

# **City of Scottsbluff, Nebraska**

**Thursday, June 2, 2016**

**Regular Meeting**

## **Item 3**

**Review Redevelopment Contract and TIF Bond for Owen Oral Surgery Redevelopment Plan.**

**Staff Contact: Nathan Johnson, City Manager**

## REDEVELOPMENT CONTRACT

THIS REDEVELOPMENT CONTRACT is entered into on \_\_\_\_\_ by and between the Community Redevelopment Authority of the City of Scottsbluff, Nebraska (the "Authority") and Owen Development, LLC, a Nebraska Limited Liability Company ("Redeveloper").

### RECITALS

- A. The City Council of the City of Scottsbluff ("City Council" and "City" respectively) has declared the Site (as defined below) blighted and substandard as defined in the Nebraska Community Development Law, NEB REV. STAT. § 18-2101 et seq, (the "Act").
- B. After a positive recommendation by the Planning Commission of the City, the Authority and City Council approved and adopted the Redevelopment Plan, as modified ("Plan") submitted by the Redeveloper. The Plan is incorporated into this Redevelopment Contract by this reference.
- C. This Redevelopment Contract has been prepared pursuant to the Act in order to implement the Plan submitted by the Redeveloper.
- D. This Redevelopment Contract is entered into by the Authority to provide financing for an approved redevelopment project.

NOW THEREFORE, in consideration of the foregoing recitals which are material to and made a part of this Contract, the covenants herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows.

- 1. Definitions.** The following terms in this Contract shall have the following definitions.
- a. "Contract" shall mean this Redevelopment Contract and all amendments, modifications, and extensions hereto.
  - b. "Holder(s)" means the registered owner or owners of the Indebtedness issued by the Authority.
  - c. "Indebtedness" means any bonds, notes, loans, and advances of money or other indebtedness, including interest and premium, if any, thereon, incurred by the Authority pursuant to this Contract to provide financing for the Project Costs (as defined below) and secured in whole or in part by TIF Revenues (as defined below). The Indebtedness as initially issued by the Authority shall consist of the Authority's Tax Increment Development Revenue Bond (Owen Development) to be issued in the amount not to exceed \$204,000.00.
  - d. "Project" shall mean the Project as defined in the Plan.
  - e. "Project Costs" shall mean the costs for those activities described on Exhibit B and reimbursable to Redeveloper under the Act. The amount of the Project Costs shall be the amount actually incurred by the Redeveloper for such activities, and the estimates set forth on Exhibit B were provided for budgeting purposes only.
  - f. "Redeveloper" shall mean Owen Development, LLC, a Nebraska Limited Liability Company.

- g. "Registrar" shall mean the Treasurer of the City in her capacity as registrar and paying agent for any Indebtedness.
- h. "Resolution" shall mean any Resolution of the Authority authorizing the issuance of the Indebtedness and/or approving this Contract.
- i. "Site" shall mean the real estate legally described on Exhibit A together with all buildings, improvements and fixtures located thereon.
- j. "TIF Revenues" shall mean that portion of the ad valorem taxes generated by the Project on the Site and allocated to the Authority pursuant to NEB. REV. STAT. § 18-2147(1)(b).

**2. Findings of the Authority:** The Authority has made the following findings:

- a. The Plan has been duly approved by the City Council and adopted by the Authority pursuant to the Act.
- b. The proposed land uses and building requirements in the Plan are designed with the general purposes of accomplishing, in conformance with the City's Comprehensive Plan, a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and 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 provision of adequate transportation, water, sewerage, and other public utilities, 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 conditions of blight.
- c. The Authority and City have each conducted a cost benefit analysis for the Project in accordance with the Act, and found that the Project would not be economically feasible or occur in the project area without tax increment financing and the costs and benefits of the Project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services, are in the long term best interests of the community.

**3. Representations of the Redeveloper:** The Redeveloper makes the following representations:

- a. The Redeveloper is a Nebraska Limited Liability Company duly organized and existing under the laws of the State of Nebraska.
- b. The execution and delivery of this Contract and the consummation of the transactions contemplated under this Contract will not conflict with or constitute a breach of or default under any contract to which Redeveloper is a party or by which it is bound.
- c. There is no litigation pending and to the best of its knowledge threatened against Redeveloper affecting its ability to carry out the Project or this Contract.
- d. The Project as set forth in the Plan would not be economically feasible or occur in the project area without tax increment financing.
- e. The Redeveloper shall only use funds granted by the Authority for the purposes set forth in Sections 18-2103 (12)(a) through (f) of the Act.

- f. Redeveloper acknowledges that interest on the Indebtedness is not tax-exempt interest under state or Federal law.
- g. Redeveloper acknowledges and represents that it has been advised that the Indebtedness, including any bond, is not registered under the Securities Act of 1933, as amended, and that the Authority is not presently required to register under Section 12 of the Securities and Exchange Act of 1934. The Redeveloper therefore recognizes that if and when the Redeveloper may wish to sell or resell the Indebtedness as held by it there may not be any available current business and financial information about the Authority or the Project. Further, the Redeveloper realizes that no trading market presently exists or is ever expected to exist for the Indebtedness. The Redeveloper understands that it may need to bear the risks of an investment in the Indebtedness for an indefinite period of time, since any sale prior to maturity of the Indebtedness may not be possible or may be at a price below that which the Redeveloper is paying for the Indebtedness.
- h. The Redeveloper has conducted its own investigation and has undertaken the responsibility to verify the accuracy and completeness and truth of any statement made or omitted to be made concerning any of the material facts relating to the Indebtedness and the Project and transactions relating thereto.
- i. The Redeveloper is acquiring the Indebtedness for its own account for investment and not with a view for resale or distribution, except that the Redeveloper may assign the Indebtedness to the Redeveloper's lender, provided that such lender shall first acknowledge the Redeveloper's investor related representations substantially the same as set forth in Section 3 of this Contract. The Redeveloper has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment represented by the purchase of the Indebtedness, has financial resources sufficient to sustain the risks related to holding the Indebtedness, and is aware of the intended use of the proceeds and the risks involved therein.
- j. The Redeveloper has been offered an opportunity to ask questions of and receive answers from the Authority and the officers of the Authority concerning the terms and conditions of the Indebtedness and to obtain any additional information on the status of the Project and to obtain any additional financial information and documentation necessary to supplement or clarify the information provided to the Redeveloper.
- k. The Redeveloper understands the liability of the Authority and City shall be limited to the TIF Revenues received by the Authority with respect to the Project available to pay the Indebtedness and the Redeveloper shall look exclusively thereto for the payment on the Indebtedness.
- l. The Redeveloper acknowledges that the debt service on the Indebtedness has been set based on estimates and assumptions including expectations as to the completion of construction and valuations suggested by the Redeveloper, which may alter substantially and materially; that tax increment revenues may be altered or eliminated entirely based on future decisions of the Nebraska Legislature or the voters of the State of Nebraska or by future court decisions.

- m. The Redeveloper acknowledges that the Indebtedness is being purchased in a direct private placement negotiated between the Authority and the Redeveloper in which no broker, dealer, or municipal securities dealer has participated and is therefore not subject to any of the requirements of Rule 15c2-12 of the Securities and Exchange Commission requiring the providing of certain information upon issuance and certain additional information on a periodic basis.
- n. The Redeveloper understands that THE INDEBTEDNESS IS A LIMITED OBLIGATION OF THE AUTHORITY AND IS NOT SECURED BY ANY OBLIGATION OR PLEDGE OF ANY MONIES RECEIVED OR TO BE RECEIVED FROM TAXATION, OTHER THAN TAX INCREMENT REVENUES AS DESCRIBED IN THIS CONTRACT.
- o. The Indebtedness does not constitute a debt within the meaning of any constitutional, statutory, or charter limitation upon the creation of general obligation indebtedness of the Authority or City and does not impose any general liability upon the Authority or City. No official of the Authority or City nor any person executing the Indebtedness shall be liable personally by reason of its issuance.

**4. Obligations of the Authority:** In addition to the Authority's other obligations set forth in this Contract, the Authority shall perform the following obligations.

- a. In accordance with Section 18-2147 of the Act, the Authority provides that any ad valorem tax on the Site, for the benefit of any public body be divided for a period of fifteen (15) years after the effective date of January 1, 2017, as described in Section 18-2147 (1) of the Act. Said taxes shall be divided as follows:
  - 1. That portion of the ad valorem tax on the Site which is produced by levy at the rate fixed each year by or for each public body upon the "redevelopment project valuation" (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as all other taxes collected by or for the bodies; and
  - 2. That portion of the ad valorem tax on the Site in excess of such amount, if any, shall be allocated to, is pledged to, and, when collected, paid into a special fund of the Authority to pay the principal of, the interest on, and any premium due in connection with the Indebtedness. When such Indebtedness, including interest and premium due have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon the Site shall be paid into the funds of the respective public bodies.
- b. The Authority shall file with the County Assessor as soon as practical after the adoption of this Contract, but in no event later than August 1, 2017 a notice for dividing the ad valorem tax on the Site as described in Section 18-2147(3) of the Act, listing 2016 as the "base year."
- c. The Authority shall authorize the issuance of the Indebtedness in the form and stated principal amount and bearing interest and being subject to such terms and conditions as are specified in this Contract and the Resolution; provided, at all times the maximum amount of the Indebtedness shall be limited to the lesser of (i) the stated face amount of the Indebtedness, or (ii) the sum of all Project Costs incurred by the Redeveloper. No Indebtedness will be issued until Redeveloper has acquired fee title to the Site and become obligated for the Project Costs or a portion thereof.

- d. The Authority pledges 100% of the available annual TIF Revenues derived from the Site as security for and to provide payment of the Indebtedness as the same fall due. The Authority shall, to the extent funds are available from TIF Revenues, pay the Holder of the Indebtedness the TIF Revenues according to the terms of the Indebtedness and this Contract. Any shortfall in anticipated TIF Revenues for any reason whatsoever shall be borne entirely by the Redeveloper and Holder without recourse of any kind against the Authority or the City.
- e. The Authority shall grant to the Redeveloper up to \$204,000.00 to pay the Redeveloper for the Project Costs actually incurred by the Redeveloper, subject to the limitations set forth in this Contract. The Indebtedness and the grant shall not exceed the amount of Project Costs as certified pursuant to Section 6(a) of this Contract. The Authority shall have no obligation to provide grant funds from any source other than the funds actually received by the Authority for the purchase price paid to the Authority for the Indebtedness. Upon the request of the Redeveloper, the purchase price of the Indebtedness shall be offset against the grant described herein.
- f. The Authority shall create the following fund accounts which shall be separate from other accounts of the Authority and City:
  - i. **Bond Fund:** The Authority shall create a special fund to collect and hold the TIF Revenues pledged to pay the Indebtedness (the "Bond Fund"). The Bond Fund shall be used for no purpose other than to pay the Indebtedness.
  - ii. **Project Fund:** The Authority shall create a special fund to collect and hold funds received from the Holder (if other than the Redeveloper) for the purchase price of the Indebtedness. The Agency shall disburse any money on deposit in the Project Fund from time to time to pay or as reimbursement for payment made by the Redeveloper for the Project Costs.

**5. Obligations of Redeveloper.** In addition to the Redeveloper's other obligations set forth herein, the Redeveloper shall fulfill the following obligations:

- a. Prior to the execution of this Contract, the Redeveloper shall deliver to the Authority a copy of the Redeveloper's certificate of organization file stamped by the Nebraska Secretary of State, a signed copy of the Redeveloper's current operating agreement, a resolution by the members and managers of the Redeveloper authorizing the execution of this Contract, and an affidavit of the Redeveloper certifying the foregoing documents.
- b. Redeveloper shall complete the Project and install all required improvements, fixtures, equipment and furnishings necessary to operate the Project. Redeveloper shall be solely responsible for obtaining all permits and approvals necessary to construct the Project. Until construction of the Project has been completed, Redeveloper shall make reports in such detail and at such times as may be reasonably requested by the Authority as to the actual progress of Redeveloper with respect to construction of the Project. Redeveloper shall furnish to the City a Certificate of Completion upon full completion of the Project.
- c. Any general contractor chosen by the Redeveloper or the Redeveloper itself shall be required to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations and a penal bond or bonds as required by the Act or as is otherwise required by law. The Authority and the Redeveloper shall be named as additional insureds. Any contractor chosen by the Redeveloper

or the Redeveloper itself, as owner, shall be required to purchase and maintain property insurance upon the Project to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include "All Risk" insurance for physical loss or damage. The contractor with respect to any specific contract or the Redeveloper shall also carry insurance on all stored materials. The contractor or the Redeveloper, as the case may be, shall furnish the Authority with a Certificate of Insurance evidencing policies as required above. Such certificates shall state that the insurance companies shall give the Authority prior written notice in the event of cancellation of or material change in any of any of the policies.

- d. Redeveloper shall pay all costs related to the redevelopment of the Site which are in excess of the amounts paid from the proceeds of the grant provided under this Contract. Redeveloper shall timely pay all costs, expenses, fees, charges and other amounts associated with the Project.
- e. Prior to commencing work, the Redeveloper shall furnish or cause to be furnished to the Authority, security consistent with policies established by the City for other development projects, to guarantee the completion of the public improvements as set forth in the Plan. The security furnished by the Redeveloper will be in the amount of the actual cost of the public improvements. It is contemplated that the Redeveloper will enter into a contract for the construction of the public improvements. The actual cost of the public improvements will be determined by the provisions of such contract. If the security furnished by the Redeveloper is a bond or letter of credit, the bond or letter of credit shall provide that upon demand by the Authority, the Authority shall be paid all sums which will enable the Authority to complete the public improvements. If the sums collected by the Authority under the bond or letter of credit are not sufficient to complete the public improvements, the Redeveloper will remain liable for the balance. The Authority may, at its option, assess all or any part of the amounts owed for the public improvements and not covered by the bond or letter of credit and not paid for by Redeveloper. This obligation of Redeveloper shall be waived by the Authority if the Redeveloper or its owner(s) are required to and do provide such security to the City under a separate development agreement with the City for the public improvements.
- f. Prior to commencing work, the Redeveloper shall furnish or cause to be furnished to the Authority, a penal bond in the amount of \$5,000.00 with a corporate surety authorized to do business in the State of Nebraska and approved by the Authority. Such penal bond shall be conditioned upon the Redeveloper at all times making payment of all amounts lawfully due to all persons supplying or furnishing the Redeveloper, the Redeveloper's contractor, or his or her subcontractors with labor or materials for the Project, and will indemnify and save harmless the Authority to the extent any payments in connection with the carrying out of the Contract which the Authority may be required to make under law.
- g. The Redeveloper will purchase or arrange for the purchase of the Indebtedness at a price equal to the principal amount thereof, in a private placement satisfactory to the Authority as to its terms and participants. The Authority shall have no obligation to provide for the sale of the Indebtedness.
- h. The Redeveloper shall pay the Authority an administrative fee to cover the Authority's expenses in Plan preparation and other arrangements in connection with the Project and this Contract in the amount of \_\_\_\_\_. The administrative fee shall be paid to the Authority on the date of issuing the Indebtedness.

**6. Cost Certification and Disbursement of Funds.** Proceeds of the Indebtedness shall be advanced and disbursed in the manner set forth below:

- a. The Redeveloper shall submit to the Authority a grant disbursement request (the “Disbursement Request”) executed by an authorized representative of the Redeveloper. The Disbursement Request shall certify: (i) the portion of the Project that has been completed and (ii) the actual costs incurred by the Redeveloper in the completion of such portion of the Project, including an itemization of the actual Project Costs incurred. All Disbursement Requests are subject to review and approval by the City Manager.
- b. The Authority shall inform the Holder in writing the amount of the Disbursement Request allocated to the Indebtedness for reimbursable Project Costs under the Act and this Contract. Upon notification from the Authority, the Holder (if other than the Redeveloper) may make deposits to the Project Fund in such amount necessary to pay the Project Costs set forth in the Disbursement Request. Such amounts shall be proceeds of the Indebtedness and the City Treasurer shall inform the Registrar in writing of the date and amount of such deposits. At the option of the Redeveloper, if the Redeveloper is the Holder, the Authority shall make a grant to Redeveloper in the amount of the approved Disbursement Request and the approved Disbursement Request amount shall offset funding of the Indebtedness. The Registrar shall keep and maintain a record of the amounts deposited into the Project Fund as “Principal Amount Advanced” and shall enter the aggregate principal amount then outstanding as the “Cumulative Outstanding Principal Amount” on its records maintained for the Indebtedness. The aggregate amount deposited into the Project Fund from proceeds of the Indebtedness shall not exceed \$204,000.00.

**7. Redeveloper’s Obligations While the Indebtedness is Outstanding.** Redeveloper covenants and agrees that while any Indebtedness is outstanding, Redeveloper shall:

- a. Not protest a taxable valuation of the Site.
- b. Not convey the Site or structures thereon to any entity which would be exempt from paying real estate taxes, except those public improvements to be transferred to the City according to the Plan;
- c. Not apply to the Scotts Bluff County Assessor for any structures on the Site to be taxed separately from the land of the Site;
- d. Maintain insurance for the full value of the structures on the Site and in the event of casualty, apply such insurance proceeds to completing or repairing the Project;
- e. Pay or cause to be paid all real estate taxes and assessments levied on the Site prior to the time they become delinquent;
- f. Provide progress reports and any relevant financial records regarding the Project to the City or Authority upon the request; and
- g. Include the restrictions in this Section 7 in any subsequent sale, assignment, sale-leaseback or other transfer of the Site or any portion thereof. The Redeveloper shall not otherwise be responsible for the action of third parties if these covenants are breached by third parties and the Redeveloper no longer owns the Site.



**8. Authority's Liability.** The liability of the Authority pursuant to the Indebtedness shall be limited to the TIF Revenues and the Redeveloper and other Holders shall look exclusively thereto for the payment on the Indebtedness. THE INDEBTEDNESS IS A LIMITED OBLIGATION OF THE AUTHORITY AND IS NOT SECURED BY ANY OBLIGATION OR PLEDGE OF ANY MONIES RECEIVED OR TO BE RECEIVED FROM TAXATION, OTHER THAN TAX INCREMENT REVENUES AS DESCRIBED IN THIS CONTRACT.

**9. Nondiscrimination.** The Redeveloper shall not, in the performance of this Contract and the Project, discriminate against any employee or applicant for employment because of race, religion, gender, color, national origin, ancestry, disability, familial status, or receipt of public assistance.

**10. Conflicts of Interest.** No officer, employee, or agent of the Authority shall have any personal interest in this Contract, whether such interest is direct or indirect.

**11. Assignment.** The Redeveloper may not assign its rights under this Contract without prior written consent of the Authority, which consent shall not be unreasonably withheld.

**12. Covenants Running with the Land.** This Contract shall be binding upon the Redeveloper's successors and assigns, and shall run with the Site. The Redeveloper shall record this Contract or a memorandum of this Contract in the Scotts Bluff County Office of the Register of Deeds, to be indexed against the Site. The Redeveloper shall not be responsible for the violation or breach of these covenants by its successors or assigns.

**13. Status of Parties.** The Authority is not and shall not be regarded as a partner, joint venturer, or other jointly acting party with the Redeveloper for any purpose whatsoever, and the undertakings and agreements on the part of the Authority herein are provided solely pursuant to the provisions of the Act and for the governmental purposes of promoting and encouraging redevelopment in blighted and substandard areas.

**14. Approvals by the Authority.** Whenever, under the terms of this Contract, the Authority has agreed that it shall take an action or cause an action to be taken and applicable statutes require public notice and a hearing or other procedures relating to public approval, the terms and conditions of this Contract shall be understood as subject to such requirements.

**15. Default.** In the event of any default hereunder, the defaulting party shall, upon written notice to the other party proceed immediately to cure the default and such shall be cured within 30 days after the defaulting party's receipt of such notice or such longer time as may be allowed by the party giving notice. Any default which, by its nature, cannot be cured in the time allowed may be cured if curing is commenced within the time allowed and diligently pursued to completion thereafter. If the default is not timely cured, the non-defaulting party may pursue any remedy available to it at law or equity, including specific performance. Neither party shall be deemed to be in default of their respective obligations in the event of delay in the performance of such obligations due to causes beyond such party's reasonable control and without its fault including, but not limited to acts of God, acts of the public enemy, acts of the Federal government, fires, floods, epidemics, quarantine, strikes, freight embargos, or delays of subcontractors due to such causes. In the event of any such delay, the party being delayed shall give prompt notice to the other party and the time for performance of the obligation being delayed shall be equitably extended.

**16. Notices and Demands.** Any notice, demand, or other communication under this Contract by either party shall be sufficiently given or delivered if it is sent by certified mail, postage prepaid, return receipt requested, or delivered personally as follows:

If to Redeveloper: Owen Development, LLC  
Attn: Zachary Owen, Manager  
3017 Primrose Drive  
Scottsbluff, NE 69361

If to Authority: Scottsbluff Community Development Authority  
Attn: City Manager  
2525 Circle Drive  
Scottsbluff, NE 69361

Either party may give notice of a change in contact information in the manner specified herein.

**17. Complete Contract.** This Contract represents the complete understanding between the parties concerning the subject matter of this Contract, and no other promises or agreements relating to the subject matter of this Contract shall be binding unless they are made in writing and authorized and executed by both parties. *Provided that*, the terms of any Resolution passed by the Authority related to the Indebtedness are made a part of and incorporated into this Contract by this reference.

**18. Governing Law.** Nebraska law will govern the construction of and the performance under this Contract.

**19. Exhibits.** All exhibits referenced above are incorporated into this Contract by this reference.

**20. Intent.** This Contract is entered into by the Authority to provide financing for an approved redevelopment project.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

Executed this \_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF SCOTTSBLUFF, NEBRASKA  
COMMUNITY REDEVELOPMENT  
AUTHORITY**

\_\_\_\_\_  
Joanne Phillips, Vice Chair

**OWEN DEVELOPMENT, LLC**

By \_\_\_\_\_  
Zachary Owen, Manager

ATTEST:

\_\_\_\_\_  
Recording Secretary

STATE OF NEBRASKA; COUNTY OF SCOTTS BLUFF ) ss.

The foregoing Redevelopment Contract was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016 by Joanne Phillips, the Vice Chair on behalf of the City of Scottsbluff, Nebraska Community Redevelopment Authority, after being duly authorized.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA; COUNTY OF SCOTTS BLUFF ) ss.

The foregoing Redevelopment Contract was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016 by Zachary Owen, Manager, on behalf of Owen Development, LLC, a Nebraska Limited Liability Company.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
The Site

Lot 1, Block 10, Five Oaks Subdivision to the City of Scottsbluff, Scotts Bluff County, Nebraska

**EXHIBIT B**

Estimated Redevelopment Costs

<u>Description</u>	<u>Estimated Cost</u>
Site Acquisition	\$ 67,500.00
Site Preparation	\$ 10,000.00
Water Connection/Improv.	\$ 9,050.00
Sewer Connection/Improv.	\$ 16,100.00
Water Line along Ave. G	\$ 16,000.00
Landscaping	\$ 16,000.00
Site Paving - Public Sidewalk	\$ 10,000.00
Avenue G Paving/Curb/Gutter (w/ Engineering) along Lot 1	\$ 43,821.00
Civil Engineering/Site Design	\$ 8,400.00
Plan Preparation/Legal	\$ 15,000.00
TOTAL	\$211,871.00

**RESOLUTION NO. 16-\_\_\_\_\_**

**BE IT RESOLVED BY THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SCOTTSBLUFF, NEBRASKA:**

**Recitals:**

a. Pursuant to the Community Development Law, NEB. REV. STAT. § 18-2101 *et seq.* (the “Act”), a redevelopment plan titled *Owen Oral Surgery Center Redevelopment Plan*, prepared by Owen Development, L.L.C. (the “Redevelopment Plan”) has been submitted to the Scottsbluff Community Redevelopment Authority (the “Authority”). The Redevelopment Plan proposes to redevelop an area of the City which the City Council has declared to be blighted and substandard and in need of redevelopment. The Redevelopment Plan includes the use of tax increment financing.

b. The Redevelopment Plan has been reviewed by the Planning Commission, which found that the Redevelopment Plan conforms to the 2016 Scottsbluff Comprehensive Plan. The Planning Commission recommended approval of the Redevelopment Plan to the Authority and City Council.

c. The Authority and City of Scottsbluff City Council have approved and adopted the Redevelopment Plan.

d. The Authority and Owen Development, LLC (the “Redeveloper”) desire to enter into a Redevelopment Contract (the “Contract”) under which the Authority will provide a grant and tax increment financing to the Redeveloper to assist with the implementation of the Redevelopment Plan. Capitalized terms not otherwise defined in this Resolution shall have the same meaning as provided for in the Contract.

**Resolved:**

1. The Contract between the Authority and Redeveloper as presented is approved. The Vice Chair and Recording Secretary of the Authority are authorized to sign the Contract on behalf of the Authority. This Resolution shall be construed consistently with the Contract.

2. A tax increment revenue bond in the aggregate principal amount of \$204,000.00 is ordered issued in accordance with NEB. REV. STAT. § 18-2125 by the Authority and shall be designated as “Tax Increment Revenue Bond (Owen Development)” (the “Bond”).

3. Pursuant to the provisions of NEB. REV. STAT. § 18-2147 and the terms of the Contract the effective date is hereby confirmed as January 1, 2017, after which ad valorem taxes on real property located within the Site (as defined in the Contract) may be apportioned pursuant to said section 18-2147. Said taxes shall be divided as follows:

- a. That portion of the ad valorem tax on the Site which is produced by levy at the rate fixed each year by or for each public body upon the "redevelopment project valuation" (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as all other taxes collected by or for the bodies; and

- b. That portion of the ad valorem tax on real property on the Site in excess of such amount (the “TIF Revenues”), if any, shall be allocated to, is pledged to, and, when collected, paid into a special fund of the Authority (the “Bond Fund” as defined in the Contract) to pay the principal of, the interest on, and any premium due in connection with the Bond. When such Bond, including interest and premium due have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property related to the project shall be paid into the funds of the respective public bodies.

4. So long as any principal of the Bond remains outstanding the Authority shall not issue any additional bonds payable from the TIF Revenues from the Site without the written consent of the registered owner (including any pledgee) of the Bond as then outstanding. The Authority further reserves the right to provide for payment of principal on the Bond from the proceeds of a refunding bond or refunding bonds to the extent allowed by law.

5. Pursuant to the terms of the Contract, the City Treasurer as Agent of the Authority is hereby authorized and directed to give notice to the County Assessor and Treasurer of the provision of the Contract for dividing ad valorem taxes in accordance with the requirements of NEB. REV. STAT. § 18-2147(3), listing 2016 as the “base year.”

6. The Bond is a special, limited obligation of the Authority and is not secured by any obligation or pledge of any monies received or to be received from taxation, other than tax increment revenues as set forth in the Contract and as described in NEB. REV. STAT. § 18-2147. The Bond shall not in any event be a debt of the Authority (except to the extent of the tax increment revenues pledged under the Contract), the City, the State, nor any of its political subdivisions, and neither the Authority (except to the extent of the tax increment revenues pledged under the Contract), the City, the State nor any of its political subdivisions is liable in respect thereof. In no event shall the Bond be payable out of any funds or properties other than those of the Authority acquired pursuant to the Contract. The Bond does not constitute a debt within the meaning of any constitutional, statutory, or charter limitation upon the creation of general obligation indebtedness of the Authority and does not impose any general liability upon the Authority. No member or official of the Authority nor any person executing the Bond shall be liable personally on the Bond by reason of its issuance.

Nothing in this Resolution shall preclude the payment of the Bond from (a) the proceeds of future bonds issued pursuant to law or (b) any other legally available funds. Nothing in this Resolution shall prevent the City or the Authority from making advances of its own funds howsoever derived to any of the uses and purposes mentioned in this Resolution and the Contract.

7. The Bond shall be in substantially the form of the attached Exhibit A and shall be subject to the terms and conditions as set forth in the Contract and this Resolution (including those in Exhibit A).

- a. The Bond shall be issued as a single Bond and in fully registered form.
- b. The Bond shall have an appropriate series designation as determined by the Treasurer of the City (the “Agent”), shall be dated the date the Bond is initially issued and delivered, which shall be the date of the first deposit of proceeds of that series in the Project Fund (defined in the Contract) (“Date of Original Issue”), shall mature, subject to right of prior redemption, not later than December 31, 2031, and shall bear interest in the amount determined by the Agent and Redeveloper, not to exceed 7%. The Agent is hereby authorized to, from time to time, specify, set, designate, determine, establish and appoint, as the case may be, and in each case in accordance with and subject to the provisions of this Resolution: (i) the Date of Original Issue, (ii) the principal amount of the Bond as set forth above, (iii) the maturity date of the Bond, which shall be not later

than December 31, 2031, (iv) the initial principal payment date and (v) any other term of the Bond not otherwise specifically fixed by the provisions of this Resolution.

- c. The Bond shall be executed by the Vice Chair and Recording Secretary of the Authority and the original, official seal of the City shall be impressed or printed thereon. In case any officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if s/he had remained in office until such delivery.
- d. Upon execution of the Bond and compliance with all other provisions of this Resolution and the Contract, the Bond shall be registered by the Agent in the name of the owner or its designee as the initial registered owner and shall be delivered in consideration of payment of the principal amount thereof to the City's Treasurer in current bankable funds. The Redeveloper may request notation of a pledge interest in the Bond on the records of the Agent. From such purchase price, the Authority is to make a grant to the Redeveloper in accordance with the terms of the Contract.
- e. The Bond shall be issued to such owner as shall be mutually agreed between the Redeveloper and the Authority for a price equal to 100% of the principal amount thereof. The initial purchaser (and any pledgee) shall be required to deliver an investment representation letter to the Agent. Such letter shall be satisfactory in form to the officers of the Authority, or any one or more of them, as advised by the Authority's attorney. No Bond shall be delivered to any owner unless the City and the Authority shall have received from the owner thereof such documents as may be required by the Authority to demonstrate compliance with all applicable laws. The Authority may impose such restrictions on the transfer of any Bond as may be required to ensure compliance with all requirements relating to any such transfer.
- f. The Bond shall be issued in installments to the purchaser thereof, as the person(s) identified as the owner(s) of the Bond from time to time, as indicated on the books of registry maintained by the Registrar. The records maintained by the Registrar as to principal amount advanced and principal amounts paid on the Bond shall be the official records of the Cumulative Outstanding Principal Amount for all purposes. The Registrar shall have only such duties and obligations as are expressly stated in this Resolution and no other duties or obligations shall be required of the Registrar.
- g. The Agent shall keep and maintain for the Authority books for the registration and transfer of the Bond at City Hall in Scottsbluff, Nebraska. The name and registered address of the registered owner of the Bond (including notation of any pledgee as may be requested by the Redeveloper) shall at all times be recorded in such books. The transfer of the Bond may be registered only upon the books kept for the registration and registration of transfer of the Bond upon surrender thereof to the Registrar, together with an assignment duly executed by the owner or its attorney or legal representative in such form as shall be satisfactory to the Registrar. Prior to any transfer and assignment, the owner will obtain and provide to the Authority an investor's letter in form and substance satisfactory to the Authority evidencing compliance with the provisions of all federal and state securities laws, and will deposit with the Authority an amount to cover all reasonable costs incurred by the Authority, including legal fees, of accomplishing such transfer. A transfer of any Bond may be prohibited by the Authority if a default then exists under the Contract. Upon any such registration of transfer the Authority may execute and deliver in exchange for such Bond a new Bond registered in the name of the transferee, in a principal amount equal to the principal amount of the Bond surrendered or exchanged, of the same series and maturity and bearing interest at the same rate. In all cases in which any Bond shall be exchanged or a transfer of a Bond shall be registered hereunder, the Authority shall at the earliest practicable time execute and deliver a



Bond in accordance with the provisions of this Resolution. The Bond surrendered in any such exchange or registration of transfer shall forthwith be canceled by the Registrar. Neither the Authority nor the Registrar shall make a charge for the first such exchange or registration of transfer of any Bond by any owner. The Authority or the Registrar, or both, may make a charge for shipping, printing and out-of-pocket costs for every subsequent exchange or registration of transfer of such Bond sufficient to reimburse it or them for any and all costs required to be paid with respect to such exchange or registration of transfer. The Authority and the Agent shall not be required to transfer the Bond during any period from any Record Date until its immediately following payment date or to transfer the Bond when called for redemption, in whole or in part, for a period of 15 days next preceding any date fixed for redemption or partial redemption.

- h. The principal and interest due on the initial payment date and each subsequent payment date prior to maturity shall be payable to the registered owner of record as of the fifteenth day of the calendar month immediately preceding the calendar month in which such payment date occurs (the "Record Date"). If the date for payment shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of Scottsbluff, Nebraska, are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day, and payment on such day shall have the same force and effect as if made on the nominal date of payment. Payments on the Bond, except for payments due on final maturity date, or other final payment, shall be made by the Authority by mailing or delivering a check or draft in the amount then available for payment on the Bond to the registered owner of the Bond, as of the Record Date for such payment date, to such owner's registered addresses as shown on the books of registration as required to be maintained hereunder. Payments of principal and interest due at final maturity or other final payment shall be made by the Authority to the registered owner upon presentation and surrender of the Bond to the Authority at the offices at City Hall in the City of Scottsbluff, Nebraska. The Authority and the Agent may treat the registered owner of the Bond as the absolute owner of the Bond for the purpose of making payments thereon and for all other purposes and neither the Authority nor the Agent shall be affected by any notice or knowledge to the contrary, whether the Bond or any installment due thereon shall be overdue or not. All payments on account of principal and interest made to the registered owner of the Bond in accordance with the terms of the Contract and this Resolution shall be valid and effectual and shall be a discharge of the Authority and the Agent, in respect of the liability upon the Bond to the extent of the sum or sums so paid.
- i. At any time, the Authority shall have the option of prepaying in whole or in part principal of the Bond. Notice of any optional redemption for the Bond shall be given at the direction of the Authority by the Agent by mail not less than 15 days prior to the date fixed for redemption, first class, postage prepaid, sent to the registered owner of the Bond at said owner's registered address. Notice of call for redemption may be waived in writing by any registered owner. In the event of prepayment in whole the Bond shall be cancelled. The determination of the amount and timing of any optional redemption of the Bond shall be in the absolute discretion of the Authority. The records of the Authority shall govern as to any determination of the principal amount of the Bond outstanding at any time and the registered owner shall have the right to request information in writing from the Authority at any time as to the principal amount outstanding upon the Bond.

8. The Vice Chair and Agent are hereby authorized to take any and all actions, and to execute any and all documents deemed by them necessary to effect the transactions contemplated in the Contract and authorized by this Resolution.

9. All prior resolutions of the Authority in conflict with the terms and provisions of this Resolution are repealed to the extent of such conflicts.

10. This Resolution shall become effective immediately upon its adoption.

**PASSED AND APPROVED** on June \_\_\_\_, 2016

**COMMUNITY REDEVELOPMENT  
AUTHORITY OF THE CITY OF  
SCOTTSBLUFF**

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Vice Chair

ATTEST:

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Recording Secretary



FOR VALUE RECEIVED, the **COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF SCOTTSBLUFF, NEBRASKA** (the “**Authority**”) acknowledges itself indebted to, and for value received hereby promises to pay, but solely from certain specified tax revenues and other funds hereinafter specified, to the Registered Owner named above, or registered assigns, the Principal Amount on Schedule 1 attached hereto, with interest on the unpaid principal balance from date of delivery hereof until maturity or earlier redemption at the rate per annum set forth above, calculated as simple interest and without compounding, in lawful money of the United States of America, with such principal sum to become due on the maturity date set forth above. All such interest upon the Bond shall be payable semiannually on May 10 and November 10 of each year, commencing May 10, 2018.

This Bond is issued by the Authority under the authority of and in full compliance with the Constitution and statutes of the State of Nebraska, including particularly Article VIII, Section 12 of the Nebraska Constitution, Sections 18-2101 to 18-2153, inclusive, Reissue Revised Statutes of Nebraska, as amended, and under and pursuant to Resolution No. \_\_\_\_\_ duly passed and adopted by the Authority on June 2, 2016, as from time to time amended and supplemented (the “**Resolution**”), which incorporates by reference the terms of the Redevelopment Contract between the Authority and Owen Development, LLC dated June \_\_\_\_, 2016 (the “**Contract**”). This Bond has been authorized by the Authority to provide financing or an approved redevelopment project.

**THE PRINCIPAL AMOUNT OF THIS BOND IS SET FORTH IN SCHEDULE 1 ATTACHED HERETO. THE MAXIMUM PRINCIPAL AMOUNT OF THIS BOND IS \$204,000.00.**

This Bond is a special limited obligation of the Authority payable solely from and is secured solely by the TIF Revenues (as defined in the Resolution and Contract) and certain other money, funds and securities pledged under the Resolution, all on the terms and conditions set forth in the Resolution and Contract. The TIF Revenues represents that portion of ad valorem taxes levied by public bodies of the State of Nebraska, including the City, on real property on the Site (as defined in the Resolution and Contract) which is in excess of that portion of such ad valorem taxes produced by the levy at the rate fixed each year by or for each such public body upon the valuation of the Site as of a certain date as set forth in the Resolution and as has been or will be certified by the County Assessor of Scotts Bluff County, Nebraska to the City in accordance with law.

The principal and interest hereon shall not be payable from the general funds of the City or the Authority, nor shall this Bond constitute a legal or equitable pledge, charge, lien, security interest or encumbrance upon any of the property or upon any of the income, receipts, or money and securities of the City or the Authority or of any other party other than those specifically pledged under the Resolution and Contract. This Bond is not a debt of the City or the Authority within the meaning of any constitutional, statutory or charter limitation upon the creation of general obligation indebtedness of the City or the Authority, and does not impose any general liability upon the City or the Authority and neither the City nor the Authority shall be liable for the payment hereof out of any funds of the City or the Authority other than the TIF Revenues and other funds pledged under the Resolution, which TIF Revenues and other funds have been and hereby are pledged to the punctual payment of the principal and interest on this Bond in accordance with the provisions of the Resolution and Contract. Neither the members of the Authority nor any person executing this Bond shall be liable personally on this Bond by reason of the issuance hereof.

The Registered Owner may from time to time enter the respective amounts advanced pursuant to the terms of the Resolution and Contract under the column headed “Principal Amount Advanced” on **Schedule 1** hereto (the “**Table**”) and may enter the aggregate principal amount of this Bond then outstanding under the column headed “Cumulative Outstanding Principal Amount” on the Table. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Registered Owner pursuant to the redemption provisions of the Resolution, the Registered Owner may enter the principal amount paid on this Bond under the column headed “Principal Amount Redeemed” on the Table and may enter the then outstanding principal amount of this Bond under the column headed “Cumulative Outstanding Principal Amount” on the Table. Notwithstanding the foregoing, the records maintained by the Authority as to the principal amount issued and principal amounts paid on this Bond shall be the official records of the Cumulative Outstanding Principal Amount of this Bond for all purposes.

Reference is hereby made to the Resolution and Contract, copies of which are on file in the office of the City Clerk, and to which each owner of this Bond by its acceptance hereof hereby assents. Without limiting the forging, the Resolution and Contract provide for definitions of terms; the description of and the nature and extent of the security for this Bond; the TIF Revenues and other money and securities pledged to the payment of this Bond; the nature and extent and manner of enforcement of the pledge; the conditions upon which the Resolution may be amended or supplemented with or without the consent of the owner of this Bond; the rights, duties and obligations of the Authority, Agent, and Registrar thereunder; the terms and provisions upon which the liens, pledges, charges, trusts and covenants made therein may be discharged at or prior to the maturity or redemption of this Bond.

This Bond is subject to redemption prior to maturity, at the option of the Authority, in whole or in part at any time at a redemption price equal to 100% of the principal amount being redeemed. Reference is hereby made to the Resolution for a description of the redemption procedures and the notice requirements pertaining thereto.

This Bond is transferable by the Registered Owner hereof in person or by its attorney or legal representative duly authorized in writing at the principal office of the Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Resolution and Contract, and upon surrender and cancellation of this Bond. Upon such transfer, a new Bond of the same series and maturity and for the same principal amount will be issued to the transferee in exchange therefor. The Agency and the Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal due hereon and for all other purposes.

This Bond is being issued as a fully registered bond without coupons. This Bond is subject to exchange as provided in the Resolution and Contract.

It is hereby certified, recited and declared that all acts, conditions and things required to have happened, to exist and to have been performed precedent to and in the issuance of this Bond have happened, do exist and have been performed in regular and due time, form and manner; that this Bond does not exceed any constitutional, statutory or charter limitation on indebtedness; and that provision has been made for the payment of the principal and interest on this Bond as provided in this Resolution.

*[The remainder of this page intentionally left blank]*

