



# City of Grand Island

Tuesday, December 13, 2016

Council Session

## Item G-13

**#2016-304 - Approving CDBG Contract #2016-4 with Downtown Business Improvement District for Small Business Rental Assistance Program**

Staff Contact: Charley Falmlen

# Council Agenda Memo

**From:** Charley Falmlen, Community Development

**Meeting:** December 13, 2016

**Subject:** Approving CDBG Contract #2016-4 with Downtown Business Improvement District for Small Business Rental Assistance Program

**Presenter(s):** Charley Falmlen, Community Development Administrator

## Background

In October 2015, the City of Grand Island was awarded an annual allocation of \$348,927 from the United States Department of Housing and Urban Development's Community Development Block Grant Program. In August 2016, City Council approved the 2016-2017 Annual Action Plan, which included various projects throughout Grand Island, all of which benefit low to moderate income persons or areas. Each one of these projects requires a separate contract, which comes before City Council.

## Discussion

The 2016-2018 Consolidated Plan created by the Community Development Division outlined a priority of "Cultivating Small and Emerging Businesses" partnered alongside the 2016-2018 Consolidated Plan priority of "Creating Re-Investment Opportunities in Downtown." Assessment and planning for these two priorities led to the creation of the Small Business Rental Assistance program by the Community Development Division. At this point and time, the Community Development Division has elected to have this program administered by the Downtown Business Improvement District, as the program closely aligns with the BID's goals for business development and the BID works closely with potential business owners on a regular basis

The rental assistance will be made available to qualifying businesses in Blight and Substandard Area #1, which includes the Downtown Business Improvement District, along with other adjacent business area, including 4<sup>th</sup> Street.

The Downtown BID will develop the application, review applicants, approve applicants, and disperse funds, all under the monitoring requirements of the Community Development Division.

The Downtown BID will have eighteen months to disperse the allotted funds of thirty-five thousand dollars (\$35,000.) Additional funding will not be allocated to this project until all funds from this contract have been dispersed.

### **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council approves CDBG Contract #2016-4 with Downtown Business Improvement District for Small Business Rental Assistance Program and authorizes Mayor to sign all related documents.

### **Sample Motion**

Move to approve CDBG Contract #2016-4 with Downtown Business Improvement District for Small Business Rental Assistance Program.

# SUB-RECIPIENT AGREEMENT

**AGREEMENT BETWEEN CITY OF GRAND ISLAND, NEBRASKA  
AND  
Downtown Business Improvement District  
FOR  
THE CITY OF GRAND ISLAND'S COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

THIS AGREEMENT, entered this 14th day of December 2016, by and between City of Grand Island (herein called the "Grantee" and/or "City") and Downtown Business Improvement District (herein called the "Sub-Recipient").

WHEREAS, the Grantee has applied for and received funds from the U.S. Department of Housing and Urban Development (HUD), under Title 1 of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Sub-Recipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

## ARTICLE 1- PROJECT

### SECTION 1: SCOPE OF SERVICE

#### **A. Activities**

##### 1. General Statement

The Sub-Recipient will assist Small Businesses with rent. The Sub-Recipient will be responsible for administering a Community Development Block Grant (CDBG) program in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the CDBG program:

##### 2. Program Delivery

Activity #1      *Recruit and ensure qualification of potential Small Business Rental Assistance Program Awardees*

Activity #2      *Disperse Small Business Rental Assistance funds under approved financial guidelines.*

Activity #3      *Maintain proper program documentation and required monitoring of Small Business Rental Assistance awardees.*

##### 3. Administration

*This contract allocates no CDBG funding for Project Administration.*

##### 4. Income Benefit Goals

It is anticipated that approximately five to seven (5-7) unduplicated low- to moderate-income clients will be served over the course of this DEFINE-month Agreement. One hundred percent of clients who qualify for this program must be at the 80 percent AMI level (moderate-income) limit or lower.

#### **B. National Objectives**

All activities funded with CDBG funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Sub-Recipient certifies that the activity/activities carried out under this Agreement will meet the national objective of special economic development activity.

**C. Goals and Performance Measures**

The Sub-Recipient agrees to provide the following levels of program services:

<u>Activity</u>	<u>Total Units/Year</u>
Activity #1	N/A
Activity #2	5-7
Activity #3	N/A

*Units of service shall be considered:* Small businesses receiving assistance.

**D. Performance Monitoring**

The Grantee will monitor the performance of the Sub-Recipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Sub-Recipient within a reasonable period of time after being notified by the Grantee, suspension or termination procedures will be initiated.

**SECTION 2: PROJECT DESCRIPTION**

Type of Project: Special Economic Development Activity

Project Location: 310 N. Walnut Street, Grand Island, Nebraska 68801

Service Area: Blight & Substandard Area #1

Matrix Code: 2014-4

Basic Eligibility Citation: 24 CFR 570.203

Amount Funded: \$35,000

**SECTION 3: TERM OF AGREEMENT**

The term of this Agreement is 12/14/2016 through 6/14/2018. The term of this Agreement may be extended should additional time for auditing this project be required, in accordance with law; this Agreement shall be deemed automatically extended until such time as the said audit shall be completed. The provisions herein shall be extended to cover any additional time period during which the Sub-Recipient remains in control of CDBG funds or other CDBG assets, including program income.

Additionally, the Sub-Recipient must comply with a "Continuing Use" requirement, which assures that capital investments will provide long-term, continuous benefits to low- and moderate-income persons or areas. Any projects or capital improvement cost paid with more than \$20,000 and up to \$50,000 in CDBG funds must be able to provide benefits to low- and moderate-income persons or areas for a minimum of five (5) years at the project site. For projects exceeding \$50,000 and up to \$100,000 in CDBG funds, the minimum continuing use is ten (10) years. Projects that exceed \$100,000 to \$150,000 in CDBG funds must be held in the same use for at least fifteen (15) years. Projects that are over \$150,000 to \$200,000 in CDBG funds must be held in the same use for twenty (20) years. Projects that have \$200,000 or more in CDBG funds must continue to serve the low- to moderate-income population for a minimum of twenty-five (25) years.

**SECTION 4: PROGRAM REPORTING**

The Sub-Recipient shall submit such reports as required by the City to meet its local obligations and its obligations to HUD. The City will prescribe the report format, as well as the time and location for submission of such reports. Required reports include, but are not limited to, the following:

- A. Quarterly reports which shall include the progress made to date, or justification for lack of progress, in providing the services specified in Article 1, Section 1: Scope of Services, of this Agreement.
- B. Quarterly reports on demographic and income information regarding persons assisted by the Sub-Recipient through this Agreement.
- C. Closeout reports including a final performance report, inventory of all property acquired or improved by CDBG funds, and final financial report, upon termination or completion of the award.

## **ARTICLE 2- FINANCIAL MANAGEMENT**

### **SECTION 1: PAYMENTS AND BUDGET**

#### **A. General Statement**

The City shall reimburse the Sub-Recipient its allowable costs for the services identified in this Agreement not to exceed thirty-five thousand dollars and zero cents (\$35,000.00) upon presentation of properly executed reimbursement forms as provided by and approved by the City.

Such reimbursement shall constitute full and complete payment by the City under this Agreement. Allowable costs shall mean those necessary and proper costs identified in the Sub-Recipient's application and budget and approved by the City unless any or all such costs are disallowed by the State of Nebraska or HUD.

Any reimbursement made under this Agreement must comply with the applicable requirements of 24 CFR Part 85. The Sub-Recipient may not request disbursement of funds under this Agreement until the funds are needed for payment of allowable costs.

#### **B. Payments**

Reimbursement request must be mailed to: City of Grand Island, Community Development Division, PO Box 1968, Grand Island, Nebraska, 68802 or emailed to charleyf@grand-island.com. Payments shall be made upon receipt of completed reimbursement requests.

Reimbursement payments shall be made directly to Sub-Recipient only.

Payments may be contingent upon certification of the Sub-Recipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

Drawdowns for the payment of allowable costs shall be made against the line item budgets specified in Paragraph C, below, herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph C and in accordance with performance.

#### **C. Budget**

<b><u>Line Item</u></b>	<b><u>Amount:</u></b>
Small Business Rental Assistance Program	\$35,000
<b>TOTAL</b>	<b>\$35,000</b>

In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Sub-Recipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Sub-Recipient.

#### **D. Closeout**

Upon termination of this Agreement, in whole or in part for any reason including completion of the project, the following provisions may apply:

- A. Upon written request by the Sub-Recipient, the City shall make or arrange for payments to the Sub-Recipient of allowable reimbursable costs not covered by previous payments;
- B. Disposition of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee);
- C. The Sub-Recipient shall submit within thirty (30) days after the date of expiration of this Agreement, all financial, performance and other reports required by this Agreement, and in addition, will cooperate in a program audit by the City or its designee; and
- D. Closeout of funds will not occur unless all requirements of 24 CFR 92.507 are met and all outstanding issues with the Sub-Recipient have been resolved to the satisfaction of the City.

The Sub-Recipient's obligation to the Grantee shall not end until all closeout requirements are completed. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Sub-Recipient has control over CDBG funds, including program income.

## **SECTION 2: DOCUMENTATION OF COSTS AND OTHER FINANCIAL REPORTING**

All costs shall be supported by properly executed payrolls, time records, invoices, vouchers or other official documentation, as evidence of the nature and propriety of the charges. All accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible, and upon reasonable notice, the City and HUD shall have the right to audit the records of the Sub-Recipient as they relate to the Agreement and the activities and services described herein. The Sub-Recipient acknowledges the financial oversight requirements of the Sub-Recipient Manual.

## **SECTION 3: REIMBURSEMENT**

The City shall reimburse the Sub-Recipient only for actual incurred costs upon presentation of properly executed reimbursement forms as required by the City in the Sub-Recipient Manual. Only those allowable costs directly related to this Agreement shall be paid. The amount of each request must be limited to the amount needed for payment of eligible costs.

## **ARTICLE 3- GENERAL CONDITIONS AND REQUIREMENTS**

### **SECTION 1: NOTICES**

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, personal delivery or other electronic means, such as email. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Grantee  
City of Grand Island, Community Development  
PO Box 1968  
Grand Island, Nebraska 68802  
308-389-0288  
charleyf@grand-island.com

Sub-Recipient  
Downtown Business Improvement District  
310 N. Walnut Street  
Grand Island, Nebraska 68801  
308-398-7022  
director@arriverailside.com

### **SECTION 2: GENERAL CONDITIONS**

#### **A. General Compliance**

The Sub-Recipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart J and subpart K of these regulations, except that (1) the Sub-

Recipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Sub-Recipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Sub-Recipient also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this Agreement. The Sub-Recipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

The Sub-Recipient shall comply with all applicable Federal laws, regulations, and requirements and all provisions of this Agreement, which include compliance with the provisions of the HCD Act and all rules, regulations, guidelines, and circulars promulgated by the various Federal departments, agencies, administrations, and commissions relating to the CDBG Program. The applicable laws and regulations include, but are not limited to:

- 24 CFR Part 570;
- 24 CFR Parts 84 and 85;
- OMB Circular A-87 "Cost Principles for State and Local Governments," or OMB Circular A-110, or OMB Circular A-122 "Cost Principles for Non-Profit Organizations," or OMB Circular A-21 "Cost Principles for Educational Institutions";
- OMB Circular A-128, "Audits of State and Local Governments" or OMB Circular A-133 "Audits of Institutions of Higher Education and Other Non-Profit Institutions";
- The Davis-Bacon Fair Labor Standards Act;
- The Contract Work Hours and Safety Standards Act of 1962;
- Copeland "Anti-Kickback" Act of 1934;
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA);
- Title VI of the Civil Rights Act of 1964; (Public Law 88-352 implemented in 24 CFR Part 1)
- Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (Public Law 90-234 and Executive Order 11063 as amended by Executive Order 12259 (implemented in 24 CFR Part 107);
- Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
- Section 3 of the Housing and Urban Development Act of 1968;
- Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
- Non-discrimination in employment, established by Executive Order 11246 (as amended by Executive Orders 11375 and 12086);
- Section 504 of the Rehabilitation Act of 1973 Uniform Federal Accessibility Standards;
- The Architectural Barriers Act of 1968;
- The Americans With Disabilities Act (ADA) of 1990;
- The Age Discrimination Act of 1975, as amended;
- National Environmental Policy of 1969 (42 USC 4321 et seq.), as amended;
- Lead Based paint regulations established in 24 CFR Parts 35, 570.608, and 24 CFR 982.401;
- Asbestos guidelines established in CPD Notice 90-44;
- HUD Environmental Criteria and Standards (24 CFR Part 51);
- The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39;
- Historic Preservation Act of 1966, as amended, and related laws and Executive Orders;
- Executive Order 11988, Floodplain Management, 1977 (42 FR 26951 et seq.);
- Flood Disaster Protection Act of 1973.
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#### B. "Independent Contractor"

Nothing contained in this Agreement is intended, or shall be construed in any manner to create or establish the relationship of employer/employee between the Grantee and the Sub-Recipient. The Sub-Recipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Sub-Recipient is an independent contractor.



### C. Hold Harmless

To the extent permitted by law, the Sub-Recipient agrees to hold harmless, defend and indemnify the City and its appointed and elected officers and employees from and against any and all liability, loss, costs, damage and expense, including costs and attorney fees in defense thereof because of any actions, claims, lawsuits, damages, charges and judgments whatsoever that arise out of the Sub-Recipient's performance or nonperformance of the services or subject matter called for in this Agreement.

### D. Workers' Compensation

The Sub-Recipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

### E. Insurance & Bonding

The Sub-Recipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee. The Sub-Recipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48.

The certificates of insurance shall be provided to the City by the Sub-Recipient's insurance agent or carrier as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. Insurance limits must be on each Certificate of Insurance. Each Certificate of Insurance shall be reviewed and approved by the City prior to commencement of this Agreement. No other form of certificate shall be used.

The Sub-Recipient will not be relieved of any liability, claims, demands, or other obligations assumed by its failure to procure or maintain insurance, or its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Failure on the part of the Sub-Recipient to procure or maintain policies providing the required coverages, conditions and minimum limits will constitute a material breach of this Agreement, upon which the City may immediately terminate this contract.

### F. Licensing

The Sub-Recipient agrees to comply with and obtain at its own expense, if necessary, all applicable Federal, State, City or Municipal standards for licensing, certifications and operation of facilities and programs, and accreditation and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

In the event of an investigation or suspension regarding any Sub-Recipient license related to the services for which the City is providing funding under this Agreement, the City may terminate this Agreement and withhold further Agreement funds. In addition, monies already received under this Agreement may be owed back to the City.

### G. Amendments

The parties may amend this Agreement at any time provided that such amendments make specific reference to this Agreement and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Sub-Recipient from its obligations under this Agreement. The Grantee may, in its discretion, amend this Agreement to conform with Federal, State or local governmental guidelines, policies or available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Sub-Recipient.

### H. Failure to Perform

In the event of a failure by the Sub-Recipient to comply with any terms or conditions of this Agreement or to provide in any manner activities or other performance as agreed herein, the City reserves the right to temporarily withhold all or any part of payment pending correction of the deficiency, suspend all or part of

the Agreement, or prohibit the Sub-Recipient from incurring additional obligation of funds until the City is satisfied that corrective action has been taken or completed. The option to withhold funds is in addition to, and not in lieu of the City's right to suspend or terminate this Agreement. The City may consider performance under this Agreement when considering future awards.

#### I. Suspension or Termination

The Grantee may pursue such remedies as are available to it in accordance with 24 CFR 85.43, including but not limited to suspension or termination of this Agreement, if the Sub-Recipient materially fails to comply with any terms or conditions of this Agreement, which include, but are not limited to, the following:

- A. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
- B. Failure, for any reason, of the Sub-Recipient to fulfill in a timely and proper manner its obligations under this Agreement;
- C. Ineffective or improper use of funds provided under this Agreement;
- D. Submission by the Sub-Recipient to the Grantee reports that are incorrect or incomplete in any material respect; or
- E. Failure to take satisfactory corrective action as directed by the City.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Sub-Recipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. If, in the case of a partial termination, however, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

In the event that funding from the Federal government is withdrawn, reduced or limited in any way after the effective date of this Agreement but prior to its normal completion, the City may summarily terminate this Agreement as to the funds reduced or limited, notwithstanding any other termination provisions of this agreement.

Termination under this Section shall be effective upon receipt of written notice.

In the case of a suspension or termination, monies already received under this Agreement may be owed back to the City and the City may also declare the Sub-Recipient ineligible for further participation in the CDBG program.

## **SECTION 2: MONITORING**

The Sub-Recipient acknowledges the Administrative and Monitoring requirements of the Sub-Recipient Manual, including but not limited to file retention and documentation of low-moderate income levels.

## **SECTION 3: SPECIAL CONDITIONS**

### A. Civil Rights

#### **1. General Compliance**

The Sub-Recipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

#### **2. Nondiscrimination**

The Sub-Recipient agrees to comply with the nondiscrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by

Executive Order 13279. The applicable nondiscrimination provisions in Section 109 of the HCDA are still applicable, which stipulates that no person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part pursuant to agreement.

- Additionally, the Sub-Recipient shall not, on the grounds of race, color, sex/gender, sexual orientation, familial status, religion, national origin, creed, ancestry, marital status, age or disability or handicap:
  - A. Deny a qualified individual any facilities, financial aid, services or other benefits provided under this Agreement;
  - B. Provide any facilities, financial aid, services or other benefits which are different, or are provided in a different manner, from those provided to others under this Agreement;
  - C. Subject an individual to segregated or separate treatment in any facility, or in any matter if process related to receipt of any service or benefit under this Agreement;
  - D. Restrict an individual's access to or enjoyment of any advantage or privilege enjoyed by others in connection with any service or benefit under this Agreement;
  - E. Treat anyone differently from others in determining if they satisfy any admission, enrollment, eligibility, membership or other requirement or condition which the individual must meet to be provided a service or a benefit under this Agreement.
  - F. Deny anyone an opportunity to participate in any program or activity as an employee which is different from that afforded others under this agreement.

If assignment and/or subcontracting has been authorized in writing, said assignment or subcontract shall include appropriate safeguards against discrimination in client services binding upon each contractor or subcontractor. The Sub-Recipient shall take such actions as may be required to ensure full compliance with the provisions, including sanction for noncompliance.

### **3. Land Covenants**

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Sub-Recipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Sub-Recipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

### **4. Section 504**

The Sub-Recipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Sub-Recipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

### **5. Architectural Barriers Act/Americans with Disabilities Act**

The Sub-Recipient shall meet the requirements, where applicable, of the Architectural Barriers Act and the Americans with Disabilities Act, as set forth in 24 CFR 570.614. A building or facility designed, constructed, or altered with funds allocated or reallocated under CDBG program after December 11, 1995 and that meets the definition of a "residential structure" as defined in 24 CFR Part 40.2 or the definition of a "building" as defined in 41 CFR Part 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 USC 4151-4157) and shall comply with the Uniform Federal Accessibility

Standards. The Americans with Disabilities Act ("ADA") (42 USC 12131; 47 USC 155, 210, 218, and 255) requires that the design and construction of facilities for first occupancy after January 26, 1993 must include measures to make them readily accessible and usable by individuals with disabilities. The ADA further requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

## **B. Affirmative Action**

### **1. Approved Plan**

The Sub-Recipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program, in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966.

### **2. Women- and Minority-Owned Businesses (W/MBE)**

The Sub-Recipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Sub-Recipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

### **3. Access to Records**

The Sub-Recipient shall furnish and cause each of its own Sub-Recipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

### **4. Notifications**

The Sub-Recipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Sub-Recipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

### **5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement**

The Sub-Recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Sub-Recipient, state that it is an Equal Opportunity and Affirmative Action employer.

The Sub-Recipient shall comply with Executive Order 11246 as amended by Executive Order 12086 and the regulations issued pursuant thereto (41 CFR Chapter 60), and will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Sub-Recipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

The Sub-Recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

### **6. Subcontract Provisions**

The Sub-Recipient will include the provisions of Section 5. A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Sub-Recipients or subcontractors.

## **7. "Section 3" Clause**

### **A. Compliance**

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued thereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Sub-Recipient and any of the Sub-Recipient's Sub-Recipients and subcontractors. Failure to fulfill these requirements shall subject the Sub-Recipient and any of the Sub-Recipient's Sub-Recipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Sub-Recipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Sub-Recipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Sub-Recipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs. The Sub-Recipient further agrees to award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Sub-Recipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

## **8. Grantee Recognition**

The Sub-Recipient shall ensure recognition of the role of the City in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to the funding source. In addition, the Sub-Recipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

**SECTION 4: SUB-RECIPIENT MANUAL RECEIPT CERTIFICATION**

The Sub-Recipient certifies that it has received the City of Grand Island’s Sub-Recipient Manual in either print or electronic format from the Grantee. The Sub-Recipient further certifies and agrees that it is the Sub-Recipient’s obligation as a part of this Agreement to read and understand the Manual.

**SECTION 5: SEVERABILITY**

It is understood and agreed by the parties that if any part, term, or provision of this Agreement is held by the courts to be invalid, illegal or in conflict with any law, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

**SECTION 6: SUCCESSORS**

This Agreement shall be binding upon each of the parties, their assigns, purchasers, trustees, and successors.

**SECTION 7: ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Grantee and the Sub-Recipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Sub-Recipient with respect to this Agreement.

**SECTION 8: NO THIRD-PARTY BENEFICIARIES**

Except as expressly provided otherwise, this Agreement is intended to be solely for the benefit of the parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause or action or other right.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the most recent signatory.

Grantee: **City of Grand Island, Nebraska**

Date \_\_\_\_\_

By \_\_\_\_\_  
Jeremy L. Jensen, Mayor, City of Grand Island

Attest:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Stacy R. Nonhof, Assistant City Attorney

Sub-Recipient: **Downtown Business Improvement District**

Date \_\_\_\_\_

By \_\_\_\_\_  
Christie DePoorter, Executive Director

Date \_\_\_\_\_

By \_\_\_\_\_  
Tom Ziller, Board President

RESOLUTION 2016-304

WHEREAS, the City of Grand Island, Nebraska was awarded a \$348,927 as part of the United States Department of Housing and Urban Development's Community Development Block Grant (CDBG) Program; and

WHEREAS, City Council approved the 2016-2017 Annual Action Plan; and

WHEREAS, Habitat for Humanity is eligible to make use of the CDBG Funds; and

WHEREAS, the City must enter into a Sub-Recipient Agreement with each organization to identified in the 2016-2017 Annual Action Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that The City of Grand Island, Nebraska is hereby authorized to enter into a Sub-Recipient Agreement with Habitat for Humanity and the Mayor is hereby authorized and directed to execute such contracts.

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Adopted by the City Council of the City of Grand Island, Nebraska, December 13, 2016.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☒ _____
December 9, 2016	☒ City Attorney