



U.S. Department of Housing and Urban Development
Buffalo Office
465 Main Street
Buffalo, New York 14203-1780
(716) 551-5755

Mr. Cliff Scott, Acting CD Director
City of Niagara Falls Community
Development Office
1022 Main Street
Niagara Falls, NY 14301

Dear Mr. Scott:

SUBJECT: Community Development Block Grant (CDBG) Funds for Hyde Park Project

Per your request, we have reviewed the question of payment for a contractor, Scufari Construction, that completed a City project at the Rose Garden in Hyde Park.

As you are aware, this project was initially included in the City's 2019 Annual Action Plan as PB360 for an amount of \$360,000. The funding for 2019 was obligated by HUD to the City on August 27, 2019. The project appears to have had an Environmental Review, been bid out in October 2019 and awarded to the noted contracting firm in October 2019. In June 2020, the City approved a change order, increasing the project budget.

On July 1, 2020, the City Council approved CDBG budget amendments to eliminate this project, along with others, including another PB360 from 2018 to fund the administration's new priorities of Demolitions and Public Works Street Improvements. The City submitted this amendment (2019 Amendment #1) to HUD in IDIS on August 11, 2020 and was subsequently approved within the week. The City has since funded the new demolition and street activities using the reprogrammed CDBG funds.

These actions were consistent with HUD regulations on amendments at 24 CFR 91.505. The City's public notification process included telling the community and HUD the project was being removed from the AAP/Con Plan. These steps resulted in the removed project no longer being consistent with the Niagara Falls Annual Action Plan. As such, the project became ineligible for the use of CDBG funds. Funding a contractor for completed work that was ineligible for CDBG funding would be in violation of Consolidated Plan regulations at 24CFR 91.221(a)(5).

HUD is sympathetic to the City and recognizes that this conflict was unintentional but using CDBG in this scenario would not be a compliant use of funds. We have consulted with HUD headquarters in Washington and they are in concurrence as to this determination.

We would be happy to continue to work with you on developing strategies to ameliorate this local budget issue. Potential opportunities for solution could include looking at the City's capital budget for upcoming projects that are CDBG eligible and could be funded using available, uncommitted CDBG funds thereby freeing up City resources for the Hyde Park Rose Garden expenses. Of course, adding a new project must also be consistent with the City's Con Plan,

meet a CDBG National Objective and meet all the CDBG requirements including Cost Allowability, Labor Standards, Procurement, Environmental Review, etc – 24 CFR 570. Subpart K.

Another potential solution might include using new upcoming 2021 CDBG funds for City pipeline projects in the same way. Such funding, as you are aware, must still be applied for and awarded, meaning it would not be available until July 1, 2021 at the earliest.

Either way, your CPD Representative Jill Casey, and our team are ready to help find potential solutions and assist the City.

I realize this is not the determination you were seeking but it would be a violation of CDBG regulations and Financial regulations at CFR2 Part 200 to use HUD funds to pay Scufari Construction for the project at the Rose Garden in Hyde Park.

Sincerely,

A handwritten signature in blue ink, appearing to read "William T. O'Connell".

William T. O'Connell
Director
Community Planning and
Development Division