

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
APRIL 6, 2010 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
CONTRACT WITH DED FOR CDBG FUNDING — EASYWAY INTERNATIONAL, LLC	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

The City received notice from the Nebraska Department of Economic Development (DED) that our Community Development Block Grant (CDBG) application was approved in the amount of \$505,000. A resolution has been prepared to approve the contract between the City and DED for the administration of the grant.

**FISCAL IMPACT**

The project involves a CDBG award of \$505,000 from the Nebraska Department of Economic Development to the City, \$5,000 of which is for the City's costs administering the grant (which will be paid to MAPA), and \$500,000 of which is to be loaned to the applicant, Easyway International, LLC, for working capital.

**RECOMMENDATION**

Approval.

**BACKGROUND**

The Nebraska Department of Economic Development (NDED) has been working with the Omaha Chamber of Commerce's International Business Division to assist in locating an office facility to serve as North American corporate headquarters for Easyway International, LLC, a freight company based in China. The Company has now leased space in the Southport Professional Building at 12120 Port Grace Blvd. in Southport East.

The grant amount is for \$505,000, with \$500,000 to be provided to Easyway in the form of a performance-based forgivable loan and \$5,000 to be used by the City for general administration of the project. MAPA has agreed to perform this function for the City and will be paid \$5,000 for this service. Conditions of funding for the company are to provide an additional \$500,000 in working capital from corporate proceeds and to create and maintain 19 new jobs at the facility for three years from the date of the award. At least 51% of all new jobs at the facility are to be taken by persons from low-to moderate income households. Presently, the company intends to transfer four executives from China and hire fifteen (15) new local employees.

On February 23, 2010, the City received notice of approval of the grant. On March 12, 2010, a contract document was received from DED. That document has been reviewed by the City Attorney and is attached for Council approval.

A resolution has been prepared which approves the contract with DED for the project administration and authorizes the Mayor to execute the document.

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RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, APPROVING THE MAYOR TO EXECUTE A CONTRACT BETWEEN THE CITY OF LA VISTA AND THE NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT(DED) FOR ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT IN AN AMOUNT NOT TO EXCEED \$505,000.00.

WHEREAS, the City has determined that it is desirable to approve the contract with the DED for the administration of the CDBG grant; and

WHEREAS, the project award is \$505,000.00 of which \$5,000.00 will be paid to MAPA for administering the grant and \$500,000.00 will be loaned to Easyway International, LLC for working capital; and

WHEREAS, Easyway International, LLC will create and maintain 19 new jobs at the facility for three years from the date of the award and at least 51% of all new jobs will be by persons from low to moderate income households; and

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, do hereby authorize the Mayor to execute a contract between the City of La Vista and the Nebraska Department of Economic Development for administration of the Community Development Block Grant in an amount not to exceed \$505,000.00.

PASSED AND APPROVED THIS 6TH DAY OF APRIL 2010

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

**STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT  
COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT NO. 09-ED-007  
(involving a special economic development activity with  
Easyway International, LLC as the benefited business)  
[CFDA #14.228]**

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

**RECITALS:**

**A.** The Department has been designated by the United States Department of Housing and Urban Development ("HUD") to administer; and HUD has awarded the Department funds for; the Community Development Block Grant Program ("CDBG").

**B.** The Grantee has submitted, and the Department has approved, Grantee's application which will undertake community development activities authorized under the Housing and Community Development Act of 1974, as amended ("HCDA" or "Act"), and as authorized under the federal regulations governing CDBG at 24 C.F.R. Part 570.

**C.** The Grantee; the Department; and Easyway International, LLC ("Business"); have executed a Memorandum of Understanding ("MOU") dated variously by the parties in January 2010, and February 2010, which MOU is incorporated by this reference, agreeing to the terms and conditions provided in the MOU.

**D.** In approving the application the Department has relied upon the information submitted by the Grantee (and the Business) as material and as full and accurate representations of:

1. the nature and scope of the project activities.
2. the number of Full Time Equivalent ("FTE") positions to be created or retained, and maintained, by the Business as a result of the project.
3. the commitment of the Business to achieve the required CDBG national objective by having the FTE positions created or retained principally benefit low-to-moderate income ("LMI") persons.
4. the management abilities of those involved with; the marketing potential of; the existing financial condition of; and the projected financial viability of; the Business.
5. the commitments of others to invest funds in the project.

**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 paid by the Department to the Grantee for allowable expenses incurred will not exceed \$505,000. Of that amount, approved administrative and audit expenses will not exceed \$5,000.

\$500,000 of the CDBG funds will be loaned by the Grantee to the Business to assist the Business in meeting its working capital needs for the Business facility in La Vista, Nebraska. The terms of the loan are specified in the MOU and referenced later in this contract.

The payment of CDBG funds requires adherence to the various requirements, conditions, and limitations as set forth and explained in §3.01 and in §3.08.

Part V (Compliance with Applicable Laws and Regulations) of this contract incorporates, as being applicable to this contract, all of the Department's administrative requirements which are contained in the *Nebraska Community Development Block Grant Program Administration Manual*. Those administrative requirements contain many restrictions governing the receipt of CDBG funds from the Department. Included among those restrictions are limitations on the amount of administration expenses the Grantee is allowed, dependent on the Project's status.

Requests by the Grantee for reimbursement of project administration expenses will not be paid by the Department unless a CDBG Certified Administrator is identified and available to conduct administration of the project, at the time of each request for reimbursement of administration expenses, with this requirement applicable at all times through project completion (including final project reports). As a cross-reference, note that §2.07 requires a CDBG Certified Administrator to achieve the initial Release of Funds for the project.

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

### **§1.02 Incorporation of RECITALS Paragraphs as Agreed Terms of Contract.**

All provisions of paragraphs A, B, C, and D of the RECITALS above are incorporated as agreed provisions of the contract.

### **§1.03 Reimbursement of Pre-Agreement Costs Incurred.**

As previously authorized by the Department in a separate letter dated December 21, 2009, costs incurred on and after December 18, 2009, will be considered part of this project and reimbursable under this contract—provided such costs were for eligible

activities, and, were undertaken in compliance with the requirements of 24 C.F.R. Part 58 (which HUD regulation addresses compliance with the National Environmental Policy Act of 1969).

#### **§1.04 Time of Performance.**

The period covered under this contract will be 24 months from February 23, 2010. The termination date of this contract will be February 23, 2012. All of the activities and services required of the Grantee, except for administration and audit, will be completed on or before this date.

#### **§1.05 Program Income.**

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

All CDBG economic development ("ED") category program income received by the Grantee (including program income from other CDBG ED projects) must be the first funds to be disbursed to pay for project activities prior to requesting ("drawing down") additional CDBG funds from the Department. In other words, program income must be the "first out" and must be fully depleted before the Grantee requests "new" CDBG funds from the Department.

**Notice of Intent.** If the Grantee intends to keep program income (normally generated from loan repayments by a benefited business, and normally kept in a revolving loan fund) to carry out CDBG ED activities in the future, the community must notify the Department of this intent within three months of the date of the Notice of Approval for a project which is to generate the program income. Note the three-month time limit for this notification. More details and other time limitations associated with establishing and administering a revolving loan fund are set forth below.

In the absence of such timely notice of intent being received by the Department, the default position is that all program income must be returned to the Department.

Also note that certain program provisions in the CDBG ED category may limit the amount of program income the Grantee may be allowed to keep for a particular project, requiring amounts over certain limits to be returned to the Department.

Program income generally means gross income received by the Grantee, or by a subrecipient of the Grantee, that was generated from the use of CDBG funds. Some exceptions to this general rule 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 is and remains subject to all requirements of the HCDA and CDBG regulations. Program income which may become a part of a Department approved community CDBG revolving loan fund remains subject to all requirements of the HCDA and CDBG regulations. This means all loans made from such a fund, including second and subsequent generation loans, are, and continue to be, subject to all CDBG requirements.

**Notice of Intent and more about reuse plans.** Program income cannot be committed to a revolving loan fund until the Grantee submits a written notice of its intent to propose a reuse plan for the program income. This notice must state whether the Grantee intends to retain program income at the local level, or intends to join a regional organization's plan. The notice must be submitted to the Department within three months of the date of the Notice of Approval for a project which is to generate the program income. If not submitted by that date, program income will be required to be returned to the Department.

- Local Administration.
  - If the notice of intent is submitted within the specified period and the Grantee intends to retain program income at the local level, the Grantee will have six months from the date of the Notice of Approval for the project to submit to the Department a plan for the administration of the program income. If the plan is not submitted by the six-month deadline, program income will be required to be returned to the Department.
  - The plan must include either: (a) a detailed description of the organization, administration, and priorities of the program income projects to be approved by the Grantee; or (b) a detailed description of the organization and administration plans, together with an incorporation of the Department's CDBG ED category objectives, including an agreement to incorporate all future changes made by the Department.
  - If the Grantee timely submits a plan, and if the plan is approved by the Department, the Grantee then must, within 24 months from the date of their initial receipt of any program income via loan repayment to them, obligate program income to another project, and seek and obtain the Department's approval for such new project.
  - During this 24-month period, program income must be placed in an interest-bearing account controlled by the Grantee (which account must be

deposit insured/secured as required by state law). If no new project is approved within this 24-month period, program income will be required to be returned to the Department.

- Regional Administration.

- If the notice of intent is submitted within the specified period and the Grantee intends to retain program income at the regional level, the Grantee will have six months from the date of the Notice of Approval for the project to submit to the Department evidence of: (a) the Grantee having entered into an agreement with other local governments which newly establishes a regional plan for the administration of the program income; or, (b) having entered into an agreement with an existing regional plan for administration of the program income. If this evidence of a regional plan is not submitted by the six-month deadline, program income will be required to be returned to the Department.
- The regional plan must include either: (a) a detailed description of the organization, administration, and priorities of the program income projects to be approved under the authority of the regional plan; or (b) a detailed description of the organization and administration plans, together with an incorporation of the Department's CDBG ED category objectives, including an agreement to incorporate all future changes made by the Department.
- If a newly established regional plan is timely submitted, and if the plan is approved by the Department, the regional administrator of the plan then must, within 36 months from the date of their initial receipt of any program income via loan repayment to them, obligate program income to another project, and seek and obtain the Department's approval for such new project.
- During this 36-month period, program income must be placed in an interest-bearing account controlled by the regional administrator (which account must be deposit insured/secured). If no new project is approved within this 36-month period, program income will be required to be returned to the Department.
- **Allocation of program income (when such program income is in the form of loan repayments by the benefited business)—between the Department and the Grantee.** If the terms specified in the MOU for this project involve loan repayments by the benefited business, such repayments must be allocated between the Department and the Grantee as agreed in the MOU. In the absence of an express provision in the MOU addressing such allocation, such repayments shall be all repaid to the Department unless the Department agrees otherwise, in writing. The timing and logistics for handling such loan repayments shall be: after each payment is received by the Grantee from the benefited business, the appropriate portion of the amount received by the Grantee for each payment on the loan will repaid to the

Department, by check from the Grantee to the Department, within a reasonably contemporaneous time.

## **PART II: SPECIAL CONDITIONS FOR RELEASE OF FUNDS.**

Funding of the amount stipulated in §1.01 of this contract will not be released to the Grantee by the Department until the following special conditions for release of funds are met. These special conditions must be satisfactorily completed no later than May 23, 2010. The Department reserves the right to cancel the contract if these special conditions are not met within this specified time frame.

### **§2.01 Grantee Information Sheet.**

Completion, and submission to the Department, of the Department's Grantee Information Sheet.

### **§2.02 Authorization to Request Funds Form.**

Completion by the appropriate chief elected official of the Grantee, and submission to the Department, of the Department's Authorization to Request Funds form.

### **§2.03 Environmental Review.**

Documentation evidencing the Grantee's 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.

### **§2.04 Procurement Standards.**

Documentation evidencing adoption of procurement standards equivalent to those established in 24 C.F.R. §85.36 and in 24 C.F.R. §570.489. Procurement standards are explained in the CDBG Administration Manual published by the Department which can be found on the Department's website.

### **§2.05 Fair Housing.**

Documentation that the Grantee has specifically provided a description of the actions they will take during the course of the grant to fulfill the requirements to affirmatively further fair housing.

### **§2.06 Excessive Force Certification.**

Documentation that the Grantee 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 CDBG Certified Administrator Required.**

Documentation must be submitted to the Department identifying the CDBG Certified Administrator the Grantee will use for the project. The Department's *Nebraska Community Development Block Grant Program Administration Manual* contains details about the certification process.

In addition to satisfying this special condition as a prerequisite for receiving a Notice of Release of Funds, Grantee should note as a cross-reference the contract provision in §1.01 providing that requests by the Grantee for reimbursement of project administration expenses will not be paid by the Department unless a CDBG Certified Administrator is identified and available to conduct administration of the project at the time of the request(s) for reimbursement.

## **§2.08 Other Special Conditions.**

None.

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

### **§3.01 Sources and Uses of Funds.**

The Sources and Uses of Funds table below 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, which ratio 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 as the source, and \$60,000 to be from the benefited business as the source—but the actual cost of the machinery 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.
- The timing (of CDBG funds flowing into the project on a pro rata basis) is that CDBG funding is reimbursement funding. If contrary, specific provisions have been made in the MOU regarding reimbursement funding for the project, then those MOU provisions will prevail. Absent such contrary, specific provisions in the MOU,

reimbursement after-the-fact of the expense having been incurred is what will be done. This timing may well result in the benefited business having to temporarily carry the costs which are then later reimbursed through CDBG funding.

[An example illustrates this point: If the actual cost of an activity such as the acquisition of equipment was \$100,000, with \$40,000 to be from CDBG funds as the source, and \$60,000 to be from the benefited business as the source—then the benefited business would have to first pay the entire \$100,000 cost of acquisition, and then seek reimbursement of \$40,000 from CDBG funding.]

SOURCES→	CDBG	BUSINESS	TOTAL
USES (Activities)↓			
0700 Direct financial assistance to for-profit business	\$500,000	\$500,000	\$1,000,000
0181 General Administration	\$5,000	\$0	\$5,000
<b>TOTAL</b>	<b>\$505,000</b>	<b>\$500,000</b>	<b>\$1,005,000</b>

### §3.02 Use of CDBG Proceeds.

The use of the CDBG proceeds will be as stated in §1.01.

### §3.03 Terms of the Loan to the Business; and Guarantees.

The terms of the loan to be made to the Business by the Grantee using CDBG funds, and the requirements for guarantees of the loan, are specified in the MOU.

### §3.04 Job Creation or Retention, and Job Maintenance Requirements.

The job creation requirements, and the job maintenance requirements, for the benefited Business are specified in the MOU, and for emphasis will be repeated here. These requirements must be satisfied in order for the project to meet the CDBG national objective, which requires that of all the jobs created as a result of the project activities, 51% or more of those jobs (on an FTE basis) must be held by (or if not actually *held by*, then the Business must meet the required regulatory standards so as to be considered to have made the jobs *available to*) LMI persons. The 51% LMI requirement applies to all jobs created—the 51% LMI requirement does not just apply to the number of jobs to be created which was agreed by the Department in the MOU as the minimum number of jobs required to be created.

Thus, the Business is to:

- (a) create at least 15, new, permanent jobs (on an FTE basis), in the Business' facility in La Vista, Nebraska:
  - (1) within the time specified in the MOU which is within 12 months of the date on the Notice of Approval letter from the Department.
  - (2) meeting the requirement that 51% or more (on an FTE basis) of those new, permanent jobs must be held by (or if not actually "held by", then the Business must meet the required regulatory standards so as to be considered to have

- made the jobs "available to") LMI persons.
- (b) maintain the 15 FTE positions for the time specified in the MOU which is 36 months measured from the date of hire for each respective job.
  - (c) adhere to any and all other specific requirements associated with the jobs as set forth in the MOU, e.g., the need to pay a minimum wage and provide an appropriate package of benefits to employees.

### **§3.05 Due on Sale Clause.**

A so-called "due on sale" clause has been included in the MOU, binding the Business to repayment requirements in the event of the sale or transfer of assets acquired with CDBG funds, or upon a material change in the majority ownership of the Business. This provision exists to protect the interests of the Department and of the Grantee in the event of such a sale of assets or a sale of the Business.

### **§3.06 Maintain Location of Project.**

The Business has agreed in the MOU to maintain the project Business facility in La Vista, Nebraska, and has agreed to not relocate to any other location in Nebraska, or out-of-state, under penalty as specified in the MOU.

### **§3.07 Default in Meeting Job Creation or Retention Requirements, or Default in Meeting Job Maintenance Requirements.**

If the Business does not meet the Job Creation or Retention Requirements, or the Job Maintenance Requirements, in the MOU and §3.04 above, CDBG funds will be disallowed, and the repayment consequences to the Business specified in the MOU and this contract will follow. In the absence of such repayment consequences to the Business being specified in the MOU, the general penalty invoked will be immediate and full repayment by the Business of all drawn CDBG funds.

When the CDBG assistance provided to the Business is in the form of a repayable loan, then full repayment of that loan is required in any event. If the Business with a repayable loan obligation fails to achieve a national objective, the consequence is that immediate acceleration of the note obligation will be declared, requiring immediate, full repayment of the note.

When the CDBG assistance provided to the Business is wholly, or partly, in the form of a forgivable loan or a job training grant, then if the Business fails to achieve a national objective, or otherwise fails to achieve related job creation or job maintenance requirements of the project award, the consequences vary depending on the nature of the failure and upon the agreed provisions of the MOU. CDBG federal statutes and regulations require CDBG funded projects to meet the national objective of principally benefiting low-to-moderate income (LMI) persons. These statutes and regulations require that at least 51% of the created jobs benefit LMI persons; with such benefit achieved by having at least 51% of the created jobs either held by, or made available

to, LMI persons. If the benefited Business fails to meet the national objective by not having at least 51% of the created jobs benefit LMI persons (as a result of not having at least 51% of the created jobs either held by, or made available to, LMI persons), then the loan is not forgiven or the job training grant is not made unconditional, and immediate, full repayment of the CDBG funding is required.

**Proration of the Repayment Obligation:**

- (a) CDBG statutes and regulations require CDBG-assisted projects to meet the national objective of principally benefiting low-to-moderate income (LMI) persons. These statutes and regulations require that at least 51% of the created/retained jobs benefit LMI persons. If Business fails to meet the national objective by not having at least 51% of the created/retained jobs benefiting LMI persons, then full repayment of the CDBG funding is required, and no proration is allowed.
- (b) If the national objective (51% LMI benefit) is met, but the job creation/retention requirement (15 jobs in this instance) is not achieved, then a pro rata portion of the CDBG funds will be required to be repaid, equivalent to the ratio of→jobs not created, divided by the number of jobs required to be created.
- (c) If the national objective (51% LMI benefit) is met, but the jobs are not maintained for the required job maintenance period (36 months in this instance), then a pro rata portion of the CDBG funds will be required to be repaid, equivalent to the ratio of→the required maintenance period in months, less the number of months the jobs were maintained, divided by the required maintenance period in months.
- (d) If the national objective (51% LMI benefit) is met, but there is a failure as to both the job creation/retention requirement and the job maintenance period, then a pro rata portion of the CDBG funds will be required to be repaid, equivalent to→using the number of jobs required to be created, multiplied by the number of months the jobs were to be maintained, resulting in a computational factor of "required job-months"—then using the number of jobs actually created multiplied by the number of months the jobs were actually maintained, resulting in a computational factor of "achieved job-months"—and then subtracting the "achieved job-months" factor from the "required job-months" factor to calculate a "failed job-months" factor—and then establishing the ratio of:

$$\frac{\text{"failed job-months"}}{\text{"required job-months"}}$$

with such ratio (with "failed job-months" as the numerator, and "required job-months" as the denominator), being the required pro rata portion of CDBG funds to be repaid.

An example to illustrate application of this requirement is:

CDBG assistance total	= \$250,000
# of jobs to be created	= 20
# of months the jobs were to be maintained	= 24
# of jobs actually created	= 15
# of months the jobs were actually maintained	= 16

20 x 24	= 480 "required job-months"
15 x 16	= 240 "achieved job-months"
480 - 240	= 240 "failed job-months"

240 "failed job-months"	
-----	= .50
480 "required job-months"	

$\$250,000 \times .50 = \$125,000$  to be repaid.

The Grantee, as Grantee determines necessary or advisable, is responsible for, and will bear the expenses of, pursuing all reasonable and necessary collection actions (including legal enforcement through the courts) against the Business to enforce and collect such default penalties from the Business.

### **§3.08 Conditions Precedent to Drawdown of CDBG Funds. .**

The Grantee must meet all of the following conditions prior to drawdown of CDBG funds:

- (a) All drawdowns require adherence to the various requirements, conditions, and limitations as set forth and explained in §3.01.
- (b) Documentation, in such form as the Department may prescribe, showing disbursement by other funding sources, will be required by the Department.
- (c) Documentation, in such form as the Department may prescribe, substantiating that qualified expenses having been incurred by the benefited Business, will be required by the Department.
- (d) Proper execution of this contract between the Grantee and the Department.
- (e) Documentation evidencing the Grantee's 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.
- (f) Proper execution of all required loan documents by the Business.

(g) Fulfillment of any and all other conditions identified in the MOU.

#### **PART IV: OTHER CONTRACTUAL CONDITIONS.**

##### **§4.01 Matching Requirements.**

The Business is to provide matching and other leveraged funds for each approved activity in the amounts, ratios, and proportions set forth in §3.01 of this contract. Matching and other leveraged funds must be expended during the grant period.

Grantees are required to certify, with each request for CDBG funds, the amount of matching funds applied to the Project. Project costs are to be paid from grant and matching funds as specified in §3.01 of this contract. The Business will be responsible for costs that exceed the total Project costs set forth in §3.01.

##### **§4.02 Legal Authority; and Acceptance of Environmental Review Responsibility.**

By signing this contract, the Grantee certifies that it possesses 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 that they 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 is the official authorized to execute this contract and any amendments to this contract, on behalf of the Grantee.

The Grantee or the Department 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 Generally, and Particularly Regarding Uniform Administrative Requirements.**

The Grantee will comply with 24 C.F.R. Part 570, including particularly the Uniform Administrative Requirements set forth in 24 C.F.R. §570.502, or any reasonably equivalent procedures and requirements that the Department may prescribe.

#### **§4.05 Record Keeping.**

The Grantee agrees to keep such records as specified in 24 C.F.R. §570.506, *Records to be Maintained*, and any other records as the Department may reasonably require. The Grantee agrees to keep such records so as to allow the Department to 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, will be retained by the Grantee for a period of ten (10) years after notification by the Department that the grant has been closed. If any claim, litigation, or audit is initiated before the expiration of the ten-year period, the records must be retained until all claims, litigation, or audits have been resolved.

The Department and duly authorized officials 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.

#### **§4.06 Reports.**

The Grantee will submit semiannual reports to the Department, in such form as the Department 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 and within such times as the Department may prescribe, at the occasion of grant closeout.

#### **§4.07 Audits.**

Audits of this grant will be conducted in accordance with the Single Audit Act of 1984, as amended, and the Office of Management and Budget (OMB) Circular A-133. Generally Accepted Government Auditing Standards (GAGAS) must be followed. If the Grantee meets the requirement for a Program-specific audit as defined in OMB Circular A-133, Department approval for such a Program-specific audit is required and audit procedures established by the Department will be followed.

Audit costs are an allowable general administration cost subject to limitations established by the Act and the Department.

#### **§4.08 Conflict of Interest.**

The Grantee will comply with the conflict of interest prohibitions set forth for the CDBG program at 24 C.F.R. §570.489. In the event prohibited conflicts of interest arise, exceptions to the prohibition may be granted, on a case-by-case basis, by the Department. The procedures governing such exception requests are set forth in the Department's CDBG Administration Manual.

#### **§4.09 Applicability to Subrecipients and Contractors.**

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

#### **§4.10 Waivers; and Assignment of Interest.**

No conditions or provisions of this contract can be waived unless approved by the Department in writing. The Grantee will not assign or transfer any interest in this contract to any other party without the written consent of the Department.

#### **§4.11 Non-Waiver of Rights.**

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

#### **§4.12 Severability.**

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.

#### **§4.13 Termination by Mutual Agreement.**

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

The Grantee will not incur new obligations for the terminated portion after the effective date, and will 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.

#### **§4.14 Termination for Cause.**

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

- (a) Suspension. After notice to the Grantee, 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. Terminate the contract in whole, or in part, at any time before the date of completion, 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 and the reasons for the termination, together with the effective date. Payments made to the Grantee or recoveries by the Department under contracts terminated for cause will be in accord 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 will return to the Department all unencumbered funds. Further, any costs previously paid by the Department which are subsequently determined to be unallowable through audit and closeout procedures may be recovered from present grant funds or deducted from future grants.

#### **§4.15 Termination Due to Loss of Funds.**

This contract will terminate in full or in part, at the discretion of the Department, in the event the Department suffers a loss of funding or termination of the federal funds which permit it to fund this grant. In the event the Department 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.

#### **§4.16 Entire Agreement, Binding Effect, and Counterparts.**

This instrument, along with any attachments, the approved grant application, and those items incorporated by reference (such as the MOU), 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 of this agreement, may be signed in any number of counterparts, each of which will be an original, but all of which taken together will constitute one agreement (or amendment, as the case may be).

#### **§4.17 Governing Law.**

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

#### **§4.18 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 Grantee's subcontractors.

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

#### **PART V: COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.**

The Grantee agrees to comply with the Department's and HUD's administrative requirements for the CDBG program, and with the provisions of the Department's CDBG Economic Development Application Guidelines, 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.
- The Davis-Bacon Act (and related acts).
- Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35.
- Section 3 of the Housing and Urban Development Act of 1968.
- The Architectural Barriers Act of 1968 and the Americans with Disabilities Act.
- The requirement in the HCDA to affirmatively further fair housing.

**ACCEPTANCE PROVISIONS.**

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

<b>NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT</b>	<b>GRANTEE→La Vista, Nebraska</b>
By: _____ (Signature of Director or Designee)	By: _____ (Signature of Chief Elected Official)
_____ (Typed or Printed Name/Title)	_____ (Typed or Printed Name/Title)
_____ (Date)	_____ (Date)
	<u>47-6050031</u> (Federal Identification Number)