



STAFF REPORT

DATE: August 4, 2021

CONSENT

AGENDA ITEM: CDBG Agreement Amendment #2

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

Washington County is requesting the city sign off on Amendment #2 to our Community Development Block Grant (CDBG) cooperation agreement. The agreement was first approved in 2000 and last amended in 2015. Copies are attached for reference.

ISSUE BEFORE COUNCIL:

Should the Council approve Amendment #2 to the city's agreement with Washington County related to CDBG funds?

PROPOSAL:

For the 2022-2024 CDBG renewal program, the U. S. Department of Housing and Urban Development (HUD) recently came out with updated language that needs to be included in any Cooperation Agreement. Per Washington County, the regulations have not changed, but rather HUD's guidance in what needs to be stated in the agreements. The Washington County Community Development Agency (CDA) administers this program on behalf of the County and many of these regulations impact them and the county-wide programs that are funded with CDBG. This should not impact your municipality in anyway, other than needing a signed agreement from you for your residents to participate in these programs. A signed amendment is requested by August 9, 2021.

OPTIONS:

- 1) Direct the mayor to sign the amendment
- 2) Do not approve amendment #2

RECOMMENDATION:

If removed from the consent agenda:

"Motion to approve Amendment #2 to the Community Development Block Grant Cooperation Agreement with Washington County."

ATTACHMENT:

- CDBG Agreement, 2000
- CDBG Agreement Amendment #1, 2015
- CDBG Agreement Amendment #2, 2021

Lake Elmo

WASHINGTON COUNTY	
Contract #	1136
Dept	Administration
Div	
Term	9/28/00

**WASHINGTON COUNTY COMMUNITY DEVELOPMENT
BLOCK GRANT (CDBG) COOPERATION AGREEMENT**

THIS AGREEMENT is made and entered into under the auspices of MINN. STAT. § 471.59 and in furtherance of the requirements of the federal Community Development Block Grant (CDBG) program and HOME Investment Partnership Program by and between the County of Washington, State of Minnesota (County) and the City of Lake Elmo, hereinafter referred to as "Cooperating Community," both parties being governmental units of the State of Minnesota.

WITNESSETH:

WHEREAS, Title I of the federal Housing and Community Development Act of 1974 as amended provides for a program of community block grants to urban counties as that term is defined in the Act; and

WHEREAS, Washington County, Minnesota meets the criteria of urban county and is eligible to receive CDBG funds; and

WHEREAS, part 570, Chapter V of Title 24 of the Code of Federal Regulations (C.F.R.) sets forth the regulations governing the applicability and use of funds under Title I; and

WHEREAS, 24 C.F.R. § 570.105 establishes the program qualification of an urban county as a county having a certain threshold population which is the combination of the population of unincorporated areas, plus the population of participating incorporated areas; and

WHEREAS, in order to be considered a participating incorporated area under the above definition, the City must enter into cooperative agreements to undertake or to assist in the undertaking of essential activities pursuant to the CDBG Program and the HOME Investment Partnership Program; and

WHEREAS, it is in the interest of the City to have its population counted together with other municipalities of Washington County in order to be able to participate in these federal programs.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties mutually agree to the following terms and conditions.

I. DEFINITIONS

For purposes of this Agreement, the terms defined in this section have the following meaning:

A. "The Act" means the Housing and Community Development Act of 1974, Title I, of Public Law 93-383, as amended (42 U.S.C. 5301, *et seq.*).

B. "Regulation" means the rules and regulations promulgated pursuant to the Acts, including but not limited to 24 C.F.R. Part 570.

C. "HUD" means the United States Department of Housing and Urban Development.

D. "Cooperating Community" means any city or township in Washington County which has entered into this Agreement or one which is identical.

E. "CDBG Program" means federal program instituted under 42 U.S.C. § 5301, *et seq.* as amended.

F. "HOME Investment Partnership Program" means the federal program instituted under Title II of the Cranston-Gonzales National Affordable Housing Act, 42 U.S.C. § 12701 *et seq.* as amended.

The definitions contained in 42 U.S.C. § 5302 and 24 C.F.R. 570.3, as amended are incorporated herein by reference and made a part hereof.

II. PURPOSE

The Cooperating Community and the County have determined that it is desirable and in the interests of the citizens that the County qualify as an urban county within the provisions of the Act. This Agreement contemplates that identical agreements will be executed between the County and other cities and townships within the County, thus enabling the County to qualify under the Act.

The purpose of this Agreement is to authorize the County to participate with the Cooperating Community in undertaking or to assist in undertaking essential community development and housing

assistance activities pursuant to the CDBG entitlement Program and the HOME Investment Partnership Program.

III. TERM OF AGREEMENT

This Agreement shall be in effect upon execution and terminate no sooner than the end of the third program year covered by the application for the basic grant amount and approved after the effective date. This Agreement shall be effective for the Federal Fiscal Years 2001 through 2003. This Agreement shall renew automatically for subsequent three-year program-periods unless written notice of termination to be effective at the end of the current three year program-period is given by the Cooperating Community to the County following the same schedule as the "opt-out" notification requirements as established by HUD. Since this Agreement has an automatic renewal provision, the County shall, prior to the "opt-out" date, provide written notification to the Cooperating Community of the Community's rights under this "opt-out" provision. The County shall have the right to "opt out" of future renewal of the Agreement.

The parties agree that this Agreement will remain in effect until CDBG and HOME Investment Partnership Program funds and program income received for activities carried out during the three year qualification period (and any successive periods under the automatic renewal provision) are expended and the funded activities completed, and that the county and Cooperating Community cannot terminate or withdraw from this Agreement during this period. Notwithstanding any other provision of this Agreement, this Agreement shall be terminated at the end of any program year during which HUD withdraws its designation of Washington County as an urban county under the Act.

IV. METHOD

The Cooperating Community expressly agrees that it will undertake or assist in undertaking community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted housing. The County shall prepare and submit to HUD and appropriate reviewing agencies, all necessary applications for a basic grant amount under the CDBG requirements. In making the application, the County shall address the goals and needs of County as developed in meetings between the Community, its citizens and the County, and also addressing the Act and other relevant Minnesota and/or federal statutes and regulations. The parties agree to cooperate fully in establishing priorities and in preparation of the application for a basic grant amount. The Cooperating Community and the County agree that the County shall establish a reasonable time schedule for the development of the grant application.

It is anticipated by the parties that the party ultimately implementing a project funded by monies received from the grant may be either the Cooperating Community, or the County. The determination of which party will implement the project will be made by the parties after consideration of the nature and scope of the project, and the ability of each party to undertake the project, though it is understood by the Cooperating Community that the County shall have final responsibility for selecting projects and filing annual grant requests. The County is hereby authorized to distribute to the Cooperating Community such funds as are determined appropriate for the Community to use in implementing a project and the County is hereby authorized to undertake projects within the Cooperating Community as are determined appropriate for the County to undertake. Contracts awarded and purchases made pursuant to a project under this Agreement shall conform to Minnesota statute and to the requirements of the entity undertaking the project.

V. SPECIAL PROVISIONS

A. Nothing in this Agreement is intended to prevent or otherwise modify or abrogate the right of the Cooperating Community or the County to submit individual applications for discretionary funds in the event County does not receive designation as an urban county entity under the Act.

B. The Cooperating Community and the County mutually agree to indemnify and hold harmless each other from any claims, losses, costs, expenses or damages resulting from the acts or omissions of their

respective officers, agents and employees relating to activities conducted by either under this Agreement, the Act or the Regulation.

C. In the event that there is a revision of the Act and/or Regulation which would make this Agreement out of compliance with the Act or Regulation, both parties will review this Agreement and renegotiate those items necessary to bring the Agreement into compliance.

D. Both parties understand and agree that the refusal to renegotiate this Agreement in order to bring it into compliance will result in de facto termination of the Agreement as of the date it is no longer in compliance with the Act and/or Regulation.

E. All funds received by the County under the Act shall be deposited in the County treasury.

F. The Cooperating Community and the County shall maintain financial and other records and accounts in accordance with requirements of the Act and Regulation. Such records and accounts will be in such form as to permit reports required of the County to be prepared therefrom and to permit the tracing of grant funds and program income to final expenditure.

G. The Cooperating Community and the County agree to make available all records and accounts with respect to matters covered by this Agreement at all reasonable times to their respective personnel and duly authorized federal officials. Such records shall be retained as provided by law, but in no event for a period of less than three years from the date of completion of any activity funded under the Act or less than three years from the last receipt of program income resulting from activity implementation. The County shall perform all audits of the basic grant amounts and resulting program income as required under the Act and Regulation.

H. Pursuant to 24 C.F.R. 570.501(6), the parties agree that the municipality is subject to the same requirements applicable to subrecipients, including the requirement of a written agreement described in 24 C.F.R. 570.503.

I. The County and Cooperating Community shall take all actions necessary to assure compliance with the County's certification required by section 104(b) of Title I of the Housing and Community Development Act of 1974 as amended, including Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws. The parties also agree that the County shall not fund activities in or in support of, any Cooperating Community that does not affirmatively further fair housing within its own jurisdiction or that impedes the County's actions to comply with the County's fair housing certification.

J. The parties agree that the Cooperating Community has adopted and is enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within jurisdictions.

K. 42 U.S.C. § 12701 The Cooperating Community acknowledges that by executing this Agreement it may not apply for grants from appropriations under the Small Cities or State Community Development Block Grant Programs for fiscal years during the period in which it participates in the County's CDBG Program. The Cooperating Community further acknowledges that during the period in which it participates in the County's CDBG Program it may only participate in a HOME Program (42 U.S.C. § 12701 *et seq.* and regulations promulgated thereto) through the County and is precluded from forming a HOME Consortium for participation in the HOME Program, except through the County.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed.

WASHINGTON COUNTY, MINNESOTA

By: R. H. Stafford

R. H. Stafford, Chair

Board of Washington County Commissioners

Date: 9/28/2000

By: James R. Schug

James R. Schug

Washington County Administrator

Date: 9/27/00

Approved as to form:

Scay Kuy
Assistant County Attorney

CITY OF LAKE ELMO

By: La Hunt

Its: Mayor

Date: Sept 26, 2000

And: Mary Kuyfne

Its: City Administrator

Date: Sept. 26, 2000

RESOLUTION NO. 2000-047

CITY OF LAKE ELMO

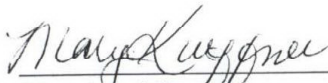
**RESOLUTION APPROVING WASHINGTON COUNTY COMMUNITY
DEVELOPMENT BLOCK GRANT (CDBG) COOPERATION AGREEMENT**

BE IT RESOLVED by the City Council of the City of Lake Elmo that the Community Development Block Grant (CDBG) Cooperation Agreement between Washington County and the City of Lake Elmo be approved, and that the Mayor and City Administrator are authorized to sign said Agreement.

Adopted this 19th day of September, 2000.



Mayor

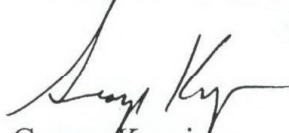


City Administrator

COUNTY ATTORNEY'S OPINION

It is hereby the opinion of the Washington County Attorney's Office that the term and provisions of this Agreement are fully authorized under state and local law and that Washington County has the full legal authority under state law and this Agreement to act in furtherance of the program. While the County itself may not have specific authority to undertake essential community development and housing assistance activities, specifically urban renewal and publicly assisted housing, although it does have authority to assist in such undertakings, the Cooperating Community does have this authority; and under state law, the County derives authority from this Agreement to act in furtherance of the program.

DOUG JOHNSON, COUNTY ATTORNEY
WASHINGTON COUNTY, MINNESOTA

A handwritten signature in black ink, appearing to read "George Kuprian", is written over the printed name.

George Kuprian
Assistant County Attorney

CO-00-0046

**AMENDMENT NUMBER ONE
AGREEMENT #1136
WASHINGTON COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
COOPERATION AGREEMENT**

This Amendment Number One is entered into by and between the County of Washington, State of Minnesota, 14949 62nd Street North, P.O. Box 30, Stillwater, MN 55082, hereafter referred to as the "County" and City of Lake Elmo, hereinafter referred to as the "Cooperating Community", is to amend CDBG Contract #1136.

WHEREAS, Title II of the Cranston – Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12701 et seq. as amended) provides for a program known as the HOME Investment Partnership Program; and

WHEREAS, Washington County, Minnesota qualifies under said law as a member of the HOME Consortium formed by Anoka, Dakota, Ramsey and Washington Counties, and the Cities of Coon Rapids in Anoka County and Woodbury in Washington County; and

WHEREAS, part 92 of Title 24 of the Code of Federal Regulations sets forth regulations governing the applicability and use of funds under Title II; and

WHEREAS, the governing regulations require that units of local government enter into a cooperation agreement with the County for participation in the HOME Program, which shall be the same cooperation agreement participation in the Community Development Block Grant Program; and

WHEREAS, a unit of general local government is restricted from selling, trading or otherwise transferring such funds; and

NOW, THEREFORE, the parties mutually agree to amend Washington County Community Development Block Grant (CDBG) Cooperation Agreement, Contract #1136 as follows:

1. Section I.A. shall hereby deleted and restated to read:

"The Acts" means the Housing and Community Development Act of 1974, Title I, of Public Law 93-383, as amended (42 U.S.C. 5301. et. seq.) and HOME Investment Partnership Act, Title II of the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12701, et. seq.) as amended.

2. Section I.B. shall be hereby deleted and restated to read:

"Regulations" means the rules and regulations promulgated pursuant to the "Acts" including but not limited to 24 C.F.R. Parts 92 and 570.

3. The last sentence in Section I, Definitions, is hereby deleted and restated to read:

The Definitions contained in the Acts and the Regulations are incorporated by reference and are made a part hereof.

4. The second paragraph of section II, Purpose, is hereby deleted and restated to read:

The purpose of this Agreement is to authorize the County to cooperate with the Cooperating Community in undertaking or assisting in undertaking the activity as authorized in the Acts and in the Regulations.

5. Section V. Special Provisions is hereby amended by adding subsection IV. L. as follows:

L. A unit of general local government may not sell, trade, or otherwise transfer all or any portion of such funds to a metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly

or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under Title I of the Housing and Community Development Act of 1974, as amended.

All other terms and conditions of Contract #1136 unless specifically amended herein remain in full force and effect.

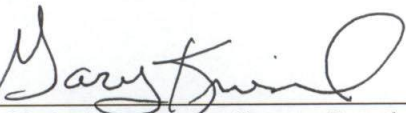
IN WITNESS THEREOF, the County and the Cooperating Community have executed this Agreement this day of _____, 2015.

APPROVED AS TO FORM:


For County Attorney

Dated: 7/20/15

WASHINGTON COUNTY, STATE OF MINNESOTA


By: 
Chair, Washington County Board of Commissioners

Dated: 7/29/15


By: 
Administrator, Washington County

Dated: 8-4-15

CITY OF LAKE ELMO

By: 
Its: PA 702

Dated: 7/29/15

By: 
Its: Interim city administrator

Dated: 7/23/15

**AMENDMENT NUMBER TWO
AGREEMENT #1136
WASHINGTON COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
COOPERATION AGREEMENT**

This Amendment Number Two is entered into and by the County of Washington, State of Minnesota, 14949 62nd Street North, PO Box 30 Stillwater, Minnesota, hereafter referred to as the “County” and the City of Lake Elmo, hereafter referred to as the “Cooperating Community”, is to amend CDBG Contract #1136.

WITNESSTH:

WHEREAS, Title II of the Cranston – Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12701 et seq. as amended) provides for a program known as the HOME Investment Partnership Program; and,

WHEREAS, Washington County, Minnesota qualifies under said law as a member of the HOME Consortium formed by Anoka, Dakota, Ramsey and Washington Counties, and the Cities of Coon Rapids in Anoka County and Woodbury in Washington County; and,

WHEREAS, part 92 of Title 24 of the Code of Federal Regulations sets forth regulations governing the applicability and use of funds under Title II; and

WHEREAS, the governing regulations require that units of local government enter into a cooperation agreement with the County for participation in the HOME Program, which shall be the same cooperation agreement participation in the Community Development Block Grant Program;

NOW, THEREFORE, the parties mutually agree to the following terms and conditions.

1. Section I. A. shall hereby be deleted and restated to read:

- A. “The Act” means the HOME Investment Partnership Act, Title II of the Cranston - Gonzales National Affordable Housing Act, 42 U.S.C. 12701 et seq., as amended.
- B. “Regulations” means those regulations found at 24 CFR Part 92, as amended.

2. Section V. is hereby deleted and restated to read:

- A. Nothing in this Agreement shall be construed to prevent or otherwise modify or abrogate the right of the Cooperating Community or the County to submit individual applications for discretionary funds in the event County does not receive designation as an urban county entity under the Act.
- B. The Cooperating Community and the County mutually agree to indemnify and hold harmless each other from any claims, losses, costs, expenses or damages resulting from the acts or omissions of their respective officers, agents and employees relating to activities conducted by either under this Agreement, the Act or the Regulations.
- C. In the event that there is a revision of the Act, Regulations, and/or the provisions of the Urban County Qualification Notice in effect at the time of renewal of this Agreement which would make this Agreement out of compliance with the Act, Regulations, or Urban County Qualification Notice, both parties will review this Agreement to renegotiate those items necessary to bring the Agreement into compliance.
- D. Both parties understand and agree that the refusal to renegotiate this Agreement will result in effective termination of the Agreement as of the date it is no longer in compliance with the Act and/or Regulations as amended.
- E. All funds received by the County under the Act shall be deposited in the County treasury.

- F. The Cooperating Community and the County shall maintain financial and other records and accounts in accordance with requirements of the Act and Regulations. Such records and accounts will be in such form as to permit reports required of the County to be prepared therefrom and to permit the tracing of grant funds and program income to final expenditure.
 - G. The Cooperating Community and the County agree to make available all records and accounts with respect to matters covered by this Agreement at all reasonable times to their respective personnel and duly authorized federal officials. Such records shall be retained as provided by law, but in no event for a period of less than three years from the date of completion of any activity funded under the Act or less than three years from the last receipt of program income resulting from activity implementation. The County shall perform all audits of the basic amounts and resulting program income as required under the Act and Regulations.
 - H. The parties mutually agree to take all required actions to comply with the provisions of the National Environmental Policy Act of 1969, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11988, Section 109 of the Housing and Community Development Act of 1974 and all other applicable requirements of the Act and Regulations in the use of basic grant amounts. Nothing in this Article shall be construed to lessen or abrogate the County's responsibility to assume all obligations of an applicant under the Act, including the development of applications pursuant to 24 CFR 570.300 et seq.
 - I. The parties further agree to take all actions necessary to assure compliance with the County's certification required by Section 104 (b) of Title I of the Housing and Community Development Act of 1974, as amended, regarding Title VI of the Civil Rights Act of 1964, the Fair Housing Act, 24 CFR part 100, and affirmatively furthering fair housing. They also agree to assure compliance with section 109 of Title I of the Housing and Community Development Act of 1974 (which incorporates Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975), the Americans with Disabilities Act of 1990, and the implementing regulation at 24 CFR part 146, and Section 3 of the Housing and Urban Development Act of 1968 and other applicable laws. They also agree that the County shall not fund activities in, or in support of, a unit of general local government that does not affirmatively further fair housing within its own jurisdictions or that impedes the County's actions to comply with its fair housing certification.
 - J. The parties further agree that pursuant to 24 CFR 570.501 (b), the Cooperating Community is subject to the same requirements applicable to subrecipients, including a written agreement as set forth in 24 CFR 570.503. Such agreements are only entered into when a Cooperating Community chooses to propose a project and actually will receive funds from the County's entitlement allocation.
 - K. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
 - L. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within jurisdictions.
 - M. The parties further agree that the Cooperating Community may not sell, trade, or otherwise transfer all or any portion of such funds to a metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the Housing and Community Development Act of 1974, as amended.
3. All other terms and conditions of the Agreement, unless specifically amended herein, remain in full force and effect.

The parties have caused this Agreement to be duly executed.

APPROVED AS TO FORM:

/s/ Susan Steffen Tice
For County Attorney

Dated: 7/23/21

WASHINGTON COUNTY, STATE OF MINNESOTA

By: _____
Chair, Washington County Board of Commissioners

Dated: _____

By: _____
Administrator, Washington County

Dated: _____

CITY OF LAKE ELMO

By: _____

Dated: _____

Its: _____

By: _____

Dated: _____

Its: _____