

City of Grand Island Economic Development Plan

Administration Agreement 2023-2024

This Administration Agreement (“Agreement”) is made and entered into as of February 23, 2024 by and between the City of Grand Island (“City”) and the Grand Island Area Economic Development Corporation (“GIAEDC”). This plan will encompass an Agreement to administer the City’s Economic Development Plan during the 2023-2024 fiscal year.

General Recitals

The City and GIAEDC desire to cooperate with each other in order to deliver the Economic Development Program (“Program”) authorized by Chapter 38 of the Grand Island City Code, the State by and through the Local Option Municipal Economic Development Act (Neb. Rev. Stat. 18-2701 et seq.) (the “Act”), and the electorate of the City of Grand Island through approval of the City’s Economic Development Plan (“Plan”) during the 2022 election as codified in Ordinance Number 9903. The Plan is attached to this Agreement as Exhibit A and is incorporated by reference herein.

The Plan, as adopted, incorporates the assistance of GIAEDC in administering the City’s LB840 Economic Development Activities (“Program”) on behalf of the City. The Plan places certain Program Administration requirements with the City, by and through the City Administrator including fiscal management of the Economic Development Fund (“Fund”) and oversight of the Revolving Loan Fund (“Loan Fund”). The Plan also places significant Program Administration responsibilities on GIAEDC.

Because the Plan, and applicable law, places requirements on the City prior to making distributions from the Fund, an agreement is necessary to set forth a framework by which the City can distribute portions of the appropriated Fund to GIAEDC for administrative overhead necessary to administer the program, as well as setting forth agreements for reimbursement of non-administrative expenses during the 2023-2024 fiscal year.

For purposes of this agreement, any references to “Eligible Activities” or “Eligible Businesses” incorporate by reference the definitions contained in the Local Option Municipal Economic Development Act (Neb. Rev. Stat. 18-2701 et seq) (“the Act”), Grand Island City Code Ch. 38 (“Code”), and the Plan (attached as Exhibit A).

The parties will develop and approve a comprehensive program management agreement for Fiscal Year 2024-25 and beyond with guidance from applicable audits and the input and recommendations of the Citizens Advisory Review Committee (“CARC”).

For purposes of this agreement, the Fiscal Year shall be October 1, 2023 through September 30, 2024 and shall be referenced as the “2023-2024 Fiscal Year.”

Provisions Defined or Restricted by the Plan

The Plan defines Eligible Activities for which voters have approved use of the Fund. These activities were specifically set forth in the plan approved by voters and incorporated into Ordinance Number 9903.

Those activities are set forth in Exhibit A, Section 3(B), and in the Act. The Plan also authorizes certain Workforce Housing initiatives as set forth in Exhibit A, Section 3(C) and in the Act.

The Act sets forth specific definitions of Eligible Businesses and business activities, which are restricted further by the current plan. The eligible businesses are set forth in Exhibit A, Section 4(A) and must also meet the criteria of Sections 4(B), (C), and (D). These definitions may be amended by the City Council upon recommendation from the CARC within the limitations of the Act.

The Plan sets forth the Loan Fund and detailed provisions for application and distribution of the Loan Fund. Responsibilities for the Loan Fund are divided, throughout the plan, between GIAEDC, the City Administrator, the City Finance Director, GIAEDC's Board of Trustees, the CARC, and the City Council.

The Plan incorporates key funding methods and limitations and sets forth limited rules and procedures for distribution of the Fund. For purposes of this Agreement the Plan, as approved by voters, authorizes:

- That the allocated Fund be divided into Incentive and Administrative/promotion authorized expense levels.
- That the portion allocated to administrative/promotion be paid in four quarterly payments to GIAEDC for its program administration.
- The remainder of the Fund be available for use for Incentives to be distributed for eligible activities or the Revolving Loan Fund ("Loan Fund") established in the Plan.
- That the Fund "...will be expended primarily for providing direct financial assistance..."

Though the parties to this agreement have identified areas in which the limitations of the Act, Program, and Plan create barriers to certain activities, the parties have elected to work within the limitations of the Program and Plan at this time. Should either party identify a barrier which they believe may justify an amendment to the Program, the parties agree to engage in active conversations about potential solutions allowed by the Act.

Time Period for Agreement

This Agreement shall be considered effective upon signing by the City and the duly authorized representative of GIAEDC and will serve to govern the 2023-24 Fiscal Year.

This Agreement shall terminate the earlier of September 30, 2024, when expressly superseded by a future duly authorized Agreement, if the Program is terminated, if GIAEDC ceases to operate, or by operation of law.

GIAEDC Responsibilities

• Administration & Administrative Expenses

GIAEDC will be the primary agency responsible for administering the Program and Plan on behalf of the City. GIAEDC will provide all administrative support including promotion of the Plan, Eligible Activities for distributions from the Fund, the promotion to Eligible Businesses of the Loan Fund, application assistance for distributions from the Fund and Loan Fund, and will provide the Board of Trustees to serve as the Application Committee as defined in the Plan.

This administrative support will include technical expertise of staff, sufficient and adequate staff time and resources, office space and technical support, and the maintenance of marketing and promotional materials such as a website and general outreach materials.

Because GIAEDC engages in other Economic Development activities which may not be eligible for payment from the Fund, the City and GIAEDC have agreed to a funding formula for administrative expenses to govern the 2023-2024 fiscal year. This Agreement provides partial funding of these expenses incurred by GIAEDC in lieu of detailed accounting of staff time and segregation of duties.

This Administrative Overhead Payment (“Administrative Overhead Payment”) has been budgeted for in an annual sum and shall be paid in quarterly installments to GIAEDC as set forth in more detail below. This Administrative Overhead Payment will serve as complete payment for the administrative activities listed below. GIAEDC expenses which may be reimbursed, in addition to the Administrative Overhead Payment, are set forth in detail in the Reimbursable Expenses section of this Agreement.

GIAEDC will make all payments necessary to its staff, contractors, and vendors necessary to fulfil their obligations including payment of salaries, taxes, occupancy expenses, and prompt vender payments. Neither party will make representations of joint employment or joint enterprise with the other party and each will indemnify and hold harmless the other for any claims made as a result of administrative actions contemplated in the Administrative Overhead Payment activities.

As obligated in the Plan, GIAEDC will provide administrative support for the following activities:

- General promotion and marketing of LB840 resources including Eligible Activities, the availability of direct financial support, and the Loan Fund.
- Staff time and expertise related to all Eligible Activities
- Determinations of eligibility under the Plan
- Screening of applications for direct and indirect assistance under the Plan.
- Assistance to eligible applicants in completion of any applications for assistance
- Presentation of Fund and Loan Fund applications to GIAEDC’s Board of Trustees, City Administration and/or City Council.
- Monitoring and auditing of all Fund and Loan Fund recipients for compliance with the terms of any approved project.
- Technical assistance as set forth in the Plan
- Reporting to the Mayor, City Council, CARC, and any applicable auditing bodies no less than semi-annually about the status of all activities in the Program.
- Staff time for promotion and marketing of the Plan and community education and outreach about the Plan and Program.
- Necessary infrastructure for administration of the plan to include adequate office space, necessary furniture, utilities, information technology resources and software.
- Maintenance of a website which includes substantial promotion of the Plan and Program.
- Provision of accounting services necessary to ensure proper administration of the Plan and Program.
- Completion of an annual independent financial audit, with the results to be provided to the City, CARC, and the City’s independent auditor for use in completion of the audit required by Neb. Rev. Stat. 18-2721 and Grand Island City Code 38-9.

- Forwarding of requests by Eligible Businesses for reimbursement or direct support for Eligible Activities including development of supporting documentation establishing eligibility for Fund distribution.
- Services of the Board of Trustees in reviewing applications for assistance as set forth in the Plan.
- Implementation and enforcement of Conflict of Interest policies sufficient to ensure conflict-free application review by the Board of Trustees.
- Providing regular updates to the City and/or CARC about conflicts of interests which exist or may arise with GIAEDC, its Board of Trustees, or other designees; and, if necessary, providing administrative support in directing applications to City Council when conflicts make it impossible, or impractical, for the Board of Trustees to take action on an application.
- Implementation and enforcement of confidentiality procedures and protections sufficient to insure against inappropriate disclosure of confidential information as defined by Neb. Rev. Stat. 84-712.05 and Grand Island City Code 38-10.
- Development of legal documents related to Workforce Housing Loans, standard Fund agreements, and Loan Fund agreements by GIAEDC retained or contracted counsel.
- Expenses related to securing legal advice related to compliance with other funding sources which may compliment the use of LB840 funds or may assist in securing other funding sources so that appropriated funds under the Plan may be used on other projects.

GIAEDC will also maintain active membership in state and regional economic development organizations which generate resources or other funding sources which may benefit or supplement the Program.

In exchange for payment of these memberships as part of the Administrative Overhead Payments made by the Fund through this agreement GIAEDC will make efforts to leverage these memberships to locate other sources of funding for eligible activities and eligible businesses and will, when practical, attempt to use these leveraged funds prior to utilization of the Fund or Loan Fund.

Expenses contemplated in the Administrative Overhead Payment included budgeted amounts for GIAEDC's expenses related to facilities and operations including rent, telecommunications, janitorial, office equipment and repairs, supplies and software, insurance, website maintenance, accounting and auditing, staff salaries, employment taxes, legal expenses related to administrative tasks, professional memberships, and a Placer AI subscription.

- **Non-Administration Expenses**

While the Administrative Overhead Payment shall be made, in advance, and shall encompass all activities related to general administration, the City and GIAEDC recognize certain expenses which may be irregular in their occurrence which cannot be adequately captured or accounted for in quarterly payment. As such, these expenses will be separately reimbursable from the Fund.

Reimbursement of these expenses has been contemplated during the City's budget process and was authorized by the Council action authorizing execution of this agreement. These reimbursable expenses shall be paid in an amount not to exceed \$152,100 during the fiscal year 2023-2024.

To be eligible for reimbursement these expenses must be submitted for reimbursement from the Fund by the later of April 1st, 2024 or within 90 days of being incurred. All expenses must be itemized and are subject to the maximum reimbursement set forth below. Each expense must include an attestation that the

expense was incurred exclusively for an Eligible Activity in exclusive support of an Eligible Business. These reimbursements specifically exclude joint ventures with other resources or programs and do not contemplate the reimbursement of salaries, insurance, office overhead, or generalized activities contemplated as part of the Administrative Overhead Payment. Expenses will not be reimbursed for GIAEDC's Board of Trustees. Payments may be reimbursed for authorized third-party contractors so long as the contractors have not been beneficiaries of the Fund or Loan Fund within the last 2 fiscal years and do not have active or anticipated applications for the Fund or Loan Fund within the upcoming fiscal year, except with explicit authorization by the CARC and City Council given before the expense is incurred. Should a non-exclusive expense be incurred which can be adequately apportioned between an eligible and non-eligible activity or business, GIAEDC may submit that request, pursuant to this Agreement to CARC, who may review that request and make recommendation to Council for payment of the portions which they determine can be apportioned to an eligible expense and eligible business. Nothing in this agreement shall be construed to bind CARC into reviewing or approving any requests.

Grants for assistance from the Fund or Loan Fund should be directed, when practically possible, for direct assistance to the eligible business. When that is not practical or economically prudent due to the small size of the direct assistance, GIAEDC may provide limited Community Support Grants or payments for targeted marketing and promotional events subject to reimbursement from the Fund. Examples of historical targeted marketing and promotional events contemplated for reimbursement, include awards and expenses related to the Future Builder's Challenge, Move to Grand Island initiatives, and the Railside Development Tour. Each request for reimbursement must be accompanied by attestation that the recipient was an Eligible Business engaged in an Eligible Activity or by GIAEDC or its contractors for a marketing and promotional event similar in nature to the historical events listed above. Administrative expenses related to these Community Support Grants are not reimbursable as they are contemplated in the Administrative Overhead Payment.

It is anticipated that GIAEDC staff performing administrative duties in support of the Plan will attend conferences or trainings during the fiscal year which aid are necessary for promotion, marketing, or general support of the Plan. It is contemplated that reimbursement for these expenses may be requested. If conference attendance or activities is not exclusively related to LB840 eligible activities, a prorated reimbursement may be considered subject to the recommendations of the CARC and City Council in the same manner as other non-exclusive expenses.

If GIAEDC incurs other expenses related to prospect development of an eligible business considering eligible activities within city limits, or the two-mile extraterritorial jurisdiction of the City, they may seek reimbursement for those direct expenses. Expenses contemplated as prospect development expenses include historical expenses such as third party economic impact studies, site selectors, property staking, development and distribution of community marketing materials, promotional videos, the Big Idea pitch contest, and direct expenses associated with hosting prospects during site visits.

City Responsibilities

- **Administration**

The City will provide ongoing maintenance, investment, and distribution of the Fund and Loan Fund. The City will provide the services of its Finance Director, or designee in administration of the Fund. The City

will assist in facilitating the sharing of information between GIAEDC, the City, and each agency's respective auditors.

The Mayor will seek qualified and conflict-free nominees for service on the CARC and will present nominees to the City Council for appointment to serve on the CARC.

The City will provide the services of the City Administrator, or designee, in performance of its program administration obligations for the Loan Fund.

The City will provide the services of the City Attorney for review of materials as set forth in the Plan.

The City will provide the services of the City Clerk in convening and supporting the CARC in performance of their duties. The City Clerk will additionally assist GIAEDC in scheduling all necessary appearances before the CARC and/or City Council.

The City will arrange for and implement the independent program audit as required by law.

The City will implement and enforce, under penalty of law, confidentiality procedures and protections sufficient to insure against inappropriate disclosure of confidential information as set forth in the Plan, Code, and the Act.

The City will host and facilitate CARC meetings and Council meetings necessary for distribution of the Fund and Loan Fund.

The City will work with GIAEDC in ongoing program review and will keep GIAEDC informed of changes to the Program as recommended by the CARC. Provided that no changes will be presented by City Administration to Council, CARC, or to Voters, without consultation and opportunity for input from GIAEDC.

- **Expenses**

As set forth in the Plan the City may retain 3% of appropriated funds as an administrative fee related to the maintenance and accounting of the Fund.

The City may also seek as reimbursement from the Fund actual costs incurred while convening meetings of the CARC or special meetings of Council.

The City may pay, directly from the Fund, the cost of an external audit as required by law and Code.

Administrative Overhead Payment

As consideration for the Administrative services performed herein, GIAEDC will be paid an annual Administrative Overhead Payment of \$272,900 to encompass all expenses which will constitute full and complete consideration for all services not specifically delineated in the Reimbursable Expenses provisions contained herein.

Quarterly payments 1 and 2 will be made as soon as possible upon final execution of this Agreement. The remaining quarterly payments (3 and 4) will be made on April 1st, 2024 and July 1st, 2024. In the event the City fails to make any administrative overhead payments for Quarter 3 and 4 as required by this Agreement within 30 days EDC may pursue all remedies available to it by law including interest at the prevailing judgment interest rate set by the Nebraska Supreme Court.

Each party shall be responsible for making all payments to its employees and other obligors and will indemnify the other in the event any third-party seeks to garnish, restrict, or lien against the Fund for unpaid debts of either party.

Default

In the event GIAEDC ceases operations, Program and Plan responsibilities shall revert to the City as set forth in the Plan. GIAEDC will promptly return any advanced Administrative Overhead Payments. In the event GIAEDC ceases operations mid-quarter, the advanced Administrative Overhead Payment shall be reduced to a pro-rated daily figure for purposes of determining the amount to be returned to the Fund. No unprocessed expense reimbursements will be made in the event of default.

Insurance Obligations

GIAEDC will be required to maintain Liability Insurance coverage on all employees and their Board of Trustees during the terms of this Agreement.

Other Provisions

In the event either party becomes aware of any claims made against it involving activities related to the Plan or Program, businesses being actively recruited under the Program, other actions related to this plan, they shall notify the other party in writing within 48 hours of becoming aware of said claims. Failure to provide notice will not limit either party's obligations to indemnify the other for its activities under the Program, Plan, and/or Agreement.

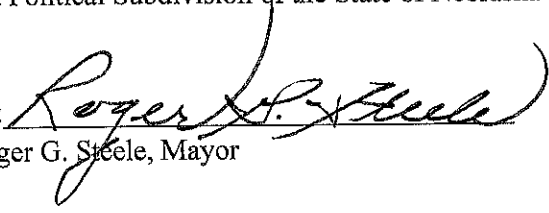
Neither party may assign their interest, rights, or obligations as set forth in this agreement to any other person or entity unless specifically authorized to do so.

Nothing herein will be deemed to establish any rights of third parties against the City or GIAEDC nor to entitle any individual or entity to benefit of the Program, Plan, Fund, or Loan Fund.

This agreement is governed by the laws of the State of Nebraska and, to the extent any portion of this agreement, the Program, or the Plan, are incompatible with the laws of the State or Federal Government, conflict with any legal interpretations of the Program or the Plan made by a court of competent jurisdiction, or are impacted by future legislation, the intention of this Agreement is that all portions of this Agreement which can remain in force and effect will do so. The parties are fully committed to working with each other so as to avoid or minimize disputes or disagreements and will attempt to resolve such disputes or disagreements through discussions between designated representatives of GIAEDC and the City Administrator or through proposed amendments to this agreement as necessary. Either party may seek amendment of this agreement subject to the limitations of law, budgetary funds and restrictions, and the approval of the Grand Island City Council and GIAEDC's Board of Trustees.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date set forth above.

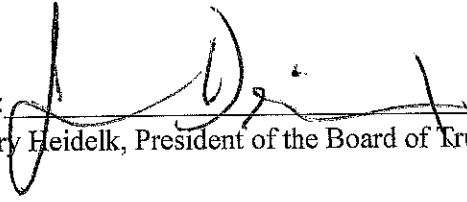
City of Grand Island, a Municipal Corporation
and Political Subdivision of the State of Nebraska

By: 
Roger G. Steele, Mayor

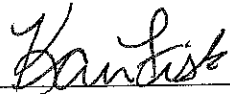
Attest:


Jill Granere, City Clerk

Grand Island Area Economic Development Corporation,

By: 
Jerry Heidelk, President of the Board of Trustees

Approved as to form:


Kari Fisk, City Attorney