

ADMINISTRATION AGREEMENT- AMENDED BUDGET & SCOPE OF WORK

Project Title: St. Ann's Parish Hall, 20-EMCV-008

THIS AGREEMENT made and entered into on September 14, 2021 by and between the **City of Lexington, Nebraska 406 E. 7th Street, Lexington, NE 68850** (hereinafter referred to as the CITY) and **Cozad Development Corporation, 121 W. 9th Street, Cozad, NE 69130.** (hereinafter referred to as CDC).

WITNESSES THAT:

WHEREAS, the CITY and CDC are desirous of entering into a contract to formalize their relationship, and

WHEREAS, pursuant to Title I of the Housing and Community Development Act of 1974, as amended through 1981 and 24 CFR 570, the State of Nebraska Department of Economic Development (THE DEPARTMENT) is authorized by the federal Department of Housing and Urban Development (HUD) to provide Community Development Block Grant Program funds (hereinafter referred to as CDBG funds) to units of local government selected to undertake and carry out certain programs and projects under the Nebraska State Community Development Block Grant Program in compliance with all applicable local, state and federal laws, regulations and policies, and

WHEREAS, the CITY, as part of its 2021 CDBG grant agreement with THE DEPARTMENT, under contract number **20-EMCV-008** (Grant for St. Anns Parish Hall) has been awarded CDBG funds for the purposes set forth herein, and

WHEREAS, the SCOPE OF WORK included in this contract is authorized as part of the CITY's approved CDBG program, and

WHEREAS, it would be beneficial to the CITY to utilize the CDC as an independent entity to accomplish the SCOPE OF WORK set forth herein and such endeavor would tend to best accomplish the objectives of the local CDBG program.

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions contained herein and the mutual benefits to be derived therefrom, the parties hereto agree as follows:

1. Services to be Provided

- a. CDC shall complete in a satisfactory and proper manner as determined by the CITY the work activities described in the SCOPE OF WORK (ATTACHMENT 1 to the contract).
- b. The CITY will provide such assistance and guidance as may be required to support the objectives set forth in the SCOPE OF WORK and will provide compensation for services as set forth in Section 3 below.

2. Time of Performance

The services of CDC are to commence on the date of signing of this agreement and shall be undertaken in such sequence as to assure their expeditious completion. All of the services

required hereunder shall be completed on or before the official project completion date cited in the original Grant Agreement. The termination date of this Professional Services Agreement shall automatically be extended to coincide with any approved grant period extension from THE DEPARTMENT.

3. Consideration

The total cost for performing the services outlined in SCOPE OF WORK (ATTACHMENT #1) of this Contract shall not total more than **\$20,500 for general administration and \$10,000 for construction management** for the original project, **and \$5,500 for general administration** activities to carry out the increased requirements related to the budget amendment and increase in project activities.

It is also understood that this contract is funded by THE DEPARTMENT in whole or in part with funds through the State of Nebraska Community Development Block Grant Program as administered by THE DEPARTMENT and is subject to those regulations and restrictions normally associated with federally funded programs and any other requirements that the state may prescribe.

4. Records

CDC agrees to maintain such records and follow such procedures as may be required under 2 CFR §200.300–345 and any such procedures that the CITY or THE DEPARTMENT may prescribe. In general such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the CDC until after the final audit of the CITY's CDBG project, unless a longer period is required to resolve audit findings or litigation. After audit, the City will retain the records in accordance with THE DEPARTMENT standards. The CITY, THE DEPARTMENT and duly authorized officials of the state and federal government shall have full access and the right to examine any pertinent documents, papers, records and books of CDC involving transactions to this local program and contract.

5. Relationship

The relationship of CDC to the CITY shall be that of an independent consultant rendering professional services. CDC shall have no authority to execute contracts or to make commitments on behalf of the CITY and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the CITY and CDC.

6. Suspension, Termination and Close-Out

If CDC fails to comply with the terms and conditions of this contract the CITY may pursue such remedies as are legally available including, but not limited to the suspension or termination of this contract in the manner specified herein:

a. Suspension - If CDC fails to comply with the terms and conditions of this contract, or whenever CDC is unable to substantiate full compliance with the provisions of this contract, the CITY may suspend the contract pending corrective actions or investigations, effective not less than 7 days following written notification to CDC or its authorized representative. The suspension will remain in full force and effect until CDC

has taken corrective action to the satisfaction of the CITY and is able to substantiate its full compliance with the terms and conditions of this contract. No obligations incurred by CDC or its authorized representatives during the period of suspension will be allowable under the contract except;

1. Reasonable, proper and otherwise allowable costs which CDC could not avoid during the period of suspension.
2. If upon investigation, CDC is able to substantiate complete compliance with the terms and conditions of this contract, otherwise allowable costs incurred during the period of suspension will be allowed.
3. In the event all or any portion of the work prepared or partially prepared by CDC be suspended, abandoned, or otherwise terminated the CITY shall pay CDC for work performed to the satisfaction of the CITY in accordance with the percentage of the work completed.

b. Termination for Cause - If CDC 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 CITY deems continuation of the contract to be substantially detrimental to the interests of the CITY;
2. CDC has failed to take satisfactory action as directed by the CITY or its authorized representative within the time specified by same;
3. CDC 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 CDC of the termination, the reasons therefore, and the effective date provided such effective date shall not be prior to notification of CDC. After this effective date, no charges incurred under any terminated portions are allowable.

c. Termination for Other Grounds - This contract may also be terminated in whole or in part;

1. By the CITY, with the consent of CDC, or by CDC with the consent of the CITY, 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 CDC promptly or within 60 days after invoices are rendered, the CITY agrees that CDC shall have the right to consider said default a breach of this agreement and the duties of CDC under this agreement terminated. In such an event, the CITY shall then promptly pay CDC for all 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 CDC. If the contract is terminated for convenience of the CITY as provided herein, CDC will be paid for time provided and expenses incurred up to the termination date.

7. Changes, Amendments, Modifications

The CITY may from time to time, require changes or modifications in the scope of services to be performed hereunder. Such changes including any increase or decrease in the amount of compensation therefore, which are mutually agreed upon by the CITY and CDC shall be incorporated in written amendments to this contract.

8. Personnel

CDC represents that it has or will secure at its own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees or have any contractual relationship to the CITY.

All services required hereunder will be performed by CDC or under CDC supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state or local law to perform such services.

None of the work or services covered by this contract shall be subcontracted without prior written approval of the CITY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this contract.

9. Assignability

CDC shall not assign any interest on this contract, and shall not transfer any interest on this contract (whether by assignment or novation), without prior written consent of the CITY thereto: Provided, however, that claims for money by CDC from the CITY under this contract may be assigned to a bank, trust company or other financial institutions without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the CITY.

10. Reports and Information

CDC at such times and in such forms as the CITY may require, shall furnish the CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith and any other matters covered by this contract.

11. Findings Confidential

All of the reports, information, data, etc., prepared or assembled by CDC under this contract are confidential and CDC agrees that they shall not be made available to any individual or organization without prior written approval of the CITY.

12. Copyright

No reports, maps or other documents produced in whole or in part under this contract shall be subject of an application for copyright by or on behalf of CDC.

13. Compliance With Local Law

CDC shall comply with all applicable laws, ordinances and codes of the state and local governments and CDC shall save the CITY harmless with respect to any damages arising from any tort done in performing any of the work embraced by this contract.

14. Title VI of the Civil Rights Act of 1964

Under Title VI of the Civil Rights Act of 1964 no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

15. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

16. Section 3 Compliance in the Provision of Training Employment and Business Opportunities

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

The parties to this contract will comply with the provisions of said Section 3. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these provisions.

CDC will send to each labor organization or representative or workers with which it has collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

CDC will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or receipt of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. CDC will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of THE DEPARTMENT issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

17. Age-Discrimination Act of 1975, As Amended (42 U.S.C. 6101, et. seq.).

The law provides that no person will be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance.

18. Section 504 of the Rehabilitation Act of 1973, As Amended (29 U.S.C. 794).

The law provides that no otherwise qualified individual will, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal assistance funds.

19. Executive Order 11246, As Amended

This Order applies to all federally assisted construction contracts and subcontracts. The Grantee and subcontractors, if any, will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Grantee and subcontractors, if any, will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin.

20. Conflict of Interest 2 CFR 200.318

No officer, employee or agent of the Grantee who will participate in the selection, the award or the administration of this grant may obtain a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with who they have family or business ties, during their tenure or for one year thereafter. It is further required that this stipulation be included in all subcontracts to this contract. Upon written request, exceptions may be granted upon a case by case basis when it is determined that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. These exceptions are granted by THE DEPARTMENT.

21. Audits and Inspections

The CITY, THE DEPARTMENT, the State Auditor and HUD or their delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as part of the CDBG project and this contract, by whatever legal and reasonable means are deemed expedient by the CITY, THE DEPARTMENT, the State Auditor and HUD.

22. Hold Harmless

CDC agrees to indemnify and hold harmless the CITY, its appointed and elected officers and employees, from and against all loss and expense, including attorney's fees and costs by reason of any and all claims and demands upon the CITY, its elected or appointed officers and employees from damages sustained by any person or persons arising out of or in consequence of CDC's and its agents' negligent performance of work associated with this agreement. CDC shall not be liable for property and bodily injury as may result from the negligence of any construction contractor or construction subcontractor.

23. Governing Law

This Agreement will be governed by the laws of the State of Nebraska, without regard to that body of law controlling conflicts of law. Any legal proceeding arising out of, or relating to this Agreement shall be instituted in any court of general jurisdiction in the State of Nebraska. This agreement contains all terms and conditions agreed to by the City and the Consultant.

This agreement contains all terms and conditions agreed to by the CITY and CDC. The attachments to this agreement are identified as follows:

ATTACHMENT #1, SCOPE OF WORK

WITNESS WHEREOF, the CITY and CDC have executed this contract agreement as of the date and year first written above.

CITY OF LEXINGTON, NEBRASKA

ATTEST:

Joe Peplitsch, City Manager

Pamela Berke, City Clerk

COZAD DEVELOPMENT CORPORATION:

ATTEST:

Adam Boryca, President

Jennifer McKeone, Executive Director

ATTACHMENT 1

SCOPE OF WORK

CDC shall complete in a satisfactory and proper manner, the following services necessary to the performance of the work activities set forth in the following SCOPE OF WORK:

ELIMINATION OF SPECIAL CONDITIONS

CDC shall assist the CITY in the preparation and execution of all documentation required by the Nebraska Department of Economic Development (THE DEPARTMENT) in order to obtain release of funds. Said documentation shall include but is not limited to:

1. Execute contract and/or memorandum of understanding
2. Financial Management Certification
3. Authorization to Request Funds
4. Excessive Force Certification
5. Antidisplacement and Relocation Assistance Plan
6. Affirmatively Furthering Fair Housing Plan
7. Agreement Between City and Ultimate Recipient
8. NEPA Environmental Review
9. Duplication of Benefits Documentation
10. LEP Plan

GRANT MANAGEMENT

CDC shall assist the CITY in maintaining proper documentation for state and federal compliance monitoring purposes. Major items include but are not limited to:

A. Files: CDC shall assist the CITY in establishing and maintaining all files as required by the Nebraska Department of Economic Development (THE DEPARTMENT):

1. Environmental Review.
2. Federal Labor Standards.
3. Equal Employment Opportunity/Affirmative Action.
4. Procurement Standards/Invitation for Bids.
5. Financial Management.

6. Performance and Capacity.
7. Other files required by THE DEPARTMENT.

Sufficient documentation of THE DEPARTMENT Grantee operations will be filed and maintained in the CITY Offices. CDC shall review each file at least monthly, and CDC shall assist the CITY staff in insuring that appropriate information is contained in each file.

B. Performance Reports

1. CDC shall provide the CITY with monthly performance and project progress reports.
2. CDC shall prepare the required semi-annual performance reports and submit the same to the CITY and Nebraska Department of Economic Development.
3. CDC shall prepare and submit to the City Council for acceptance by the CITY final performance reports required by the Nebraska Department of Economic Development.

C. Assurance Requirements

CDC shall assist the CITY in meeting the requirements of the following laws, rules and regulations:

1. National Environmental Policy Act of 1969 and 24 CFR Part 58.
2. Title I of the Housing and Community Development Act of 1974, as amended.
3. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 24 CFR Part 42.
4. Section 3 of the Housing and Urban Development Act of 1968.
5. Title VI of Civil Rights Act of 1964 and 24 CFR Part 1.
6. Title VIII of the Civil Rights Act of 1968.
7. Age Discrimination Act of 1975.
8. Davis-Bacon Fair Labor Standards Act of 1970, as amended
9. Contract Work Hours and Safety Standards Act of 1970.
10. Section 504 of the Rehabilitation Act of 1973.
11. Title IV of the Lead Based Paint Poisoning Prevention Act and 24 CFR Part 35.
12. Executive Order 11063 as amended by Executive Order 12259 and 24 CFR Part 35.
13. Executive Order 11246 and 11246 as amended.

14. OMB Circular A-102.
15. OMB Circular A-87.
16. CFR 570.488 to 570.499 (a).
17. Nebraska Community Development Law.
18. Nebraska Environmental Protection Act.
19. Nebraska State Statutes 49-14,103.01 to 49-14,103.07
20. Other laws, regulations and assurances required by THE DEPARTMENT.

Added on 2/28//2023
BUDGET AMENDMENT

CDC shall assist the CITY in meeting all of the necessary requirements as it relates to the additional allocation of funding including approved by the Nebraska Department of Economic Development on 1/30/2023:

1. Environmental Clearance
2. Updating Special Conditions
3. Contract requirements
4. File Maintenance
5. Performance Reports
6. Additional paperwork required for budget amendment
7. Any and all requirements as it relates to the increase in project scope

Attachment 2: Contract Costs

2020-EMCV-008

ALL COSTS ARE FIXED COSTS FOR FEES & SERVICES

	<u>PRICE</u>
<u>Activity 1 – Environmental Review (Contained in Special Conditions)</u>	<u>\$ 2,500.00</u>
<u>Activity 2– Fair Housing Activities (Contained in Special Conditions)</u>	<u>\$ 1,000.00</u>
<u>Activity 3- Special Conditions for Release of Funds</u>	<u>\$ 6,000.00</u>
<u>Activity 4- Preparation of Semi-Annual Reports</u>	<u>\$ 2,000.00</u>
<u>Activity 5- Preparation of Drawdowns</u>	<u>\$ 3,500.00</u>
<u>Activity 6- File Maintenance/Prepare for Monitoring</u>	<u>\$ 4,500.00</u>
<u>Activity 7-Project Close-Out</u>	<u>\$ 1,000.00</u>
TOTAL BID PRICE for GENERAL ADMINISTRATION	<u>\$ 20,500.00</u>
Additional Activities, Budget and Project Amendment as of 1/30/2023	\$ 5,500.00
<u>Activity – Construction Management/Labor Standards</u>	<u>\$ 10,000.00</u>
TOTAL FOR GENERAL ADMIN & CONSTRUCTION MGMT	\$36,000.00

****Based on the Budget Submitted and Approved by the Nebraska Department of Economic Development this leaves the following for the City of Lexington for eligible expenses for the administration of the grant:

Review of Contracts by City of Lexington Legal Consultant	\$1,000.00
Time by Lexington Certified Grant Administrator, Treasurer	\$2,500.00
Postage, Legal Notices, & Misc. Admin Expenses by Lexington	<u>\$ 500.00</u>
TOTAL ADMINISTRATION BUDGET FOR LEXINGTON	\$4,000.00