

**STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
CIVIC AND COMMUNITY CENTER FINANCING FUND
ASSISTANCE AWARD CONTRACT NO. 14-03-175**

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

RECITALS:

A. Pursuant to the Nebraska Civic and Community Center Financing Act, §13-2701 et seq., Nebraska Revised Statutes, (the "Act"), the Department is directed to administer awards of funds available pursuant to the Act and on deposit in the Civic and Community Center Financing Fund (the "Fund"; and money therein "Act Funds"). The requirements of the Act are incorporated herein by this reference.

B. The Recipient has submitted an initial application and supplementary applications materials (collectively the "Application") to the Department, which Application is incorporated herein by this reference, setting forth a project eligible for assistance under the Act (the "Project"), generally referred to as the Lexington Field House.

C. The Project was "conditionally approved" (a term established in the Act) by the Department, and Act Funds for the Project were subsequently appropriated by the Nebraska Legislature (the procedure established in the Act), and thus the grant of assistance to the Recipient for the Project has been "finally approved" (a term established in the Act). This grant agreement is intended to govern the Department's administration of Act Funds disbursed to the Recipient for the Project.

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 Act Funds.

The Department will disburse Act Funds to the Recipient for the Project in a total amount not to exceed \$600,000; or fifty percent (50%) of the cost of construction, renovation, or expansion of the Project; whichever is less.

The matching funds from local sources (as required by the Act) must be injected into the Project within the period defined by the effective dates as specified in §1.03 below.

The Department will disburse fifty percent (50%) of the award (\$300,000 of the \$600,000) of Act Funds for the Project to the Recipient (without further request by the Recipient) reasonably contemporaneously after the Department receives from the Recipient a properly executed counterpart of this contract instrument. The remaining fifty percent (50%) of the award of Act Funds will be disbursed as provided in §4.01 of this contract.

§1.02 Use of Act Funds.

The Act Funds will be used solely for the purpose(s) set forth in the Application; and as allowed and as restricted; by the Act and this agreement. Some specific requirements which are applicable to Recipient's Project include, but are not limited to, the following:

- (a) Act Funds may be used for the construction, renovation, or expansion of the Project facility, but Act Funds may not be used for planning, programming, marketing, advertising, and related activities.
- (b) The Project is required to be physically located within the Recipient's municipal boundaries.
- (c) The Recipient must own, and operate, the Project facility. It is permissible for the Recipient to operate the Project facility through the use of agents, public or private.

§1.03 Effective Dates.

The effective dates of this contract are from May 7, 2014 to May 7, 2016, with contract funding associated with the appropriated Act Funds for the fiscal biennium from July 1, 2012, through June 30, 2014.

§1.04 Incorporation of RECITALS Paragraphs as Agreed Terms of Contract

All provisions of paragraphs A, B, and C of the RECITALS above are incorporated as agreed provisions of the contract.

PART II: [RESERVED].

PART III: [RESERVED].

PART IV: OTHER CONTRACTUAL CONDITIONS.

§4.01 Disbursements of Act Funds by the Department to the Recipient; 50% Reserve/Escrow Until Project Completed.

Disbursements of the Act Funds will be made to the Recipient in the form and manner prescribed by the Department and as specified in §1.01 above, if such disbursements are determined by the Department to be in conformance with the requirements of the Act.

The Recipient will be required to provide, if and as requested by the Department, documentation substantiating the expenditure of Project costs, and substantiating the providing of appropriate local match for the Act Funds disbursement requested.

No more than fifty percent (50%) of the Act Funds specified in §1.01 above will be disbursed to the Recipient prior to the Department's receiving, from the Recipient, a certification of the commitment and expenditure of the required minimum match, or an amount of local sources equaling the total grant award. Upon the Department's determination that Project costs have been properly documented by the Recipient, with the minimum level of matching funds committed, the remainder of the Act Funds (at that point still being held by the Department in reserve/escrow and in most cases being fifty percent (50%) of the Act Funds awarded) will be disbursed to the Recipient.

§4.02 Accounting For Act Funds by the Recipient; Record Keeping

The Recipient will account for Act Funds in a manner consistent with generally accepted accounting principles. All expenditures of the Act Funds by the Recipient will be for obligations incurred associated with the Project, and will be supported by documentation evidencing the necessity for such expenditures. The Recipient will keep such records as the Department may require for compliance with the Act.

The Department and other duly authorized officials of the State of Nebraska will have full access to; and the right to examine, audit, excerpt, or transcribe, any of the Recipient's records pertaining to this contract. The records will be retained for at least three years after expiration of this agreement.

§4.03 Performance Reviews

The Department may conduct performance review monitoring visitations for ascertaining compliance with this contract.

§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 Recipient is the official authorized to execute this contract and any amendments to this contract, on behalf of the Recipient.

The Recipient or the Department may request amendments to this contract. Amendments will not be effective until mutually agreed to in writing by both parties.

§4.05 Waivers in Writing; and Assignment of Interest.

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

§4.06 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.

§4.07 Termination by Mutual Agreement.

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

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

§4.08 Termination for Cause.

In the event:

- (a) the terms of this contract have not been, nor are anticipated to be, fulfilled;
- (b) the Department determines the Application contained material omissions, errors, or misrepresentations; or,
- (c) the Department determines Act Funds have been used for purposes other than contracted Project purposes, or in any other manner contrary to the requirements of the Act; then,

the Department may revoke the grant and terminate this contract, or seek repayment of Act Funds paid to the Recipient, or both. Payments made to the Recipient or recoveries by the Department will be in accord with the legal rights of the parties.

§4.09 Termination Due to Loss of Act Funds.

This contract will terminate in full or in part, in the event the Department suffers a loss of funding of Act Funds which permit it to fund the Recipient. In such an event, the Department will provide the Recipient written notice setting forth the effective date of full or partial termination.

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

The Recipient will hold the State of Nebraska and the Department harmless from any and all claims, demands, and actions based upon or arising out of any services performed by the Recipient itself, or by their officials, officers, employees, agents, or associates under this contract.

§4.11 Relationship of the Parties.

Nothing in this contract should be construed in any manner as creating or establishing the relationship of partners between the parties, nor shall either party have the right, power or authority to create any obligations or duty, express or implied, on behalf of the other party.

Any and all claims; on behalf of any person arising out of employment or alleged employment (including, but not limited to, claims of discrimination); against the Recipient, its officers, or its agents; will in no way be the responsibility of the Department. Recipient will hold the Department harmless from any and all such claims.

§4.12 Entire Agreement, Binding Effect, and Counterparts.

This instrument, along with any attachments, the 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 agreement will be binding upon, and will inure to the benefit of, the successors, assigns, and legal representatives of the parties.

This agreement, or any amendment of this agreement, 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 (or amendment, as the case may be).

§4.13 Governing Law.

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

§4.14 Americans With Disabilities Act (ADA).

The Recipient agrees to comply with all provisions of the Americans With Disabilities Act (ADA) with respect to hiring, training, and employment practices, including reasonable accommodation of persons with disabilities in hiring, training, and employment practices; and in assuring access by persons with disabilities to facilities and services provided by the Recipient to the general public.

§4.15 Civil Rights Law and Equal Opportunity Employment.

The Recipient agrees to comply with all applicable local, state and federal statutes and regulations regarding civil rights law and equal opportunity employment. The Recipient shall not discriminate against any employee or applicant for employment with respect to the employee or applicant's hire, tenure, terms, conditions or privileges of employment, because of his or her race, color, religion, sex, disability, or national origin.

§4.16 Drug Free Workplace Policy.

The Recipient acknowledges the State of Nebraska requires a Drug Free Workplace Policy on the part of the Recipient as a term and condition of contracting with the Department.

§4.17 Verification of Work Eligibility Status for New Employees.

The Recipient 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 Recipient in performing this contract. The Recipient will be responsible to the Department for enforcing this requirement with Recipient's subcontractors.

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

[REMAINDER OF PAGE INTENTIONALLY BLANK]

ACCEPTANCE PROVISIONS.

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

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT	RECIPIENT → City of Lexington, Nebraska
By: _____ (Director or Designee)	By: _____ (Chief Elected Official)
_____ (Typed or Printed Name/Title)	_____ (Typed or Printed Name/Title)
_____ (Date)	_____ (Date)
	_____ (Federal Identification Number)