



City of Grand Island

Tuesday, November 7, 2017

Study Session

Item -2

Husker Harvest Days Project

Staff Contact: Marlan Ferguson

Husker Harvest Days, the World's Largest Totally Irrigated Working Farm Show is now 40 years old and is experiencing infrastructure issues, lot size issues and lack of modern facility issue. For several years Farm Progress has been discussing with the private companies, Agriculture Institute of Nebraska, City, County, Chamber and other entities their concern of losing the Show to another location or the show becoming a regional rather than a National/International Show. Farm Progress has identified 7 million dollars of infrastructure and modern upgrades that need to be completed. They have asked the City to contribute 2 million dollars of that from the Food and Beverage tax. The economic impact of this show is estimated to be 7.5 million annually. Although it is a three day show, exhibitors are in the community often times 2 weeks in advance and a week or more afterwards. Since it is a National Show the Corporate Headquarters of such companies as John Deere bring in equipment and personnel to handle the show and they are staying in the community for 2 to 3 weeks, thus the added impact.

Farm Progress is committed and ready to start on the upgrades as soon as they are assured of the City's participation. Since this area is outside of the City Limits it has been determined that the best legal process for the City to contribute funds would be for the City to approve a redevelopment plan for the project and enter into an Interlocal Agreement with the Community Redevelopment Authority to provide partial funding for the project. The attached memo from Jerry Janulewicz, details how and why this transfer can occur to fund private improvements within the redevelopment area.

As proposed the interlocal agreement would authorize the City to contribute up to \$200,000 per year for 10 years beginning in fiscal year 2019 to the CRA and the CRA would pay those funds to Farm Progress to cover up to \$2,000,000 of the costs of the proposed improvements at the site. The CRA would enter into a redevelopment contract with Farm Progress for a period of 20 years. Farm Progress will agree to continue to hold at least one 3 day farm show on the site for a 20 year period and the CRA will forgive \$100,000 of the \$2,000,000 investment for each year that a show is held. The CRA will hold a lien on the Farm Progress property at the Cornhusker Army Ammunition Plant to protect the City and the CRA in the event that the show is canceled prior to the 20 year term of the contract.

It is the intent of the City to fund this project over the 20 year period with the proceeds of the Food and Beverage Occupation Tax.

This Study Session will outline that interlocal agreement and the process the City Council needs to follow to contribute to this project.

MEMO

TO: File
FROM: Jerry Janulewicz, City Attorney
DATE: October 9, 2017
RE: Legal Authority to Expend City Funds to Support a Redevelopment Project
Located Beyond the Corporate Boundaries of the City

QUESTION: Whether legal authority exist to expend city funds in support a community redevelopment authority project located beyond the corporate boundaries of the city.

ANSWER: Nebraska Revised Statutes specifies two separate and distinct statutory basis for a community redevelopment authority and a city to undertake a redevelopment project located beyond the corporate boundaries of the municipality. Nebraska Revised Statutes § 18-2123 authorizes the acquisition and development of lands within three miles of the municipal boundaries when necessary or convenient to the proper clearance or redevelopment of a blighted and substandard area. And, Neb.Rev.Stat. § 18-2123.01 authorizes, under the conditions specified, a city to undertake a redevelopment project at the site of a former military base located beyond the municipal boundaries of the city.

Any city located within the area of operation of an authority may grant funds to an authority for the purpose of aiding such authority in carrying out any of its powers and functions under the provisions of Neb.Rev.Stat. §§ 18-2101 to 18-2144. To obtain funds for this purpose, the city may levy taxes and may issue and sell its bonds.

By statute, the powers and authorities granted to cities, villages and redevelopment authorities are to be liberally construed, and all incidental powers necessary to carry into effect such sections are hereby expressly granted to and conferred upon any such city or village or an authority.

DISCUSSION: The Community Development Act, Neb.Rev.Stat. §§ 18-2101, et seq., (the “Act”) provides full and complete power to cities to create community development

authorities and to exercise all powers provided by the Act. The Act “shall be full authority for the creation of a community redevelopment authority by a city or village, and for the exercise of the powers therein granted to a city or village and to such authority *Insofar as the provisions of sections 18-2101 to 18-2144 are inconsistent with the provisions of any other law or of any city charter, if any, the provisions of sections 18-2101 to 18-2144 shall be controlling.*”

Neb.Rev.Stat. §18-2144 (emphasis added). An authority is authorized “[t]o prepare or cause to be prepared and recommend redevelopment plans to the governing body of the city and to undertake and carry out redevelopment projects within its area of operation.” Neb.Rev.Stat. § 18-2107.

Moreover, the Legislature specifically provided: “[A]ll grants of power, authority, rights, or discretion to a city or village and to an authority created under the Community Development Law shall be liberally construed, and all incidental powers necessary to carry into effect such sections are hereby expressly granted to and conferred upon a city or village or an authority created pursuant to the Community Development Law.” Neb.Rev.Stat. §18-2153 (emphasis added).

Nebraska statutes provide two distinct scenarios for a community development authority and city to acquire, develop, and operate a redevelopment project beyond the corporate limits of the municipality. Nebraska Revised Statute § 18-2103(9) identifies the area of operation of a Community Redevelopment Authority as the “area within the corporate limits of the city *and such land outside the city* as may come within the purview of sections 18-2123 and 18-2123.01.”

Nebraska Revised Statute § 18-2123 provides for the acquisition and development of undeveloped vacant land located within a three mile radius of the municipal boundaries when such acquisition or development “is necessary or convenient to the proper clearance or redevelopment of one or more substandard or blighted areas within the city or is a necessary adjunct to the general community redevelopment program of the city”. The second extraterritorial area of operation is provided by Neb.Rev.Stat. § 18-2123.01, which authorizes a city to undertake a redevelopment project located outside the corporate limits of such city when:

- (a) The real property located outside the corporate limits of the city is a formerly used defense site;
- (b) The formerly used defense site is located within the same county as the city approving such redevelopment project;
- (c) The formerly used defense site is located within a sanitary and improvement district;
- (d) The governing body of the city approving such redevelopment project passes an ordinance stating such city’s intent to annex the formerly used defense site in the

future; and (e) The redevelopment project has been consented to by any city exercising extraterritorial jurisdiction over the formerly used defense site.

Thus, the areas of operation of a city and its community redevelopment authority include not only the area within the municipal boundaries, but may include such other areas as fit within the statutory framework of §§ 18-2123 or 18-2123.01. “[I]t is competent for the legislature to confer power upon a municipality to act beyond its boundaries in making improvements and in other ways promoting municipal objects.” § 37:10. *Improvements beyond corporate limits*, 13 McQuillin Mun. Corp. § 37:10 (3d ed.).

To finance a redevelopment project, a community development authority may “issue bonds, and provide security for loans or bonds; to establish a revolving loan fund, and to provide grants, loans, or other means of financing to public or private parties in order to accomplish the rehabilitation or redevelopment in accordance with a redevelopment plan.” Neb.Rev.Stat. § 18-2107(4). To assist in the financing of a redevelopment project, the Act authorizes public bodies, defined by Neb.Rev.Stat. § 18-2103(4) as any municipality, county, township, board, commission, authority, district, or other political subdivision or public body of the state in Nebraska, to provide financial and other assistance to a redevelopment authority:

In addition to any other provisions governing any public body set forth in sections 18-2101 to 18-2144 and 18-2147 to 18-2151, *for the purpose of aiding and cooperating in the planning, undertaking, or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine: ... (6) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section; (7) do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment plan; (8) lend, grant, or contribute funds to an authority; (9) employ any funds belonging to or within the control of such public body, including funds derived from the sale or furnishing of property, service, or facilities to an authority, in the purchase of the bonds or other obligations of an authority and, as the holder of such bonds or other obligations, exercise the rights connected therewith; and (10) enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with an authority respecting action to be taken by such public body pursuant to any of the powers granted by the provisions of sections 18-2101 to 18-2144.*

Neb.Rev.Stat. § 18-2138.

Additionally, cities are authorized by Neb.Rev.Stat. §18-2140 to provide funds for aiding in the operation of the community redevelopment authority and to assist it in defraying its expenses: “The governing body of such city is hereby authorized, in its discretion, to appropriate from its general fund and to place at the disposal of the authority an amount sufficient to assist in defraying such expense. *Any city located within the area of operation of an authority may grant funds to an authority for the purpose of aiding such authority in carrying out any of its powers and functions under the provisions of sections 18-2101 to 18-2144. To obtain funds for this purpose, the city may levy taxes and may issue and sell its bonds.*” Neb.Rev.Stat. § 18-2140 (emphasis added). This statutory grant of authority is authorized by the Constitution of the State of Nebraska, which provides specific authority for a city to incur indebtedness, whether by issuing bonds, loans, notes, advance of money, or otherwise, for the purpose of rehabilitating, acquiring, or redeveloping substandard and blighted property in a redevelopment project. Neb. Const. art. VIII, § 12.

Financing a redevelopment project may accomplished through joint or cooperative exercise of powers and authorities by one or more local government entities. (“[A]ny local government may exercise any of its powers or perform any of its functions, including financing the same, jointly or in cooperation with any other governmental entity or entities.” Neb. Const. art. XV, § 18.)

It is clear, therefore, through the enactment of Laws 2013 LB 66 the Nebraska legislature provided to cities the grant of authority necessary to undertake a redevelopment project at the site of a former military base located beyond the municipal boundaries of the city. Such an area is included within the area of operation of a community redevelopment authority of such city. Cities and other public bodies are statutorily authorized to provide financial and other assistance to a community redevelopment authority to aid it in carrying out a redevelopment project within its area of operation. Moreover, as noted above, the State’s Constitution provides authority for cities to incur indebtedness for the purpose of rehabilitating, acquiring, or redeveloping substandard and blighted property in a redevelopment project.

**CITY OF GRAND ISLAND, NEBRASKA
AND
COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF GRAND
ISLAND, NEBRASKA
INTER-LOCAL COOPERATION AGREEMENT
FOR
HUSKER HARVEST DAYS REDEVELOPMENT PROJECT**

Pursuant to Neb. Rev. Stat., Chap. 13, Art. 8, this Inter-Local Cooperation Agreement is entered into by and between the City of Grand Island, Nebraska (“City”) and the Community Redevelopment Authority of the City of Grand Island, Nebraska (“Authority”), political subdivisions of the State of Nebraska, this ___ day of _____, 2017.

Whereas, Authority and City are parties to a Redevelopment Agreement with Farm Progress, Inc. (“Farm Progress”), for redevelopment of the Husker Harvest Days show site (the “show site”), a redevelopment project located at the site of a former military base and approved by City and Authority (the “Redevelopment Project”); and

Whereas, pursuant to the terms of a redevelopment agreement, Authority will provide to Farm Progress not more than \$2,000,000.00 for funding Authority’s pro-rata share of infrastructure improvements at the show site under terms as set forth in the Redevelopment Agreement; and

Whereas, in order to meet the financial commitments set forth in the Redevelopment Agreement, Authority may incur indebtedness in the form of issuance of bonds, issuance of a promissory note or notes, or participation in other debt instruments and obligations; and

Whereas, City desires to provide financial assistance to Authority to enable Authority to fulfill Authority’s financial commitments to the Redevelopment Project as set forth in a Redevelopment Agreement.

Now, therefore, City and Authority agree as follows:

1. **DURATION.** This Interlocal Agreement shall be contingent upon approval of a Redevelopment Agreement by and among City, Authority and Farm Progress, shall commence upon the effective date of such Redevelopment Agreement, and shall continue thereafter for a period of twenty (20) years unless sooner terminated by mutual agreement of City and Authority.

2. **SEPARATE LEGAL OR ADMINISTRATIVE ENTITY; DELEGATION.** There shall be no separate legal or administrative entity created by this Inter-Local Cooperation Agreement.
3. **PURPOSE.** The purpose of this Agreement is to provide financial assistance of the City to enable Authority to undertake the Redevelopment Project.
4. **MANNER OF FINANCING AND MAINTAINING A BUDGET.**
 - a. City shall provide to Authority City funds not to exceed \$2,000,000.00 to enable Authority to pay a two-sevenths (2/7) pro-rata share of infrastructure development cost for the Redevelopment Project as approved by Authority. Said funds shall be provided in 20 annual payments of \$100,000.00 commencing November 1, 2018 and each November 1 thereafter or such other amounts and upon such payment schedule as mutually agreed by City and Authority. Additionally, in the event Authority is required to incur debt to fund all or a part of its pro-rata share of Redevelopment Project costs and expenses (the “project debt”), City shall reimburse the Authority in such annual amounts as required to service the interest expense incurred by Authority with respect to project debt.
 - b. Notwithstanding anything herein to the contrary, if Authority receives, recovers or otherwise obtains reimbursement of all or a part of its pro-rata share of Redevelopment Project costs and expense from Farm Progress or any other party, Authority shall transfer, assign, and pay over such amounts to City to the extent such amounts, if any, exceed Authority’s outstanding project debt. This provision of this section 4.b. shall survive termination of this agreement.
 - c. City and Authority shall budget such amounts annually as necessary to fund this Interlocal Agreement.
5. **ADMINISTRATOR.** The Grand Island City Administrator and the Director of the Community Redevelopment Authority of the City of Grand Island shall serve as co-administrators for this cooperative undertaking.
6. **MANNER OF DISPOSING OF PROPERTY.** No real or personal property shall be jointly acquired by the parties as a result of this Interlocal Cooperation Agreement.

CITY OF GRAND ISLAND, NEBRASKA

Dated _____

By: _____

Jeremy L. Jensen, Mayor

Attest: _____

RaNae Edwards, City Clerk

COMMUNITY REDEVELOPMENT
AUTHORITY OF THE CITY OF GRAND
ISLAND, NEBRASKA

Dated _____

By: _____

Tom Gdowski, Its Chair

Attest: _____

Authority Secretary

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