



City of Grand Island

Tuesday, July 24, 2012

Council Session

Item I5

#2012-194 - Approving Memorandum of Understanding with Chief Industries and the Grand Island Community Redevelopment Authority

Staff Contact: Chad Nabity

Council Agenda Memo

From: Chad Nabity, AICP

Meeting: July 24, 2012

Subject: Memorandum of Understanding with Chief Industries and the Grand Island Community Redevelopment Authority

Item #'s: I-5

Presenter(s): Chad Nabity, Director Grand Island CRA

Background

Chief Industries has purchased the former Aurora Coop property at Fonner Park Road and Lincoln Avenue. They are currently in the process of demolishing the old structures and preparing the site for future construction. The Grand Island CRA has approved a grant of \$100,000 to aid Chief in this process that will cost more than \$200,000. This grant is consistent with the generalized redevelopment plan for the area approved by the Grand Island City Council and the CRA.

When the CRA approved the grant they asked Chief to consider a Memorandum of Understanding (MOU) that would allow the CRA to recapture the grant at some point in the future if TIF is requested on the property. Attorney's representing both the CRA and Chief has drafted the attached MOU. In order to make it clear that all parties are on board with the possible inclusion of these demolition activities in any future TIF application both attorneys agreed that the MOU should also be signed by the Mayor representing the City after approval by Council.

Representatives from Chief signed the agreement on July 5, 2012. The CRA approved and signed the agreement on July 11, 2012.

Discussion

The action item does not authorize the use of Tax Increment Financing for this project or impact the decision of the CRA to grant funds toward the demolition of structures on the former Aurora Coop property. It does however allow the CRA to recapture the grant at

some point in the future if Chief makes an application for TIF. It also authorizes Chief to complete the demolition and site clearance activities and allows them to proceed with the installation of a public water main across the property to facilitate potential future development.

This MOU does not bind either the City Council or the CRA into approving an application for TIF at some future time. It does not bind City or CRA into allowing these redevelopment expenses as TIF Eligible expenses within any future redevelopment plan or TIF application. It does however make it clear that these expenses can be included within any future application.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the MOU as presented.
2. Move to not approve the MOU as presented
3. Refer the issue to a Committee
4. Postpone the issue to future date
5. Take no action on the issue

Recommendation

City Administration recommends that the Council Move to approve the MOU as presented and authorize the Mayor to sign the agreement on behalf of the City.

Sample Motion

Move to approve the MOU as presented and authorize the Mayor to sign the agreement on behalf of the City.

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (the “**MOU**”) is made and entered into this 11th day of July, 2012, between the City of Grand Island, NE (the “**City**”), the Community Redevelopment Authority of the City of Grand Island, NE (the “**Authority**”) and Chief Industries, Inc., a Delaware corporation (the “**Company**”).

WHEREAS, the Community Development Law, Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended (the “**Act**”), prescribes the requirements and procedures for the Planning and implementation of Redevelopment Projects; and

WHEREAS, the Company has acquired certain real Property in the City legally described on Exhibit A (the “**Property**”) which lies within an area declared blighted and substandard by the City; and

WHEREAS, the Property lies within an area subject to a Redevelopment Plan adopted by the Authority and approved by the City; and

WHEREAS, the Company desires to demolish and remove the blighted and substandard improvements on the Property, (the “**Preliminary Activities**”); and

WHEREAS, the Company intends to formulate and present a Redevelopment Plan for the Property to the Authority, which plan shall include demolition of blighted and substandard improvements, installation of municipal utilities including, but not limited to, a municipal water main line, and the eventual redevelopment of certain private improvements to be identified by the Company; and

WHEREAS, the Authority finds it in the public interest to consider a request for a grant to be funded in part by Tax Increment Financing (TIF) to promote the development of the Project and assist with the funding of the Preliminary Activities.

NOW THEREFORE, the parties set forth their understanding in regard to certain actions and expenditures that the Company will make for funding Preliminary Activities prior to Redevelopment Plan submission and approval but which Preliminary Activities shall remain eligible for inclusion in a subsequent Redevelopment Project and Plan:

1. *Definitions.* Capitalized items used in this MOU shall have the meanings assigned herein.
2. *Company's Obligations.* Upon execution of this MOU, the Company may proceed with the following actions:
 - a. *Preliminary Activities.* Upon presentation to the Authority of a Demolition Plan identifying the existing improvements on the Property to be demolished the Company may proceed with the demolition in accordance with the Demolition Plan.

- b. *Redevelopment Plan and Project.* The Company shall cooperate with the Authority to prepare a Redevelopment Plan identifying a Redevelopment Project for the Property. Such Redevelopment Plan shall include, at a minimum:
 - i) the demolition of the existing blighted and substandard structures;
 - ii) the installation of municipal utilities including, specifically, a city water main extension to provide service to the Property; and
 - iii) the eventual development of the Property with private improvements.
- c. *Funding.* Upon completion of the demolition pursuant to the Demolition Plan, the Company shall provide the Authority an itemized list of expenditures incurred in the demolition.
- d. *Indemnification.* The Company agrees to indemnify, and hold the Authority and the City, their employees, agents, independent contractors and consultants harmless from and against any and all suits, claims, cost of defense, damages, injuries, liabilities, costs and/or expenses resulting from, arising out of, or in any way connected with this MOU.

3. *Authority's Obligations.*

- a. *Funding.* In order to finance in part the Preliminary Activities the Authority shall grant to the Company up to the sum of \$100,000.00 ("**Grant**"), provided such amount shall not exceed the sum determined to be qualifying expenditures eligible for reimbursement pursuant to §18-2103 (12) of the Act. Such grant shall be financed by the issuance of TIF indebtedness to be repaid from a division of taxes pursuant to §18-2147 (1)(b) of the Act as provided herein. The Redevelopment Plan for the Property shall provide for the reimbursement of the Authority in an amount not to exceed the Grant solely from excess TIF Note proceeds or excess incremental tax revenue generated by the Project. The Redevelopment Plan and the Redevelopment Contract shall first provide for the payment of the Company's eligible project costs once the Authority and/or the City approve the use of TIF for the Project, pursuant to subsection (b) below.
- b. *Tax Increment Financing.* The City and Authority shall consider, after appropriate proceedings as required by law approving and implementing a Redevelopment Plan for the Property authorizing tax increment financing for the Project to pay costs eligible for reimbursement as Redevelopment Project costs as defined by §18-2103(12) of the Act. The grant for Preliminary Activity qualifying expenditures as set forth in paragraph 3a hereof, shall be payable only from Authority funds and those funds generated by the TIF revenues on the Property divided pursuant to §18-2147(1) (b) of the Act. After approval of a Redevelopment Plan dividing taxes on the Property pursuant to §18-2147(1)(b) of the Act, the Authority may consider the issuance of additional TIF indebtedness, to be purchased by the Company, the proceeds of which shall be granted to the Company to fund remaining qualifying Preliminary Activity expenditures, and other Redevelopment Project costs as defined by §18-2103(12) of the Act. The Authority and City, in entering in this MOU, do not pre approve use of TIF for the Project. The Authority and/or the City, without any liability to the Company, may ultimately decline to utilize TIF for the Project, and if either or both do so, the Company shall have no claim against the Authority or the City. The

- Company knowingly accepts its own risk in site acquisition, demolition and site preparation prior to the Authority's implementation and City's approval of the TIF process.
- c. *Good Faith Meeting Schedule.* The City and Authority agree to takes all reasonable steps to establish public meeting schedules, according to law, to establish and maintain the proposed schedule for Redevelopment Plan adoption and Redevelopment Contract approval and other steps required by the Project.
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4. *Economic Feasibility.* The Company hereby declares to the City and the Authority that the Redevelopment Project for the Property, and specifically the Preliminary Activities are not economically feasible and the Project will not occur on the Property as designed without the use of tax increment financing as required by §18-2116(1) of the Act.. The Company's investment of costs of Preliminary Activities to begin the Project development will not alter the Company's determination, based upon its analysis of cash flow requirements, not to implement the Project in the proposed location unless tax increment financing is ultimately provided by the City and the Authority. Section 18-2116(1) of the Act requires the City to make findings as follows if a TIF application requests the use of funds as described in Section 3 above: (i) the Project would not be economically feasible without the use of tax increment financing, and (ii) the Project would not occur in the City without the use of tax increment financing. Due to the proposed schedule of the Project the Company desires to begin the Project immediately and to undertake the Preliminary Activities prior the formal submittal of a Redevelopment Plan/ Project to the Authority and the city for approval. The purpose of this MOU is to make clear the parties intentions to consider the costs of Preliminary Activities as eligible for TIF funding, if and only if, the City and Authority approve TIF funding for the Project even if the Project is commenced prior to the approval of a Redevelopment Plan or Redevelopment Project by the Authority or the City. The parties agree that if the Project is commenced prior to the approval of a Redevelopment Plan providing for TIF funding, the allowable costs for the Preliminary Activities will remain eligible for TIF funding under a Redevelopment Contract.
 5. *Preliminary Activity Costs.* The Company estimates that the costs to conduct the Preliminary Activities shall be in excess of Two Hundred Thousand and No/100 Dollars (\$200,000.00). The Redevelopment Project ultimately proposed by the Company for the Redevelopment Project Site shall be eligible for payment or reimbursement as part of the Project Eligible Costs. Any sums expended by the Company in excess of the Preliminary Activity Grant are subject to reimbursement to the Company in accordance with the priority and order set forth herein and subject to the terms of the Redevelopment Contract. Further, the Preliminary Activity Grant made by the Authority is subject to reimbursement from excess incremental tax revenues generated by the Redevelopment Project to be undertaken by the Company.
 6. *Counterparts.* This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this MOU and all other agreements, certificates, instruments and other documents contemplated by this MOU and exchange the

counterparts of such documents by means of facsimile transmission. The parties agree that the receipt of such executed counterparts shall be binding on such parties and shall be construed as originals.


7. *Governing Law.* The MOU shall be governed by the laws the State of Nebraska.


July 11th, 2012

“The Authority”

Community Redevelopment Authority
of the City of Grand Island, Nebraska

Attest


Secretary Chad Nabity

By: 
Barry Sandstrom, Chair

July ____, 2012

“The City”

City of Grand Island, Nebraska

Attest

City Clerk RaNae Edwards

By: _____
Jay Vavricek, Mayor

July 11th, 2012

“The Company”

Chief Industries, Inc., a Delaware corporation


By: 
DJ Eihusen, President

Exhibit A

LEGAL DESCRIPTION OF PROJECT

Lots One (1) and Two (2), Chief Fab Second Subdivision, City of Grand Island,
Hall County, Nebraska

4813-3490-9967,v . 2

RESOLUTION 2012-194

WHEREAS, the City of Grand Island, Nebraska, a municipal corporation and city of the first class, has determined it be desirable to undertake and carry out urban redevelopment projects in areas of the City which are determined to be substandard and blighted and in need of redevelopment; and

WHEREAS, the Nebraska Community Development Law, Chapter 18, Article 21, Nebraska Reissue Revised Statutes of 2007, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects; and

WHEREAS, the City has previously declared Redevelopment Area No. 8 of the City to be substandard and blighted and in need of redevelopment pursuant to the Act; and

WHEREAS, Chief Industries Inc., a Delaware Corporation (the "Developer), has purchased the former Aurora Coop Property located entirely within Redevelopment Area No. 8,

WHEREAS, various activities are necessary to facilitate the redevelopment of the property owned by the Developer including: demolition of the existing structures, clearing and grading the property, and installation of a city water main across the property.

WHEREAS, the Community Redevelopment Authority of the City of Grand Island, Nebraska (the "Authority"), the Developer and wish to enter into a memorandum of understanding with the City of Grand Island regarding the various activities necessary to facilitate the redevelopment of the property; and

WHEREAS, the Authority and the Developer have previously approved and signed the memorandum of understanding, and

WHEREAS, the Authority has granted funds in the amount of \$100,000 toward clearance of the site to the Developer, and

WHEREAS, this memorandum of understanding is in the best interests of the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of a healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreation and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, or conditions of blight.

NOW, THEREFORE, be it resolved by the City Council of the City of Grand Island, Nebraska that The Mayor and City Clerk are authorized and directed to execute the attached memorandum of understanding.

Approved as to Form July 23, 2012	by _____ City Attorney
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Adopted by the City Council of the City of Grand Island, Nebraska, July 24, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

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