

## **SUBRECIPIENT AGREEMENT**

THIS CONTRACT is entered into by the City of Lexington, Nebraska, herein referred to as "CITY", and the Lexington St. Ann's Parish Hall, Lexington, Nebraska, herein referred to as "NON-PROFIT".

WITNESSETH THAT:

WHEREAS, the CITY is the recipient of Community Development Block Grant #20-EMCV-008, to update the existing structure of the NON-PROFIT to benefit the community of Lexington in the time of pandemic and disaster; and

WHEREAS, The St. Ann's Catholic Parish Hall holds sole title to the facility now and will into the future; and

WHEREAS, the CITY, in its capacity as CDBG grantee, has determined that the NON-PROFIT can better supervise the design and construction phases of the NON-PROFIT building renovation; and

WHEREAS, the Nebraska Department of Economic Development desires the CITY to enter into a contract with the NON-PROFIT specifying the terms and conditions of the CITY'S delegation of certain CDBG responsibilities to the NON-PROFIT; and

WHEREAS, both parties to the contract understand that neither the CITY nor the NON-PROFIT has in any way, expressly or implied, abrogated any of its individual powers, and that this contract does not create any new organization or legal entity.

NOW, THEREFORE, THE CITY AND THE NON-PROFIT MUTUALLY AGREE AS FOLLOWS:

### **I. Responsibilities Delegated to the NON-PROFIT**

- A. The NON-PROFIT will, subject to prior approval of the City Council, retain the services of a consulting engineering firm to design and supervise the construction of the project.
- B. The NON-PROFIT will be responsible for all facets of the design and construction phases of the project, including the following:
  - 1. Design engineering.
  - 2. Construction engineering.
  - 3. Except as provided by paragraph IV. Administration below, compliance with all applicable state and federal requirements contained in the Statement of Assurances submitted with the CITY's application for CDBG funds.
  - 4. Except as provided by paragraph IV. Administration below, compliance with all other federal and state requirements as described in the Nebraska Community Development Block Grant Program Administration Manual.
  - 5. Preparation of construction bid documents; and

6. Supervision of the bid process, the awarding of construction contracts, and construction of the project. The selection of the project contractor will be subject to the ratification of the city council and bid solicitation documents will reflect this requirement.
- C. The NON-PROFIT and its consulting engineer will receive, review, approve all requests for payment for the items contained in paragraph B above, and if approved, the NON-PROFIT shall make payment on said requests accordingly. The NON-PROFIT shall then prepare and submit to the City Council claims for reimbursement by the CITY per Section 2 below.
- D. During the term of this contract, the NON-PROFIT will maintain reasonable records of its performance hereunder in a manner consistent with generally accepted accounting principles. The NON-PROFIT will allow the CITY and the Department of Economic Development authorized representatives' access to these records at any time during normal business hours. At the request of the CITY, the NON-PROFIT will submit to the CITY, in the format prescribed by the CITY, status reports on its performance under this Contract.
- E. The NON-PROFIT will provide documentation that the local share of the project that exceeds CDBG funds may be accessed by the CITY for the project no later than the time of construction bid award.

## **II Payment of Design and Construction Costs Incurred by the NON-PROFIT**

In consideration of the NON-PROFIT'S acceptance of the responsibilities described in Paragraph I, above, the CITY agrees to the following:

- A. Upon receipt of a valid claim for reimbursement from the NON-PROFIT for allowable project costs as specified in the CITY'S Grant Agreement with the Nebraska Department of Economic Development, a copy of which is appended as Attachment A of this Contract, and which by this reference is made a part hereof; the CITY will request the required amount of CDBG funds from the Department and upon receipt of these funds, the CITY will honor the NON-PROFIT'S claim and reimburse the NON-PROFIT accordingly.
- B. Each payment for engineering and construction costs will be drawn from CDBG and NON-PROFIT funds (if applicable) in amounts that are proportionate to the percentage that such funds represent of the total cost of the project as specified in Part III sources and uses of the Grant Agreement.
- C. The NON-PROFIT shall deduct a retainage from each payment request equal to 10 percent of the request, submitted by the NON-PROFIT for construction incurred by the project contractor and hold this retainage until construction is completed, the engineer approves final payment, and the project is accepted, all in accordance with the conditions of the construction contract.
- D. The CITY may refuse to reimburse the NON-PROFIT for any claim which it deems not valid under the terms of the CDBG Grant Agreement.

### **III. Duration of the Contract**

- A. This contract takes effect when the following conditions are satisfied:
  - 1. The Department of Economic Development, and the CITY have executed the CDBG Grant Agreement.
  - 2. The Department of Economic Development has approved the CITY'S "Request for Release of Funds".
  - 3. The CITY'S attorney and the attorney for the NON-PROFIT have approved this contract and agreed fully to its terms and conditions.
  - 4. The City Council and the NON-PROFIT'S governing body have each reviewed this contract and agreed fully to its terms and conditions.
- B. This contract will terminate 90 days after the Department of Economic Development closes out the CDBG grant with the CITY.

### **IV. Administration**

- A. The NON-PROFIT will comply with the federal administrative requirements contained in 24 Code of Federal Regulations (CFR), section 570.502, as applicable.
- B. The NON-PROFIT will carry out each activity under this contract in compliance with all federal laws and regulations described in 24 CFR sections 570.600 through 570.614 (Subpart K), except that:
  - 1. The NON-PROFIT does not assume the CITY'S environmental responsibilities described at 24 CFR section 570.604, and
  - 2. The NON-PROFIT does not assume the CITY'S responsibility for initiating the review process under the provisions of 24 CFR Part 58.

### **V. Disposition of Real Property or Equipment Acquired**

- A. The primary purpose of this contract is to allow the CITY to delegate responsibility for the design and updates of the NON-PROFIT'S project to the Catholic Parish Hall and to define the procedures by which the CITY will disburse CDBG funds to pay the costs incurred as a result of these activities. The St. Ann's Parish Hall facility will be improved as described in the Grant Agreement and the NON-PROFIT will continue to own and operate those facilities subject to the limitations contained in subparagraph B.
- B. Upon the expiration of this contract the NON-PROFIT will transfer to the CITY any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. With respect to any real property or equipment under the NON-PROFIT'S that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 the NON-PROFIT will either:

1. use the property to meet one of the national objectives contained in 24 CFR section 570.901 for five years after expiration of the agreement (or for such longer period of time as is determined to be appropriate by the CITY) or;
2. dispose of the property in a manner that results in the CITY'S being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvements to, the property. Reimbursement is not required after the period of time specified in paragraph A. of this section. The proceeds from such disposition will be subject to the applicable provisions of 24 CFR 570.504 (Program Income).

## **VI. Indemnification**

- A. The NON-PROFIT waives any and all claims and recourse against the CITY, including the right of contribution for loss or damage to persons or property arising from, growing out or in any way connected with or arising from the concurrent or sole negligence of the CITY or its officers, agents, or employees. The St. Ann's Parish Hall Church will indemnify, hold harmless, and defend the CITY against any and all claims, demands, damages, costs, expenses, or liability arising out of the St. Ann's Parish Hall's performance of this contract except for liability arising out of the concurrent or sole negligence of the CITY or its officers, agents, or employees.

## **VII. Suspension and Termination**

- A. Termination for Cause: If the NON-PROFIT fails to comply with the terms and conditions of this contract and any of the following conditions exist:
  1. The lack of compliance with the provisions of this contract are of such scope and nature that the NON-PROFIT deems continuation of the contract to be substantially detrimental to the interests of the CITY.
  2. The NON-PROFIT has failed to take satisfactory action as directed by the CITY or its authorized representative within the time specified by same.
  3. The NON-PROFIT has failed within the time specified by the CITY or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this contract; then, the CITY may terminate this contract in whole or in part, and thereupon shall notify the St. Ann's Church of the termination, the reasons therefore, and the effective date provided such effective date shall not be prior to notification of the St. Ann's Church. After this effective date, no charges incurred under any terminated portions are allowable.
- B. Termination for Other Grounds: This contract may also be terminated in whole or Part:
  1. By the CITY, with the consent of the NON-PROFIT, in which case the two parties shall devise by mutual agreement, the conditions of termination including effective date and in case of termination in part, that portion to be terminated.

2. If the funds allocated by the CITY via this contract are from anticipated sources of revenue, and if the anticipated sources of revenue do not become available for use in purchasing said services.
3. In the event the CITY fails to pay the NON-PROFIT promptly or within 60 days after invoices are rendered, the CITY agrees that the St. Ann's Parish Hall Church shall have the right to consider said default a breach of this agreement and the duties of the NON-PROFIT under this agreement terminated. In such an event, the CITY shall then promptly pay the services performed and all allowable expenses incurred.
4. The CITY may terminate this contract at any time giving at least 10 days notice in writing to the NON-PROFIT. If the contract is terminated for convenience of the CITY as provided herein, the NON-PROFIT will be paid for the time provided and expenses incurred up to the termination date.

This contract has been approved by the LEXINGTON CITY COUNCIL and the LEXINGTON ST. ANN'S PARISH HALL CHURCH PARISH COUNCIL.

CITY OF LEXINGTON, NEBRASKA

ATTEST:

\_\_\_\_\_  
John Fagot, Mayor

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Pam Baruth, City Clerk

ST. ANN'S PARISH HALL

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Trustee

\_\_\_\_\_  
\_\_\_\_\_, Trustee

Reviewed as to contact by City of Lexington:

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Brian Copley, City Attorney