

**STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT
GRANT AGREEMENT NO. 20-EMCV-008
[CFDA #14.228]**

This contract is entered into between the State of Nebraska Department of Economic Development ("Department") and the City of Lexington, Nebraska ("Grantee") upon the date of signature by both parties.

RECITALS:

A. The following referenced Federal Register Notice ("Notice"), applicable August 7, 2020, and published August 20, 2020, applies to this contract:

Federal Register 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 (collectively, the "CDBG funds"). Except as otherwise described in this Notice and the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") (Public Law 116-136), the statutory and regulatory provisions governing the CDBG program apply to CDBG funds. 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 CDBG Program. Funding for this contract was made available through the CARES Act for grants to prevent, prepare for, and respond to coronavirus.

B. 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/.

C. [RESERVED]

D. 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*: This national objective is usually satisfied when the *public facilities* or *public improvements* will be used for activities designed to benefit a particular group of persons (at least 51% of whom are LMI persons) rather than everyone in a general area.
3. *SBA Prevention/Elimination*: This national objective addresses the prevention or elimination of slum and blighted areas (“SBA”). It is usually satisfied in the context of community development projects involving public facilities or public improvements by demonstrating the activities undertaken prevent or eliminate objectively determinable signs of slum or blight in a defined slum or blighted area. The specific criteria for qualifications for this national objective can be found in the CDBG regulations.
4. *Urgent Need*: This national objective addresses meeting community development needs having a particular urgency. An activity must be designed to alleviate existing conditions which the local government certifies and the State determines pose a serious and immediate threat to the health or welfare of the community, are of recent origin or recently became urgent, and the local unit of government is unable to finance the activity on its own, and other sources of funding are not available to carry out the activity, as certified by both the State and the community.

E. 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.

F. 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.

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 I: TERMS AND CONDITIONS.

§1.01 Amount, Use, and Payment of CDBG Funds.

The total amount of CDBG funds to be paid by the Department to the Grantee for allowable expenses incurred will not exceed **Four Hundred Eighty-Five Thousand Dollars (\$485,000)**.

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 Grantee 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 CDBG funds granted to the Grantee must be 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.

Requests by the Grantee for reimbursement of Project administration expenses will not be paid by the Department unless a CDBG Certified Administrator has been identified and is administering the Project at the time of each request for reimbursement of administration expenses. This requirement is applicable at all times throughout Project completion (including final Project reports).

To request payment of allowable expenses, the Grantee must submit a request for payment in the manner and form prescribed by the Department to the Housing and Community Development Division.

§1.02 Time of Performance.

The time of performance for this contract shall commence on July 11, 2021 and terminate on July 10, 2023. All of the required activities and services, except for submission of final reports, administration, and audit, must be completed by or before this date. The provisions of this contract that survive the termination date are specified in Part IV.

§1.03 National Objective Compliance—Failure Requiring Repayment by Grantee.

Failing to utilize funding for use in preventing, preparing for and/or responding to the

outbreak of coronavirus in Nebraska, and/or 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.

§1.04 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.

The Department will implement its CDBG-CV Duplication of Benefits (“DOB”) Policy to assure beneficiaries do not receive DOB. DOB refers to a situation where a beneficiary receives assistance from multiple sources (e.g., private insurance, FEMA, NFIP, non-profits, etc.), and the total assistance amount exceeds the need for a particular recovery purpose. This ensures that beneficiaries receive assistance to the extent that the recovery need has not been fully met 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.

§1.05 Incorporation of RECITALS.

All provisions of the RECITALS are incorporated as agreed provisions of this contract.

PART II: SPECIAL CONDITIONS FOR RELEASE OF FUNDS.

Funding of the amount stipulated in §1.01 will not be released until the following special conditions for release of funds are met. These special conditions must be satisfactorily completed no later than October 10, 2021. The Department reserves the right to cancel the contract if these special conditions are not met by this date.

§2.01 Grantee Information Sheet.

The Grantee must submit a completed Program Grantee Information Sheet to the Department as prescribed.

§2.02 Environmental Review.

The Grantee must submit documentation to the Department evidencing the completion of its responsibilities for environmental review and decision-making pertaining to the Project and its compliance with 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.

The Grantee agrees to assume all of the responsibilities for Environmental Review, decision making and action, as specified and required in Section 104(g) of Title I of the Housing and Community Development Act of 1974 (Public Law 93-383), as amended. The Grantee shall not allow any subrecipient to assume the Grantee's Environmental Review responsibilities.

§2.03 Authorization to Request Funds Form.

The Grantee must complete and return an Authorization to Request Funds form as prescribed by the Department.

§2.04 Financial Management.

The Grantee must submit documentation evidencing completion of all financial management system requirements and execution of the financial management certification form prescribed by the Department. Grantees shall establish and maintain a system which assures effective control over and accountability for all funds, property and other assets used in the Project.

§2.05 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 written policies and 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 Funds (including subrecipients and direct beneficiaries) must agree to repay assistance that is determined to be duplicative; and
- (2) a method of assessing and documenting 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, as required in §4.08, 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.

§2.06 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.

These standards do not relieve the Grantee of any contractual responsibilities under its contracts. The Grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into support of a grant. These include but are not limited to source evaluation, protests, disputes, and claims.

§2.07 Excessive Force Certification.

The Grantee must provide documentation that it has adopted a policy to prohibit the use of excessive force by local law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.

§2.08 Fair Housing.

The Grantee must submit documentation identifying its fair housing representative, and it must include the representative's name and contact information. The Grantee must submit a description of the actions it will take during the course of the Project to fulfill any requirements to affirmatively further fair housing and must also submit documentation demonstrating the actions that were actually taken, including the details of such actions (e.g. when the actions occurred, who participated, who benefitted, etc.). The requirement to submit documentation demonstrating the actions that were actually taken need not be submitted within the time frame for completion of the special conditions, but such documentation must be submitted prior to closeout of the grant. The Department's Administration Manual contains additional detail about affirmatively furthering fair housing.

§2.09 [RESERVED].

§2.10 CDBG Certified Administrator Required.

The Grantee must submit documentation identifying the CDBG Certified Administrator that will be used for the Project. The Department's Administration Manual contains details about the certification process. Reimbursement of Project expenses will not be paid by the Department unless a CDBG Certified Administrator is identified and administering the Project at the time of the request for reimbursement.

§2.11 Limited English Proficiency.

The Grantee must submit documentation evidencing completion of its responsibilities to ensuring meaningful access to the Project activities and services for persons with Limited English Proficiency (“LEP”) as required by Title VI of the Civil Rights Act of 1964; Executive Order 13166; and HUD’s final “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons”, which was published in the Federal Register on January 22, 2007 and which became effective on March 7, 2007 (“HUD LEP Guidance”).

Such documentation must include all of the following: (1) information identifying the LEP representative for the Grantee, including the representative’s name and contact information; (2) a Four Factor Analysis that is consistent with the HUD LEP Guidance; and (3) a description of the actions the Grantee will take during the course of the Project to fulfill the requirements to provide meaningful access to LEP persons. If deemed necessary as a result of the Four Factor Analysis, the Grantee will also prepare and submit to the Department a Language Access Plan (“LAP”) that includes all elements of an effective LAP as defined by HUD.

The Grantee must also submit documentation demonstrating LEP services provided and keep records of all requests for LEP services and all LEP services actually provided. The requirement to submit documentation demonstrating the LEP services provided need not be submitted within the time frame for completion of the special conditions, but such documentation must be submitted prior to closeout of the grant.

§2.12 Other Special Conditions.

Submit to the Department, for approval by the Department’s program representative for the Project, a copy of the agreement between the Grantee and Catholic Church of Lexington St Ann which addresses the responsibilities of each party in carrying out the activities necessary for Project completion.

PART III: SOURCES AND USES OF FUNDS.

§3.01 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 business—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.

PART IV: OTHER CONTRACTUAL CONDITIONS.

§4.01 Program Income.

Program income is regulated by the provisions of 24 C.F.R. §570.489(e). The exact text of this regulation should be consulted for definitions and other guidance concerning program income.

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 Matching Requirements.

The Grantee agrees to provide matching funds for each approved activity in the amounts, ratios, and proportions set forth in Part III. Matching funds must be expended during the grant period.

With each request for CDBG funds, the Grantee is required to certify the amount of matching funds applied to the Project. Project costs are to be paid from grant and matching funds as specified in Part III. The Grantee will be responsible for costs that exceed the total Project costs.

§4.03 Legal Authority and Acceptance of Environmental Review Responsibility.

By signing this contract, the Grantee certifies that it possesses the legal authority to accept CDBG funds and to carry out the Project described in this contract and that the Grantee's chief elected official:

- (a) Consents to assume the status of responsible federal official and the responsibilities for environmental review and decision making under 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; and
- (b) Is authorized and consents, on behalf of the Grantee, to accept the jurisdiction of the federal courts for the purpose of enforcement of their responsibilities as such responsible federal official.

§4.04 Designation of Officials to Execute Contract and Amendments.

The Director of the Department or their designee is the official authorized to execute this contract and any amendments to this contract on behalf of the Department.

The Chief Elected Official of the Grantee or their designee is the official authorized to execute this contract and any amendments to this contract on behalf of the Grantee.

Either party may request amendments to this contract; however, amendments will not take effect until mutually agreed to in writing by both parties.

§4.05 Grantee Compliance with CDBG Regulations and Uniform Administrative Requirements.

The Grantee must comply with all applicable CDBG Regulations in 24 C.F.R. Part 570. The Grantee must also comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth in this contract and in 2 C.F.R. Part 200 (which have been adopted by HUD through 2 C.F.R. Part 2400) or any reasonably equivalent procedures and requirements that the Department may prescribe.

In particular, the Grantee agrees to establish internal controls in order to have reasonable assurance that the Grantee is carrying out the Project in compliance with federal statutes, regulations, and the terms and conditions of this contract, as required by 2 C.F.R. §200.303. The Grantee also agrees to comply with provisions regarding the protection of personally identifiable information, as required by 2 C.F.R. §200.303 and 2 C.F.R. §200.512.

§4.06 Record Keeping.

The Grantee agrees to keep the following records: (1) records as specified in 24 C.F.R. §570.506 *Records to be Maintained*; (2) adequate documentation to support costs charged to the CDBG Program; (3) records detailing procurement procedures followed by Grantee; (4) records that include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the Project, as required by 24 C.F.R. §570.490 for fair housing and equal opportunity purposes; and (5) any other records as the Department may reasonably require. The Grantee agrees to keep such records so the Department can perform a 24 C.F.R. §570.492 *State's review and audits*.

All records pertinent to this grant and work undertaken as part of the Project must be retained by the Grantee for the period required by 2 C.F.R. §200.334 (as interpreted by HUD and applied to the CDBG Program through 24 C.F.R. §570.490). The Grantee also agrees to comply with the methods for collection, transmission, and storage of information as described in 2 C.F.R. §200.336.

The Department and any duly authorized official of the state and federal government will have full access to and the right to examine, audit, excerpt, and/or transcribe any of the Grantee's records pertaining to all matters covered by this contract. The Grantee agrees to transfer records pertinent to this grant and work undertaken as part of the Project to the Department upon request.

§4.07 Reports.

The Grantee must submit timely reports to the Department, in such form as it may prescribe, pertaining to the activities undertaken as a result of this contract. The Grantee will also be required to submit a final performance and financial report, in such form as the Department may prescribe, at grant closeout.

Additionally, prior to closeout, the Grantee must submit documentation demonstrating the actions or services that were taken during the course of the grant by the Grantee to affirmatively further fair housing, as required in §2.08, and ensure meaningful access to the Project activities for LEP persons, as required in §2.11.

Failure to report as required or respond to requests for data or information in a timely manner may be grounds for suspension or termination of the Grant.

§4.08 Cost Principles; Audits; Post-Closeout Adjustments and Continuing Responsibilities.

The Grantee is responsible for the efficient and effective administration of the CDBG funds provided to it under this contract. The Grantee agrees to administer the CDBG funds in a manner consistent with this contract, HUD's administrative requirements for the CDBG program, the provisions of the Department's Administration Manual, and all federal and state laws, regulations, and executive orders applicable to the CDBG-assisted Project.

Generally Accepted Government Auditing Standards (GAGAS) must be followed, and audits of this grant will be conducted in accordance with the Single Audit Act of 1984, as amended, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200 (which have been adopted by HUD through 2 C.F.R. Part 2400). The Grantee is required by 2 C.F.R. §200.512 to submit the required audit reporting package to the Federal Audit Clearinghouse ("FAC") within thirty (30) calendar days after receipt of the auditor's reports or nine (9) months after the end of the audit period, whichever is earlier. Audit costs are an allowable general administration cost subject to limitations established by the applicable law and the Department.

The closeout of this grant does not affect the right of the Department or any duly authorized official of the state and federal government to disallow costs and recover funds from the Grantee on the basis of a later audit or other review. In other words, the obligation of the Grantee to return any funds due as a result of an audit is not affected by closeout of this grant.

§4.09 Conflict of Interest.

The Grantee must comply with the conflict of interest prohibitions set forth for the CDBG program in 24 C.F.R. §570.489 and 2 C.F.R. §200.318 and in the Grantee's written standards of conduct covering conflicts of interest submitted to the Department as required in Part II. In the event prohibited conflicts of interest arise, the Grantee must inform the Department of such conflicts of interest as soon as possible. Exceptions to the prohibition may be granted by the Department on a case-by-case basis.

§4.10 Applicability to Subrecipients and Contractors.

All provisions of this contract will be made binding on any subrecipient or contractor of the Grantee, and the Grantee will, nonetheless, remain fully obligated under the provisions of this contract.

Any such subrecipient or contractor of the Grantee must be authorized to transact business in the State of Nebraska. All subrecipients and contractors are expected to comply with all Nebraska Secretary of State and Department of Revenue registration requirements, including any registration requirements pertaining to types of business entities (e.g. sole proprietorship, partnership, foreign/domestic limited liability company, association, or foreign/domestic corporation). Construction contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certificate of registration to the Grantee for its records.

Upon request of the Department, the Grantee must submit copies of written agreements executed between the Grantee and any subrecipients or contractors relating to the Project.

§4.11 Funding Source Recognition.

Prior to referring to the Project or Project activities in publications, the Grantee must inform the Department and, if requested, include a reference to the CDBG funding made available for the Project.

§4.12 Intellectual Property.

If the Project results in any copyrightable material or inventions, the Department and/or the State of Nebraska reserves the right to a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and/or authorize others to use the work or materials for governmental purposes.

§4.13 Religious Activities.

The Grantee agrees that CDBG funds provided under this contract will not be used for inherently religious activities, such as worship, religious instruction, or proselytization, prohibited by 24 C.F.R. 570.200(j).

§4.14 Title, Use, and Disposition of Property/Supplies/Equipment; Insurance.

The Grantee agrees to comply with the provisions of 2 C.F.R. §§200.311 through 200.316 regarding the title, use, and disposition of property, supplies, and equipment.

In accordance with 2 C.F.R. §200.310, the Grantee agrees to, at a minimum, provide insurance coverage that is equivalent to the insurance it provides for its other property for the real property and equipment acquired or improved with CDBG funds.

§4.15 Reversion of Assets.

Consistent with the provisions at 24 C.F.R. 570.703, the Grantee shall transfer any CDBG funds on hand at the time of expiration of the contract and any accounts receivable attributable to the use of CDBG funds to the Department.

Any real property under the Grantee's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 shall be used for its original intended purpose for five years after expiration of the contract. Should the Grantee fail to utilize said property for its intended purpose, the Grantee shall pay the Department an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

§4.16 Anti-Lobbying.

To the best of the Grantee's knowledge and belief: no federal appropriated funds have been paid or will be paid by or on behalf of the Grantee to any person for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Grantee must complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.

§4.17 Waivers and Assignment of Interest.

No conditions or provisions of this contract can be waived unless approved by the Department in writing. The Grantee may not assign or transfer any interest in this contract to any other party without the written consent of the Department.

§4.18 Non-Waiver of Rights.

The Department's failure to insist upon the strict performance of any provision of this contract or to exercise any right based upon breach will not constitute a waiver of any rights under this contract.

§4.19 Severability.

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

§4.20 Early Termination; Termination by Mutual Agreement.

The Department may terminate this contract for any reason upon sixty (60) days written notice to the Grantee.

This contract may also be terminated, in whole or in part, prior to the completion of project activities when both parties agree that continuation is not feasible or would not produce beneficial results commensurate with the further expenditure of funds. In the event of mutual termination, the parties must agree on the termination conditions, including the effective date and the portion to be terminated.

The Grantee may not incur new obligations for the terminated portion after the effective date and must cancel as many outstanding obligations as possible. The Department will make funds available to the Grantee to pay for allowable expenses incurred before the effective date of termination.

§4.21 Termination for Cause.

In the event of a default or violation of the terms of this contract by the Grantee or a failure to use the grant for only those purposes set forth herein, the Department may take the following actions (which are supplemental to other default remedies specified elsewhere in this contract):

- (a) *Suspension.* After notice to the Grantee, the Department may suspend the contract and withhold any further payment or prohibit the Grantee from incurring additional obligations of grant funds pending corrective action by the Grantee or a decision to terminate.
- (b) *Termination.* The Department may terminate the contract, in whole or in part, at any time whenever it is determined that the Grantee has failed to comply with the terms and conditions of the contract. The Department will promptly notify the Grantee in writing of the determination to and the reasons for termination, along with the effective date. Payments made to the Grantee or recoveries by the Department under contracts terminated for cause will be in accordance with the legal rights and liabilities of the parties. Payments and recoveries may include, but are not limited to, payments allowed for costs determined to be in compliance with the terms of this contract up to the date of termination. The Grantee must return all unencumbered funds, and any costs previously paid by the Department that are subsequently determined to be unallowable through audit and closeout procedures may be recovered from present grant funds or deducted from future grants.

§4.22 Termination Due to Loss of Funds.

This contract may terminate, in full or in part at the discretion of the Department, in the event the Department suffers a loss of funding or a termination of the federal funds which permit it to fund this grant. In the event it suffers such a loss of funding, the Department will give the Grantee written notice which will set forth the effective date of full or partial termination or, if a change in funding is required, setting forth the change in funding.

§4.23 State of Nebraska Non-Liability/Hold Harmless.

The Grantee must hold the State of Nebraska and the Department harmless from any and all claims, demands, and actions based upon or arising out of any activities or services performed by the Grantee or by its officials, officers, employees, agents, or associates.

§4.24 Entire Agreement; Binding Effect; Counterparts.

This instrument and any attachments, the approved Application, and those items incorporated by reference contain the entire agreement between the parties. Any statements, inducements, or promises not contained therein will not be binding upon the parties.

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

This contract or any amendment to this contract may be signed in any number of counterparts; each of which will be considered an original, and all of which taken together will constitute one agreement or amendment, as the case may be.

§4.25 Governing Law.

This contract shall be governed by, construed according to the laws and regulations of, and subject to the jurisdiction of the State of Nebraska.

§4.26 Verification of Work Eligibility Status for New Employees.

The Grantee is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

In this context, "new employees" means employees hired on or after the effective date of this contract. A "federal immigration verification system" means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a), known as the E-Verify Program, or an equivalent federal program designated by the United States Department of

Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

This contractual obligation to verify work eligibility status for new employees physically performing services within the State of Nebraska also applies to any and all subcontractors utilized by the Grantee in performing this contract. The Grantee will be responsible to the Department for enforcing this requirement with its subcontractors.

A failure by the Grantee to adhere to these requirements is a violation of the statutory requirements of Neb. Rev. Stat. §4-114 and, as such, will be deemed a substantial breach of this contract which could result in the Department declaring the Grantee to be in default on the contract.

§4.27 Debarment, Suspension, and Ineligibility; Universal Numbering System and Registration Requirements.

By executing this contract, the Grantee certifies, represents, and warrants that the Grantee and all subrecipients or contractors to be used by the Grantee in performing this contract are not debarred, suspended, proposed for debarment, placed in ineligibility status, or voluntarily excluded from covered transactions by HUD or any other federal agency under the provisions of Executive Order 12549 “Debarment and Suspension” and any applicable government debarment and suspension regulations. The Grantee agrees to immediately notify the Department if it or any of its subrecipients or contractors become sanctioned or debarred. The Grantee acknowledges that suspension or debarment and/or use by the Grantee of suspended or debarred subrecipients or contractors is cause for termination of this contract.

The Grantee agrees to comply with all requirements established by the Office of Management and Budget (“OMB”) concerning participation in the Dun and Bradstreet Data Universal Numbering System (“DUNS”), registration with the Federal System for Awards Management (“SAM”), and maintenance of such participation and registration.

§4.28 Mandatory Disclosures.

As required by 2 C.F.R. §200.113, Grantee must immediately disclose to the Department, HUD, and/or other appropriate authorities (with a copy to the Department) all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the use of CDBG funds provided under this contract.

§4.29 Force Majeure.

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster or other similar event outside the control of and not the fault of the affected party (“Force Majeure Event”). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The

Department may grant relief from performance of the contract if the Grantee is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based on a Force Majeure Event, the Grantee shall file a written request for such relief with the Department.

Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

§4.30 Drug Free Workplace.

The Grantee agrees to maintain a drug free workplace environment to ensure worker safety and workplace integrity and agrees to provide a copy of its drug free workplace policy at any time upon request by the Department.

§4.31 Notice.

Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed by U.S. Mail, postage prepaid and return receipt requested, to the parties at their respective addresses set forth in the Application, in this contract, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or four (4) calendar days following deposit in the mail.

§4.32 Survival.

The terms of this contract regarding national objective compliance, program income, use of funds, matching requirements, record keeping, audits, reports, and notice (and other terms that by their nature should survive the termination or expiration of this contract) shall survive expiration or termination of this contract.

PART V: COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

The Grantee agrees to comply with the administrative requirements for the CDBG program established by the Department and HUD, with the provisions of the Department's Administration Manual, and with all federal and state laws, regulations, and executive orders applicable to the CDBG-assisted Project, as now in effect and as such law may be amended, during the term of this contract including, but not limited to:

- Federal Register Notice: 85 FR 51457, Pages: 51457-51475, Docket No. FR-6218-N-01.
- Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and related authorities.
- Housing and Community Development Act of 1974, as amended ("HCDA").
- 24 C.F.R. Part 570.

- National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58.
- Clean Air Act and Federal Water Pollution Control Act, as amended.
- Federal Restrictions on the use of the power of eminent domain.
- The Davis-Bacon Act (and related requirements).
- Contract Work Hours and Safety Standards Act (and related requirements).
- Copeland “Anti-Kickback” Act (and related requirements).
- Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act, and regulations at 24 C.F.R. Part 35.
- Section 3 of the Housing and Urban Development Act of 1968; and 24 C.F.R. Part 75.
- The Architectural Barriers Act of 1968 and the Americans with Disabilities Act.
- The requirement in the HCDA to affirmatively further fair housing.
- 2 C.F.R. Part 200.
- The Federal Funding Accountability and Transparency Act of 2006 as amended, and related federal requirements (“FFATA”) (Public Law 109-282).
- Byrd Anti-Lobbying Amendment (and related acts and requirements).
- The Equal Employment Opportunity Act; The Vietnam Era Veterans’ Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002); The Immigration Reform and Control Act of 1986; and The Americans with Disabilities Act of 1990; the Nebraska Fair Employment Practices Act; and related acts and requirements.
- Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act); the Age Discrimination Act of 1975; Section 504 of the Rehabilitation Act of 1973; The Housing for Older Persons Act of 1995; and related acts and requirements.
- Nebraska Uniform Energy Efficiency Standards, §§81-1608 to 81-1626.

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ACCEPTANCE PROVISIONS.

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

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT	GRANTEE → City of Lexington, Nebraska
By: _____ (Director or Designee)	By: _____ (Authorized Official)
_____ (Typed or Printed Name/Title)	_____ (Typed or Printed Name/Title)
_____ (Date)	_____ (Date)