

## AGREEMENT

THIS AGREEMENT is made and entered into this 10<sup>th</sup> day of June, 2015, by and between the **CITY OF GRAND ISLAND, NEBRASKA**, a Municipal Corporation, hereinafter referred to as "City" along with the **DOWNTOWN BUSINESS IMPROVEMENT DISTRICT**, hereinafter referred to as "BID", and **The Chocolate Bar** hereinafter referred to as "Grantee".

WHEREAS, the City and BID have obtained and authorized funding for a Downtown Revitalization loan; and

WHEREAS, Grantee has filed with the City and BID a Project Application for Downtown Revitalization Fund; and

WHEREAS, the Project Application fully describes the project and is incorporated herein by reference as a part of this Agreement; and

WHEREAS, the Grantee is a qualifying business under the City's Downtown Revitalization Fund Program, hereinafter referred to as "Program"; and

WHEREAS, the Grantee's Project Application qualifies for incentives under the Program; and

WHEREAS, the project will be of substantial economic benefit the City and its surrounding area; and

WHEREAS, the forgivable Downtown Revitalization Fund loan terms set forth below constitute a fulfillment of the major objective of the City and BID.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the City along with the BID and Grantee agree as follows:

1. **DISBURSEMENTS.** The City shall disburse funds of the Forgivable Loan to the General Contractor as follows:

(A) Grantee shall obtain all permits to complete the project.

(B) After approval of the project by the City and BID, written notice to proceed will be delivered to the Grantee.

(C) The Grantee will create all bid documents, inclusive of Davis-Bacon language. All bid documents must be reviewed by the City's Purchasing Agent prior to publication. The entire bid process must comply with City procurement rules.

(D) Upon opening of bids, the City and Grantee will review submittals and mutually agree upon a General Contractor.

(E) After selection of a General Contractor, a Davis-Bacon required pre-construction meeting shall be held. **No work on the project shall begin until the Davis-Bacon pre-construction meeting has taken place.**

(F) Progress payments will only be made to the General Contractor upon submittal of a request for payment along with an Affidavit of the General Contractor certifying the work completed as of the date of the submittal.

(G) All changes to the project must be approved by the City and BID prior to implementation of any changes to the project.

(H) Any unapproved changes shall void the Loan.

(I) TOTAL DISBURSEMENTS: Pursuant to this Agreement, the City shall not disburse more than \$159,339.00 to the General Contractor.

2. DOWNTOWN REVITALIZATION FUND LOAN FORGIVENESS. The City shall forgive the entire amount of the Downtown Revitalization Loan disbursed on behalf of Grantee, not to exceed \$159,339.00, according to the Measuring Benchmarks as defined in the Revitalization Fund Overview. The schedule of loan forgiveness is attached and incorporated herein as Exhibit "A."

3. BREACH OF AGREEMENT. In the event Grantee fails to comply with any of the terms as set forth in this Agreement, the City and/or BID may declare Grantee in breach and shall follow the procedure set for below:

(A) Any such declaration shall be given in writing, clearly stating the nature of the breach, signed by such person duly authorized to make such declaration, and delivered to Grantee by Certified U.S. Mail, return receipt requested to the Grantee at Grantee's last known address.

(B) Grantee shall respond, in writing, to such declaration within fifteen (15) days of receipt of declaration.

(C) Grantee shall be given thirty (30) days from date of receipt of said declaration to cure the breach.

(D) Upon agreement of the City and BID, the Grantee may be granted additional time to cure said breach.

(E) Should the breach not be cured, any monies disbursed by the City and not forgiven pursuant to the terms of Paragraph 2 of this Agreement shall become immediately due and owing by Grantee to the City.

(F) Upon breach of this Agreement and a failure to cure said breach, any monies disbursed and unforgiven shall accrue interest at the rate of eight percent (8%) per annum.

4. COMMUNICATION. Grantee agrees to fully respond within fifteen (15) calendar days to any request for information from the City and/or BID related to the Grantee's compliance with the terms of this Agreement. Grantee further agrees to inform the City and BID of any changes in address, telephone number, or email address within three (3) business days of such change. All responses and notifications shall be in writing and provided to the City and BID at the following addresses:

City of Grand Island Grant Administrator  
Attn: Charley Falmlen  
100 East First St.  
P.O. Box 1968  
Grand Island, NE 68802-1968

Grand Island Area Business Improvement District  
404 West Third Street  
Grand Island, Nebraska 68801

5. LEGAL EFFECT. Notwithstanding any other provision of this Agreement, Grantee specifically agrees to the following:

(A) Should Grantee be purchased, absorbed or merged with any other person or entity the terms of this Agreement shall continue to be in full force and effect on any such purchaser or successor entity.

(B) Should Grantee cease operations in the City Of Grand Island at any time while this Agreement is in effect, any monies disbursed by the City and not forgiven pursuant to the terms of this Agreement shall become immediately due and owing to the City, and any monies owed shall accrue interest at the rate of eight percent (8%) per annum until paid in full.

(C) Should any provision of this Agreement be declared void or illegal by a Court of law, all other unaffected provisions shall remain in full force and effect.

6. ENTIRE AGREEMENT. This agreement, and all attachments hereto, constitutes the entire agreement between the City, BID and Grantee notwithstanding any other oral agreements or understandings to the contrary and may be amended only in writing, approved and executed as required by law.

IN WITNESS WHEREOF, this agreement is executed by the respective parties.

CITY OF GRAND ISLAND, NEBRASKA,  
A Municipal Corporation,

By: Jeremy L. Jensen  
Jeremy L. Jensen, Mayor

Date: 6/11/15

Attest: RaNae Edwards  
RaNae Edwards, City Clerk

By: Stacy R. Nonhof  
Stacy R. Nonhof, Assistant City Attorney

Date: 6/10/15

DOWNTOWN BUSINESS IMPROVEMENT DISTRICT

By: Christie DePoorter  
Christie DePoorter, Director

Date: 6/10/2015

THE CHOCOLATE BAR, GRANTEE

By: Sharena Anson  
Sharena Anson, President

Date: 6/10/15