
City of Broken Bow

Monday, September 24, 2012

City Council Regular Session

Memorandum of Understanding for TIF for Arrow Seed

Staff Contact: City Attorney

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (the "MOU") is made and entered into this 2nd day of May, 2011, between the City of Broken Bow, Nebraska (the "City") the Community Redevelopment Authority of the City of Broken Bow, Nebraska (the "CRA") and Arrow Seed Company, Inc., a Nebraska Corporation (the "Company").

WHEREAS, the Company has indicated an interest in redeveloping and rehabilitating certain real property in the City legally described on Exhibit A (the "Property") and renovating and adding to the motor vehicle sales and service business thereby removing the blight conditions in proposed area 7 (the "Project");

WHEREAS, upon completion, the Company intends to operate the Project and will do business on the Property;

WHEREAS, prior to making additional financial commitments and continuing due diligence, the Company desires to have an indication of interest from the City with regard to certain financing and other assistance necessary to develop the Project;

WHEREAS, the City has made preliminary indications that it intends to declare an area of the City where the Company's property is located to be blighted and substandard. That further, the Company, based on indications by the City has pursued the Project with the use of TIF.

WHEREAS, the City finds it in the public interest to cooperate with the Company to promote the development of business activity in the City; and

WHEREAS, the parties desire to set forth their understandings and obligations to bring about the accomplishment of the foregoing recitals, all in accordance with the terms set forth in this MOU.

NOW, THEREFORE, in consideration of the foregoing recitals (which are specifically incorporated herein by this reference), the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties hereby agree as follows:

1. *Definitions.* Capitalized terms 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. *Development of Project.* The Company agrees to use its best efforts to begin rehabilitation and redeveloping the Property and commence construction on the Project no later than May 2nd, 2011.

b. *Creation of Jobs.* The Company believes that the development of the Project will result in the creation of new jobs and retention of existing jobs within the City.

c. *Project Requires TIF.* The Company verifies that: (i) the Project would not be economically feasible without the use of tax-increment financing; and (ii) the Project would not occur in the Redevelopment Area without the use of tax-increment financing.

d. *Minimum Tax Payments.* The Company will be required by written agreement with the CRA and City to pay a minimum tax increment payment on the project (over and above an assessment based on January 1, 2011 Project valuation) sufficient to pay loans to the company.

e. *Indemnification.* The Company agrees to indemnify and hold the City, their employees, agents, independent contractors and consultants harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, resulting from, arising out of, or in any way connected with this MOU.

f. *No Sales Tax Exemption.* The Company agrees that it will not seek any exemption from the payment of sales tax or personal property tax on the Project, so long as any Tax Increment Revenue Bond on the Project remains unpaid.

3. *CRA's and City's Obligations.* In order to induce the Company to build the Project on the Property, the CRA and City shall use best reasonable efforts consistent with applicable law to work in good faith to consider any application for tax increment financing, community development debt or grants, or other financial incentives which might be available to promote the Company's economic development of the Project in the City. Specifically, the CRA and City shall consider the following:

a. *TIF Revenue Funds.* The CRA and City shall consider a grant of TIF funds to pay costs eligible for reimbursement as redevelopment project costs as defined by Neb. Rev. Stat. § 18-2103(12). Such grant shall be payable only from City funds generated by the Property pursuant to Neb. Rev. Stat. §18-2147(1)(b).

4. *Economic Feasibility.* Neb. Rev. Stat. 18-2116(1) requires the CRA and 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, (ii) the Project would not occur in the City without the use of tax-increment financing. Due to the proposed construction schedule of the Project and the impact of weather concerns on such schedule, the Company desires to begin construction on the Project immediately. If the Company does begin such construction, the CRA and City will analyze the economic feasibility of the Project and the likelihood the Project would occur in the City as of the time prior to the commencement of construction.

5. *Redevelopment Contract.* The CRA and City and the Company shall use their best reasonable efforts to negotiate and enter into a redevelopment contract in accordance with any timelines required by applicable law, subject to Section 3. The redevelopment contract shall outline the obligations and agreements with regard to the financing matters set forth in Section 3 above, including, without limitation, the amount of any tax increment revenue financing proceeds to be granted to the Company, along with any other agreements deemed necessary. Upon execution of the redevelopment contract, this MOU shall be deemed superseded and of no further force and effect.

6. *Intent of MOU.* The undersigned parties each acknowledge and agree that the Company would be unwilling to pursue any further discussions with regard to locating the Project in the City without execution of this MOU. The Company acknowledges and agrees that, until the CRA and the City act in accordance with law with regard to each parties' obligations as outlined in this MOU (i.e., following all notice and hearing requirements, etc.), any obligations set forth in this MOU for the CRA, City and the Company are nonbinding. This MOU does not approve or create an obligation to approve any subsequent TIF application submitted by the Company. The CRA and City retain full legislative to approve or deny any TIF application submitted by the Company.

7. *Counterp*

8. *rts.* 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 counterpart shall be binding on such parties and shall be construed as originals.

9. *Time.* This MOU and all obligations contained herein shall terminate July 1, 2011.

10. *Governing Law.* This MOU shall be governed by the laws of the State of Nebraska.

City of Broken Bow

Community Redevelopment Authority

By: _____
Mayor

Chairman

Arrow Seed Company, Inc.

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY