



CITY OF RAPID CITY

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MEMORANDUM

TO: Legal and Finance Committee

FROM: Allison Creelman, Assistant City Attorney

DATE: December 23, 2015

RE: Council Approval of CDBG Contract with Hagg, Development, Inc.

In addition to the contract updates outlined in Barb Garcia's December 16, 2015 memo, a clause has been added to paragraph B. beginning on page 4 of the agreement. The added clause ensures that if the feasibility measures that the Subrecipient carries out with the CDBG funds do not eventually result in completed dwelling(s) for low to moderate income persons, that the City will be able to recover the CDBG funds.

This recovery is necessary as H.U.D. will require repayment of the funds if the project does not result in any housing for low to moderate income persons. Hagg, Development, Inc. has agreed to provide an Irrevocable Letter of Credit ("ILOC") to provide surety to the City in this regard. It is anticipated that the ILOC will be issued prior to the January 4, 2016 Council meeting, and it will be linked to the Council agenda once it's been issued.

The updated language is as follows:

Failure by the Subrecipient to fulfill the national objective shall result in grant funds being disallowed and required to be returned to the City/Grantee.

1. Subrecipient shall provide the City/Grantee an Irrevocable Letter of Credit ("ILOC") in an amount equal to the Community Development Block Grant fund expenditures contemplated under this Agreement, which is **One Hundred Twenty Thousand Seven Hundred Twenty-one & 56/100 dollars (\$120,721.56)**, payable to the City to secure Subrecipient's full and faithful

compliance with the Community Development Block Grant Program National Objectives, including but not limited to the compliance requirement that the above-stated H.U.D. National Objective be met via completion of a dwelling or dwellings contemplated under Section C. below, such dwelling(s) to be available for occupation by low- and/or moderate-income person(s) within three years of the date of execution of this Agreement (the "Completion Requirement").

- a. In the event the Subrecipient defaults under this paragraph B. by failure of the Completion Requirement, subject to any timeframe adjustments agreed upon in writing by the City/Grantee and the Subrecipient, the City/Grantee may use the ILOC to recover the funds granted to Subrecipient under this Agreement.
- b. The City/Grantee will provide written notice of such default on the Completion Requirement and intent to recover at Subrecipient's last known address by first class mail. The Subrecipient may be provided an opportunity to cure such default at the sole discretion of the City/Grantee.
- c. The ILOC shall be maintained in full force and effect for the duration of this Agreement, or until the Completion Requirement has been met, whichever comes first.
- d. The form and provisions of the ILOC shall be acceptable to the City/Grantee, in its sole discretion.