
<p>Non-profit—Saint Ann’s Catholic Church</p> <p>By: _____ (Signature of Authorized Officer)</p> <p>_____ (Typed or Printed Name/Title)</p> <p>_____ (Date)</p>	<p style="text-align: center;">THIS SECTION INTENTIONALLY LEFT BLANK</p>