

City of Scottsbluff, Nebraska

Tuesday, January 19, 2021

Regular Meeting

Item Reports5

Council to discuss and consider action on authorizing the Mayor to sign the State of Nebraska Department of Economic Development CDBG Contract for Owner-Occupied Property Rehabilitation.

Staff Contact: Starr Lehl, Economic Development Director

**STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT
CONTRACT NO. 20-HO-31041
Owner-Occupied Property Rehabilitation
CFDA #14.228**

This contract is entered into between the State of Nebraska Department of Economic Development ("Department") and the City of Scottsbluff, Nebraska ("Grantee") upon the date of signature by both parties.

RECITALS:

A. The United States Department of Housing and Urban Development ("HUD") has designated the Department as administrator of and has awarded the Department funds for the Community Development Block Grant Program ("CDBG").

B. The Grantee submitted an application ("Application") to undertake community development activities ("Project") authorized under the Housing and Community Development Act of 1974 ("HCDA" or "Act") and its corresponding federal regulations (24 C.F.R. Part 570) using CDBG funds.

C. The Grantee has submitted an application ("Application") to the Department setting forth a project which will undertake community development activities authorized under the Act using CDBG funds. The Application has been approved and is incorporated herein by this reference. The CDBG Funds will be used for owner-occupied housing rehabilitation assistance for low-to-moderate income Nebraskans. The project consists of assisting housing units located, or to be located, in Scottsbluff, Nebraska (the "Project"). The units and the project requirements are further described in the Application and in the *Table of Project Requirements* found on the next page of this contract.

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All percentage references in this table, e.g. 60%, include the implied phrase "at or below" prior to the % and the implied phrase "of the area median income per the most recent HUD income limits" after the %.

Table of Project Requirements (for homebuyer assistance, or owner-occupied rehabilitation, project)						
Requirement Descriptions			Data/Comment			
Total number of units in the Project→			25			
Total number of CDBG-assisted units→			25			
Number of CDBG units 80% for HOME Low-Income Limits			25			
Number of CDBG units 60% for HOME 60% Income Limits x 2			00			
Number of CDBG units 50% for HOME Very Low-Income Limits			00			
Affordability period, if any (source and duration)→			<input type="checkbox"/> HUD-imposed affordability period, specified in Part III of this contract		<input checked="" type="checkbox"/> Nebraska-imposed affordability period, specified in Part III of this contract	
Categories of homebuyers/homeowners to be served→	<input checked="" type="checkbox"/> No restrictions	<input type="checkbox"/> Elderly aged 62 and older	<input type="checkbox"/> Elderly aged 55 and older	<input type="checkbox"/> Persons w/ disabilities (particulars below*)	<input type="checkbox"/> 'Other' (particulars below*)	[Reserved]
*Particulars as to persons w/disabilities or as to 'Other' category→ Not applicable.						

AGREEMENT:

Premised on the Recitals above and in consideration of the mutual promises and understandings of the parties set forth below, the parties agree as follows:

PART I: TERMS AND CONDITIONS.

§1.01 Amount, Use, and Payment of CDBG Funds.

The total amount of CDBG funds to be paid by the Department to the Grantee for allowable expenses incurred will not exceed **Seven Hundred Thirty-Two Thousand Five Hundred Dollars (\$732,500)**.

The *Nebraska Community Development Block Grant Program Administration Manual* ("Administration Manual") describes many restrictions governing the receipt of CDBG funds from the Department. Included among those restrictions are limitations on the amount of CDBG funds the Grantee is allowed to use for administration expenses. Only **Twenty Thousand Dollars (\$20,000)** of CDBG funds may be used for approved administrative and audit expenses.

The CDBG funds granted to the Grantee must be used to fund the Project as detailed in the Application. The Project generally involves housing rehabilitation, housing management, and lead-based paint test & risk assessments/clearance in Scottsbluff, Nebraska.

Requests by the Grantee for reimbursement of Project administration expenses will not be paid by the Department unless a CDBG Certified Administrator has been identified and is administering the Project at the time of each request for reimbursement of administration expenses. This requirement is applicable at all times throughout Project completion (including final Project reports).

To request payment of allowable expenses, the Grantee must submit a request for payment in the manner and form prescribed by the Department to the Housing and Community Development Division, Department of Economic Development, 301 Centennial Mall South, P.O. Box 94666, Lincoln, Nebraska 68509-4666.

§1.02 Time of Performance.

The time of performance for this contract shall commence on November 18, 2020 and terminate on November 17, 2022. All of the required activities and services, except for submission of final reports, administration, and audit, must be completed on or before this date. The provisions of this contract that survive the termination date are specified in Part IV.

§1.03 Program Income.

Program income is regulated by the provisions of 24 C.F.R. §570.489(e). The exact text of this regulation should be consulted for definitions and other guidance concerning program income.

Program income generally means any gross income received by the Grantee or a subrecipient of the Grantee that was generated from the use of CDBG funds; however, some exceptions are detailed in 24 C.F.R. §570.489(e)(2). Program income includes, but is not limited to, the following:

- payments of principal and interest on loans made using CDBG funds;
- proceeds from the disposition (by sale or long-term lease) of real property purchased or improved with CDBG funds;
- proceeds from the disposition of equipment purchased with CDBG funds;
- interest earned on program income pending its disposition;
- interest earned on CDBG funds held in a revolving loan fund's cash balance interest-bearing account.

All program income received prior to the completion of the approved grant activities must be applied to those activities prior to requesting additional CDBG funds from the Department. In other words, the Grantee's pool of program income must be the "first out" and must be fully depleted before it may request "new" CDBG funds from the Department.

The Grantee agrees to treat all received and/or retained program income as additional CDBG funds subject to all requirements applicable to the CDBG Program. Additionally, the Grantee agrees to submit regularly occurring reports to the Department regarding program income and agrees, upon the Department's request, to maintain a contractual relationship with the Department for the duration of the time period in which the Grantee maintains program income.

§1.04 National Objective Requirement.

The Grantee must fulfill the national objective of benefiting low-to-moderate income persons. Failing to fulfill a national objective will result in the disallowance of CDBG funding for the Project, and CDBG regulations require the Grantee to repay all CDBG funds to the Department.

§1.05 Conduct of Local Project; Amendments to Local Program Guidelines.

The Grantee's Project must be conducted in the manner, under the criteria, and according to the standards established in the Grantee's guidelines, which were submitted to the Department in the Application or as required by Part II of this contract. The Project must also be conducted in accordance with the Administration Manual.

Any amendments to the Grantee's guidelines which materially change their form and content as originally submitted must be approved by the Department in writing.

§1.06 Incorporation of RECITALS as Agreed Terms of Contract.

All provisions of the RECITALS above are incorporated as agreed provisions of the contract.

PART II: SPECIAL CONDITIONS FOR RELEASE OF FUNDS.

Funding of the amount stipulated in §1.01 will not be released until the following special conditions for release of funds are met. These special conditions must be satisfactorily completed no later than February 18, 2021. The Department reserves the right to cancel the contract if these special conditions are not met by this date.

§2.01 Grantee Information Sheet.

The Grantee must submit a completed Program Grantee Information Sheet to the Department as prescribed.

§2.02 Environmental Review.

The Grantee must submit documentation to the Department evidencing the completion of its responsibilities for environmental review and decision making pertaining to the Project

and its compliance with the National Environmental Policy Act of 1969 (NEPA) and other provisions of federal law, as specified in 24 C.F.R. Part 58, which further the purposes of NEPA.

The Grantee agrees to assume all of the responsibilities for Environmental Review, decision making and action, as specified and required in Section 104(g) of Title I of the Housing and Community Development Act of 1974 (Public Law 93-383), as amended. The Grantee shall not allow any subrecipient to assume the grantee's Environmental Review responsibilities.

§2.03 Authorization to Request Funds Form.

The Grantee must complete and return an Authorization to Request Funds form as prescribed by the Department.

§2.04 Financial Management.

The Grantee must submit documentation evidencing completion of all financial management system requirements and execution of the financial management certification form prescribed by the Department.

§2.05 Procurement Standards.

The Grantee must submit documentation to the Department evidencing adoption of appropriate procurement standards in compliance with provisions of federal law including, but not limited to, 24 C.F.R. Part 85, 24 C.F.R. §570.489, and 2 C.F.R. §§200.318 through 200.326 (with emphasis on the provisions in 2 C.F.R. §200.322 regarding procurement of recovered materials). Such procurement standards must include written standards of conduct covering conflicts of interest and governing the actions of the Grantee's employees engaged in the selection, award, and administration of contracts.

These standards do not relieve the Grantee of any contractual responsibilities under its contracts. The Grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into support of a grant. These include but are not limited to source evaluation, protests, disputes, and claims.

§2.06 Excessive Force Certification.

The Grantee must provide documentation that it has adopted a policy to prohibit the use of excessive force by local law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.

§2.07 Fair Housing.

The Grantee must submit documentation identifying its fair housing representative, and it must include the representative's name and contact information. The Grantee must submit a description of the actions it will take during the course of the Project to fulfill any requirements to affirmatively further fair housing and must also submit documentation demonstrating the actions that were actually taken, including the details of such actions (e.g. when the actions occurred, who participated, who benefitted, etc.). The requirement to submit documentation demonstrating the actions that were actually taken need not be submitted within the time frame for completion of the special conditions, but such documentation must be submitted prior to closeout of the grant. The Department's Administration Manual contains additional detail about affirmatively furthering fair housing.

§2.08 [RESERVED].

§2.09 CDBG Certified Administrator Required.

The Grantee must submit documentation identifying the CDBG Certified Administrator that will be used for the Project. The Department's Administration Manual contains details about the certification process. Reimbursement of Project expenses will not be paid by the Department unless a CDBG Certified Administrator is identified and administering the Project at the time of the request for reimbursement.

§2.10 Limited English Proficiency.

The Grantee must submit documentation evidencing completion of its responsibilities to ensuring meaningful access to the Project activities and services for persons with Limited English Proficiency ("LEP") as required by Title VI of the Civil Rights Act of 1964; Executive Order 13166; and HUD's final "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons", which was published in the Federal Register on January 22, 2007 and which became effective on March 7, 2007 ("HUD LEP Guidance").

Such documentation must include all of the following: (1) information identifying the LEP representative for the Grantee, including the representative's name and contact information; (2) a Four Factor Analysis that is consistent with the HUD LEP Guidance; and (3) a description of the actions the Grantee will take during the course of the Project to fulfill the requirements to provide meaningful access to LEP persons. If deemed necessary as a result of the Four Factor analysis, the Grantee will also prepare and submit to the Department a Language Access Plan ("LAP") that includes all elements of an effective LAP as defined by HUD.

The Grantee must also submit documentation demonstrating LEP services provided and

keep records of all requests for LEP services and all LEP services actually provided. The requirement to submit documentation demonstrating the LEP services provided need not be submitted within the time frame for completion of the special conditions, but such documentation must be submitted prior to closeout of the grant.

§2.11 Other Special Conditions.

All of the following must be approved, in writing, as acceptable to the Department, by the Department's Program Representative for Grantee's Project:

- (a) The Grantee's plan for reuse of program income derived from the Grantee's Project.
- (b) If applicable to Grantee's Project, Grantee's rehabilitation procedures incorporating HUD's lead-based paint regulation requirements.
- (c) Documentation evidencing official adoption by the Grantee of formal, written Housing Rehabilitation Program Guidelines matching those in the Application, which must include eligibility criteria and standards for assisting rehabilitation.

PART III: SOURCES AND USES OF FUNDS; OTHER REQUIREMENTS.

§3.01 Sources and Uses of Funds.

SOURCES→	CDBG	OTHER	TOTAL
USES (Activities)↓			
14A Owner Occupied Rehabilitation	\$625,000	\$0	\$625,000
14H Housing Management	\$50,000	\$0	\$50,000
14I Lead-Based Paint/Lead Hazards Testing	\$37,500	\$0	\$37,500
12A General Program Administration	\$20,000	\$0	\$20,000
TOTAL	\$732,500	\$0	\$732,500

The Sources and Uses of Funds table above reflects:

- The anticipated total costs of the CDBG-assisted Project.
- The CDBG-assisted activities being funded.
- The sources and amounts of other matching funds required for each activity.
- The maximum authorized CDBG funds for each CDBG-assisted activity.
- The ratio (derived by computation, not expressly shown) of CDBG funds to other matching funds for each CDBG-assisted activity that is a further limitation upon the maximum authorized CDBG funds which may be paid for each activity. The ratio is invoked as a limitation if the actual total costs of the activity are less than anticipated.

[An example illustrates this point: If the anticipated cost of an activity, such as the acquisition of equipment, was \$100,000—with \$40,000 to be from CDBG funds and \$60,000 to be from the benefited business—but the actual cost of the equipment turned out to be \$90,000, then the 40% ratio limits CDBG funding to \$36,000 rather than the \$40,000 originally anticipated.]

- The proportionality (derived by computation, not expressly shown) of funding from all funding sources for each activity and for the Project in total. Disbursement of CDBG funds will be made only on a pro rata basis with all other funding sources for each activity and for the Project in total. CDBG funds will not be the first funds invested in the Project, but rather CDBG funds will flow into the Project in proportion to all other funding sources.

§3.02 Use of Grant Proceeds.

The grant funds will be used by the Grantee to fund the Project as described in Paragraph C of the Recitals. The Grantee recognizes and agrees that implementation of the local Project as set forth in the Application is the responsibility of the Grantee.

§3.03 Recapture of CDBG Funds.

Beginning the date of Project completion, the CDBG-assisted units are subject to certain requirements *for the affordability period established in the Grantee's program guidelines as reflected in the Application or reflected in the following table, whichever is longest:*

CDBG funds invested per CDBG-assisted unit:	State imposed length of period of affordability (recapture period):
Under \$15,000	5 years
\$15,000 to \$40,000	5 years
Over \$40,000	5 years

The requirements are: (1) that the housing units be owned by and be the principal residence of the assisted homebuyer or the rehabilitation assisted owner-occupier for the period of affordability established above and (2) that those homebuyers or owner-occupiers assisted must be in the income categories established as a Project requirement in the *Table of Project Requirements* in Paragraph C of the Recitals of this contract for the period of affordability established above.

Assistance to beneficiaries under the local program must be secured by an appropriate lien instrument, such as a mortgage or deed of trust. The lien instrument must be properly recorded and must require, at a minimum, a proportionate repayment by the assisted beneficiary if non-compliance with the local program requirements occurs during the affordability period appropriate for the particular CDBG-assisted unit (measured from the time assistance was initiated). The following example illustrates the required recapture concept:

If the housing does not continue to be the principal residence of the original rehabilitation assisted owner-occupier for the duration of the period of affordability, then recapture provisions must be invoked to ensure recouping of CDBG assistance funds. The Grantee may invoke any of several recapture options depending on the Grantee's program guidelines, but the following is required at a minimum:

CDBG funds assistance to be recaptured may be reduced on a pro rata basis by dividing the years (rounded down to the nearest whole year) since the original rehabilitation assisted owner-occupier was provided the grant by the required affordability/recapture period. Example: An owner-occupier was granted \$10,000 of CDBG funds, it has been two (2) years since the original rehabilitation occurred, and the required affordability/recapture period is five (5) years. The calculation of the pro rata required recapture would be:

- (years since rehab (2) ÷ affordability/recapture period (5)) × grant amount (\$10,000) = \$4,000 pro rata credit.
- Total CDBG-assistance (\$10,000) minus the pro rata credit (\$4,000) = \$6,000 to be recaptured.

Upon request, the Grantee must provide documentation to the Department showing execution of any appropriate loan and security interest documents (e.g. promissory note and/or recapture restrictions in a mortgage) between the Grantee and the persons assisted through the Program.

Recapture restrictions may terminate upon the occurrence of events such as foreclosure or a transfer in lieu of foreclosure; however, recapture restrictions shall be revived according to their original terms if, during the original recapture period, the owner of record before the termination event or any newly formed entity that includes the former owner or those with whom the former owner has or has had familial or business ties obtains an ownership interest in the housing unit.

PART IV: OTHER CONTRACTUAL CONDITIONS.

§4.01 Matching Requirements.

The Grantee agrees to provide matching and other leveraged funds for each approved activity in the amounts, ratios, and proportions set forth in Part III. Matching and other leveraged funds must be expended during the grant period.

With each request for CDBG funds, the Grantee is required to certify the amount of matching funds applied to the Project. Project costs are to be paid from grant and matching funds as specified in Part III. The Grantee will be responsible for costs that exceed the total Project costs.

§4.02 Legal Authority; Acceptance of Environmental Review Responsibility.

By signing this contract, the Grantee certifies that it possesses the legal authority to accept CDBG funds and to carry out the Project described in this contract and that the Grantee's chief elected official:

- (a) Consents to assume the status of responsible federal official and the responsibilities for environmental review and decision making under the National Environmental Policy Act of 1969 (NEPA) and other provisions of federal law as specified in 24 C.F.R. Part 58 which further the purposes of NEPA; and
- (b) Is authorized and consents, on behalf of the Grantee, to accept the jurisdiction of the federal courts for the purpose of enforcement of their responsibilities as such responsible federal official.

§4.03 Designation of Officials to Execute Contract and Amendments.

The Director of the Department or their designee is the official authorized to execute this contract and any amendments to this contract on behalf of the Department.

The Chief Elected Official of the Grantee or their designee is the official authorized to execute this contract and any amendments to this contract on behalf of the Grantee.

Either party may request amendments to this contract. Amendments will not take effect until mutually agreed to in writing by both parties.

§4.04 Grantee Compliance with CDBG Regulations and Uniform Administrative Requirements.

The Grantee must comply with all applicable CDBG Regulations in 24 C.F.R. Part 570. The Grantee must also comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth in this contract and in 2 C.F.R. Part 200 (which have been adopted by HUD through 2 C.F.R. Part 2400) or any reasonably equivalent procedures and requirements that the Department may prescribe.

In particular, the Grantee agrees to establish internal controls in order to have reasonable assurance that the Grantee is carrying out the Project in compliance with federal statutes, regulations, and the terms and conditions of this contract, as required by 2 C.F.R. §200.303. The Grantee also agrees to comply with provisions regarding the protection of personally identifiable information, as required by 2 C.F.R. §200.303 and 2 C.F.R. §200.512.

§4.05 Record Keeping.

The Grantee agrees to keep the following records: (1) records as specified in 24 C.F.R.

§570.506 *Records to be Maintained*; (2) adequate documentation to support costs charged to the CDBG Program; (3) records detailing procurement procedures followed by Grantee; (4) records that include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the Project, as required by 24 C.F.R §570.490 for fair housing and equal opportunity purposes; and (5) any other records as the Department may reasonably require. The Grantee agrees to keep such records so the Department can perform a 24 C.F.R. §570.492 *State's review and audits*.

All records pertinent to this grant and work undertaken as part of the Project must be retained by the Grantee for the period required by 2 C.F.R. §200.333 (as interpreted by HUD and applied to the CDBG Program through 24 C.F.R. §570.490). The Grantee also agrees to comply with the methods for collection, transmission, and storage of information as described in 2 C.F.R §200.335.

The Department and any duly authorized official of the state and federal government will have full access to and the right to examine, audit, excerpt, and/or transcribe any of the Grantee's records pertaining to all matters covered by this contract. The Grantee agrees to transfer records pertinent to this grant and work undertaken as part of the Project to the Department upon request.

§4.06 Reports.

The Grantee must submit timely reports to the Department, in such form as it may prescribe, pertaining to the activities undertaken as a result of this contract. The Grantee will also be required to submit a final performance and financial report, in such form as the Department may prescribe, at grant closeout.

All semiannual reports must be submitted to the Department no later than thirty (30) days following the end of the reporting period. All final performance and financial reports must be submitted to the Department no later than ninety (90) days after the termination date of this contract. Additionally, prior to closeout, the Grantee must submit documentation demonstrating the actions that were taken to affirmatively further fair housing and demonstrating the LEP services provided by the Grantee during the course of the grant.

Failure to report as required or respond to requests for data or information in a timely manner may be grounds for suspension or termination of the Grant.

§4.07 Cost Principles; Audits; Post-Closeout Adjustments and Continuing Responsibilities.

The Grantee is responsible for the efficient and effective administration of the CDBG funds provided to it under this contract. The Grantee agrees to administer the CDBG funds in a manner consistent with this contract, HUD's administrative requirements for the CDBG Program, the provisions of the Department's Administration Manual, and all

federal and state laws, regulations, and executive orders applicable to the CDBG-assisted Project.

Generally Accepted Government Auditing Standards (GAGAS) must be followed, and audits of this grant will be conducted in accordance with the Single Audit Act of 1984, as amended, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200 (which have been adopted by HUD through 2 C.F.R. Part 2400). The Grantee is required by 2 C.F.R §200.512 to submit the required audit reporting package to the Federal Audit Clearinghouse (“FAC”) within thirty (30) calendar days after receipt of the auditor's reports or nine (9) months after the end of the audit period, whichever is earlier. Audit costs are an allowable general administration cost subject to limitations established by the applicable law and the Department.

The closeout of this grant does not affect the right of the Department or any duly authorized official of the state and federal government to disallow costs and recover funds from the Grantee on the basis of a later audit or other review. In other words, the obligation of the Grantee to return any funds due as a result of an audit is not affected by closeout of this grant.

§4.08 Conflict of Interest.

The Grantee will comply with the conflict of interest prohibitions set forth for the CDBG Program in 24 C.F.R. §570.489 and 2 C.F.R. §200.318 and in the Grantee's written standards of conduct covering conflicts of interest submitted to the Department as required by §2.05. In the event prohibited conflicts of interest arise, the Grantee must inform the Department of such conflicts of interest as soon as possible. Exceptions to the prohibition may be granted by the Department on a case-by-case basis.

§4.09 Applicability to Subrecipients and Contractors.

All provisions of this contract will be made binding on any subrecipient or contractor of the Grantee, and the Grantee will, nonetheless, remain fully obligated under the provisions of this contract.

Any such subrecipient or contractor of the Grantee must be authorized to transact business in the State of Nebraska. All subrecipients and contractors are expected to comply with all Nebraska Secretary of State and Department of Revenue registration requirements, including any registration requirements pertaining to types of business entities (e.g. sole proprietorship, partnership, foreign/domestic limited liability company, association, or foreign/domestic corporation). Construction contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certificate of registration to the Grantee for its records.

Upon request of the Department, the Grantee must submit copies of written agreements executed between the Grantee and any subrecipients or contractors relating to the

Project.

§4.10 Funding Source Recognition.

Prior to referring to the Project or Project activities in publications, the Grantee must inform the Department and, if requested, include a reference to the CDBG funding made available for the Project.

§4.11 Intellectual Property.

If the Project results in any copyrightable material or inventions, the Department and/or the State of Nebraska reserves the right to a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and/or authorize others to use the work or materials for governmental purposes.

§4.12 Religious Activities.

The Grantee agrees that CDBG funds provided under this contract will not be used for inherently religious activities, such as worship, religious instruction, or proselytization, prohibited by 24 C.F.R. 570.200(j).

§4.13 Title, Use, and Disposition of Property/Supplies/Equipment; Insurance.

The Grantee agrees to comply with the provisions of 2 C.F.R. §§200.311 through 200.316 regarding the title, use, and disposition of property, supplies, and equipment. In accordance with 2 C.F.R. §200.310, the Grantee agrees to, at a minimum, provide insurance coverage that is equivalent to the insurance it provides for its other property for the real property and equipment acquired or improved with CDBG funds.

§4.14 Reversion of Assets.

Consistent with the provisions at 24 CFR 570.703, the Grantee shall transfer any CDBG funds on hand at the time of expiration of the Agreement and any accounts receivable attributable to the use of CDBG funds to the Department.

Any real property under the Grantee's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 shall be used for its original intended purpose for five years after expiration of the agreement. Should the Grantee fail to utilize said property for its intended purpose, the Grantee shall pay the Department an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

§4.15 Anti-Lobbying.

To the best of the Grantee's knowledge and belief: no federal appropriated funds have been paid or will be paid by or on behalf of the Grantee to any person for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Grantee must complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.

§4.16 Waivers; Non-Waiver of Rights; Assignment of Interest; Severability.

No conditions or provisions of this contract can be waived unless approved by the Department in writing.

The Department's failure to insist upon the strict performance of any provision of this contract or to exercise any right based upon breach will not constitute a waiver of any rights under this contract.

The Grantee may not assign or transfer any interest in this contract to any other party without the written consent of the Department.

If any provision of this contract or its application to any person or circumstances is held invalid by any court of competent jurisdiction, the invalidity will not affect other provisions of this contract.

§4.17 Early Termination; Termination by Mutual Agreement.

The Department may terminate this contract for any reason upon sixty (60) days written notice to the Grantee.

This contract may also be terminated, in whole or in part, prior to the completion of project activities when both parties agree that continuation is not feasible or would not produce beneficial results commensurate with the further expenditure of funds. In the event of mutual termination, the parties must agree on the termination conditions, including the effective date and the portion to be terminated.

The Grantee may not incur new obligations for the terminated portion after the effective date and must cancel as many outstanding obligations as possible. The Department will make funds available to the Grantee to pay for allowable expenses incurred before the effective date of termination.

§4.18 Termination for Cause.

In the event of a default or violation of the terms of this contract by the Grantee or a failure to use the grant for only those purposes set forth herein, the Department may take the following actions (which are supplemental to other default remedies specified elsewhere in this contract):

- (a) *Suspension.* After notice to the Grantee, the Department may suspend the contract and withhold any further payment or prohibit the Grantee from incurring additional obligations of grant funds pending corrective action by the Grantee or a decision to terminate.
- (b) *Termination.* The Department may terminate the contract, in whole or in part, at any time whenever it is determined that the Grantee has failed to comply with the terms and conditions of the contract. The Department will promptly notify the Grantee in writing of the determination to and the reasons for termination, along with the effective date. Payments made to the Grantee or recoveries by the Department under contracts terminated for cause will be in accordance with the legal rights and liabilities of the parties. Payments and recoveries may include, but are not limited to, payments allowed for costs determined to be in compliance with the terms of this contract up to the date of termination. The Grantee must return all unencumbered funds, and any costs previously paid by the Department that are subsequently determined to be unallowable through audit and closeout procedures may be recovered from present grant funds or deducted from future grants.

§4.19 Termination Due to Loss of Funding.

This contract may terminate, in full or in part at the discretion of the Department, in the event the Department suffers a loss of funding or a termination of the federal funds which permit it to fund this grant. In the event it suffers such a loss of funding, the Department will give the Grantee written notice which will set forth the effective date of full or partial termination or, if a change in funding is required, setting forth the change in funding.

§4.20 Authorization of Project Publicity and Information Sharing.

Prior to announcing or referring to the Project or Project activities in news releases, press conferences, or other media, the Grantee must inform the Department and, if requested, include an acknowledgement or reference to the funding made available for the Project under this contract.

The Grantee agrees to allow the Department to issue news releases and otherwise share

information and/or make announcements about the Project. The Department is not required to obtain any approval, written or otherwise, from the Grantee prior to releasing information about the Project.

§4.21 Notification of Project Staff Changes.

The Grantee will make reasonable efforts to keep the Department informed of changes in Grantee's staff that relate to the project such as the departure of key persons.

§4.22 Requirement to Provide Project Photographs.

The Grantee agrees to provide the Department with before and after photographs of the Project whenever possible and agrees to obtain written consent from the owner-occupiers when necessary.

§4.23 State of Nebraska Non-Liability/Hold Harmless.

The Grantee must hold the State of Nebraska and the Department harmless from any and all claims, demands, and actions based upon or arising out of any activities or services performed by the Grantee or by its officials, officers, employees, agents, or associates.

§4.24 Entire Agreement; Binding Effect; Counterparts; Governing Law.

This instrument and any attachments, the approved Application, and those items incorporated by reference contain the entire agreement between the parties. Any statements, inducements, or promises not contained therein will not be binding upon the parties.

This agreement will be binding upon and will inure to the benefit of the successors, assigns, and legal representatives of the parties.

This agreement or any amendment to this agreement may be signed in any number of counterparts; each of which will be considered an original, and all of which taken together will constitute one agreement or amendment, as the case may be.

This agreement shall be governed by, construed according to the laws and regulations of, and subject to the jurisdiction of, the State of Nebraska.

§4.25 Verification of Work Eligibility Status for New Employees.

The Grantee is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

In this context, "new employees" means employees hired on or after the effective date of this contract. A "federal immigration verification system" means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a), known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

This contractual obligation to verify work eligibility status for new employees physically performing services within the State of Nebraska also applies to any and all subcontractors utilized by the Grantee in performing this contract. The Grantee will be responsible to the Department for enforcing this requirement with its subcontractors.

A failure by the Grantee to adhere to these requirements is a violation of the statutory requirements of Neb. Rev. Stat. §4-114 and, as such, will be deemed a substantial breach of this contract which could result in the Department declaring the Grantee to be in default on the contract.

§4.26 Verification of Lawful Presence for Public Benefits Eligibility.

The Department of Economic Development is prohibited by state law (Neb. Rev. Stat. §4-108) from providing public benefits to a person not lawfully present in the United States. Public benefits are statutorily defined broadly (see Neb. Rev. Stat. §4-109); however, some exemptions from the verification of lawful presence requirement are set forth in Neb. Rev. Stat. §4-110. For the purposes of this contract, the Department has determined that, in the performance of its contractual duties, the Grantee is providing public benefits to individuals or households under the statutory definition of public benefits.

Consequently, pursuant to this contract and Neb. Rev. Stat. §§4-108 through 4-114, the Grantee shall have each applicant for public benefits under this contract complete the United States Citizenship Attestation Form attached to this contract and available on the State of Nebraska Department of Administrative Services website at www.das.state.ne.us. The Attestation Form serves as the applicant's attestation that he or she is a U.S. citizen or a qualified alien under the federal Immigration and Nationality Act (8 U.S.C. 1101 et seq.). If the applicant attests they are a qualified alien, the Grantee shall verify the applicant's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

The Grantee must:

1. retain the attestation form and any additional verification documentation required because the applicant attested they were a qualified alien;
2. provide such attestation form and other documentation (or copies thereof) to the Department upon request;

3. maintain aggregate records for the duration of the contract showing: (a) the number of applicants for public benefits under this contract and (b) the number of applicants rejected pursuant to the lawful presence requirement; and
4. provide a summary report to the Department no later than December 31st each calendar year reflecting data for such calendar year (or portion of such year when there is not a full calendar year of activity under this contract) so that the Department can fulfill its annual reporting obligation to the Nebraska Legislature concerning these "lawful presence" requirements.

§4.27 Debarment, Suspension, and Ineligibility; Universal Numbering System and Registration Requirements.

By executing this contract, the Grantee certifies, represents, and warrants that the Grantee and all subrecipients or contractors to be used by the Grantee in performing this contract are not debarred, suspended, proposed for debarment, placed in ineligibility status, or voluntarily excluded from covered transactions by HUD or any other federal agency under the provisions of Executive Order 12549 "Debarment and Suspension" and any applicable government debarment and suspension regulations. The Grantee agrees to immediately notify the Department if it or any of its subrecipients or contractors become sanctioned or debarred. The Grantee acknowledges that suspension or debarment and/or use by the Grantee of suspended or debarred subrecipients or contractors is cause for termination of this contract.

The Grantee agrees to comply with all requirements established by the Office of Management and Budget ("OMB") concerning participation in the Dun and Bradstreet Data Universal Numbering System ("DUNS"), registration with the Federal System for Awards Management ("SAM"), and maintenance of such participation and registration.

§4.28 Force Majeure.

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster or other similar event outside the control of and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event.

The Department may grant relief from performance of the contract if the Grantee is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based on a Force Majeure Event, the Grantee shall file a written request for such relief with the Department.

Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

§4.29 Mandatory Disclosures.

As required by 2 C.F.R. §200.113, Grantee must immediately disclose to the Department, HUD, and/or other appropriate authorities (with a copy to the Department) all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the use of CDBG funds provided under this contract.

§4.30 Drug Free Workplace.

The Grantee agrees to maintain a drug free workplace environment to ensure worker safety and workplace integrity and agrees to provide a copy of its drug free workplace policy at any time upon request by the Department.

§4.31 Notice.

Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed by U.S. Mail, postage prepaid and return receipt requested, to the parties at their respective addresses set forth in the Application, in this contract, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or four (4) calendar days following deposit in the mail.

§4.32 Survival.

The terms of this contract regarding national objective compliance, program income, use of funds, matching requirements, record keeping, audits, reports, and notice (and other terms that by their nature should survive the termination or expiration of this contract) shall survive expiration or termination of this contract.

PART V: COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

The Grantee agrees to comply with the administrative requirements for the CDBG Program established by the Department and HUD, with the provisions of the Department's Administration Manual, and with all federal and state laws, regulations, and executive orders applicable to the CDBG-assisted Project including, but not limited to:

- Housing and Community Development Act of 1974, as amended ("HCDA").
- 24 C.F.R. Part 570.
- National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58.
- Clean Air Act and Federal Water Pollution Control Act, as amended.
- Federal Restrictions on the use of the power of eminent domain.
- The Davis-Bacon Act (and related requirements).

- Contract Work Hours and Safety Standards Act (and related requirements).
- Copeland “Anti-Kickback” Act (and related requirements).
- Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act, and regulations at 24 C.F.R. Part 35.
- Section 3 of the Housing and Urban Development Act of 1968; and 24 C.F.R. Part 135.
- The Architectural Barriers Act of 1968 and the Americans with Disabilities Act.
- 2 C.F.R. Part 200, The Federal Funding Accountability and Transparency Act, and related federal requirements.
- Byrd Anti-Lobbying Amendment (and related acts and requirements).
- The Equal Employment Opportunity Act; The Vietnam Era Veterans’ Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002); The Immigration Reform and Control Act of 1986; and The Americans with Disabilities Act of 1990; the Nebraska Fair Employment Practices Act; and related acts and requirements.
- Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act); the Age Discrimination Act of 1975; Section 504 of the Rehabilitation Act of 1973; The Housing for Older Persons Act of 1995; and related acts and requirements.
- Nebraska Uniform Energy Efficiency Standards, §§81-1608 to 81-1626.

ACCEPTANCE PROVISIONS.

The parties acknowledge they have read and understand this contract, they agree to its provisions, and that it will be effective on the date when both parties have signed.

<p>NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT</p> <p>By: _____ (Director or Designee)</p> <p>_____ (Typed or Printed Name/Title)</p> <p>_____ (Date)</p>	<p>GRANTEE → City of Scottsbluff, Nebraska</p> <p>By: _____ (Chief Elected Official)</p> <p>_____ (Typed or Printed Name/Title)</p> <p>_____ (Date)</p>
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United States Citizenship Attestation Form

For the purpose of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

I am a citizen of the United States.

— OR —

I am a qualified alien under the federal Immigration and Nationality Act, my immigration status and alien number are as follows:

_____,
and I agree to provide a copy of my USCIS documentation upon request.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete, and accurate, and I understand that this information may be used to verify my lawful presence in the United States.

PRINT NAME	<hr/> (First, Middle, Last)
SIGNATURE	<hr/>
DATE	<hr/>