

City of Scottsbluff, Nebraska

Tuesday, January 2, 2018

Regular Meeting

Item Reports1

Council to consider approval of the Economic Development Assistance Grant for Mitchell Care Center.

Staff Contact: Starr Lehl, Economic Development Director

City of Scottsbluff
Economic Development Application Review Committee
December 22, 2017

A meeting of the Economic Development Application Review Committee was held on December 22, 2017, at 8:00 a.m. at City Hall, 2525 Circle Drive, Scottsbluff, NE.

The meeting was convened at 8:01 a.m. Present were Committee Members, Jim Trumbull, Dennis Hadden, Marla Marx, and Dave Schaff. In attendance on behalf of the City were Program Administrator, Nathan Johnson, Deputy City Attorney, Rick Ediger, City Economic Development Director, Starr Lehl, and City Finance Director, Liz Hilyard.

Chairman Trumbull called the meeting to order and stated that a copy of the Nebraska Open Meetings Act is located on the South wall of the Council Chamber. Item 6 was removed from the Agenda. There were no other changes in the Agenda, nor were there any citizens with business not scheduled on the Agenda.

It was moved by Hadden and seconded by Marx that the Minutes of the December 8, 2017 Committee Meeting be approved. Voting yes: Trumbull, Hadden, Marx, and Schaff. Voting no: None.

An Application for Assistance from Lamp Public Relations & Marketing, LLC was presented. Present on behalf of the Applicant was Jody Lamp, President of the Applicant. Also present in support of the Applicant was Kevin Kelley. The Applicant is requesting support for a project which has been titled "Legacy Project 2019". Funds will be used with respect to a commemorative documentary film project, along with an educational "Circle Tour" booklet. Specifically, the project will honor and commemorate the upbringing and life of John A. Nerud. Mr. Nerud was born near Lake Minatare and was a 1931 Minatare High School graduate. He was known to be one of America's most accomplished and revered thoroughbred horse trainers and breeders. The Applicant has already received funding from several local businesses and a grant from Nebraska Humanities Council. It was indicated that the City does not currently have the production of films as an eligible activity under its Economic Development Plan. However, this type of activity can be added by the Plan upon recommendation of the Citizen Advisory Review Committee and approval by the City Council. The Members present indicated they would generally be supportive of a grant to the project if the production of films is added to the City's Economic Development Program. City staff will pursue consideration of the addition of film production to the City's Economic Development Plan.

Consideration of the Application of Mitchell Health Center, Inc. ("MHC") had previously been tabled by the Committee. It was moved by Schaff and seconded by Marx to remove this matter from the table. Voting yes: Trumbull, Hadden, Marx, and Schaff. Voting no: None. Since the December 8th meeting, the Application had been amended to add Rural Health Development, Inc. ("RHD") as a Co-Applicant. In addition, a spreadsheet was presented which showed the proposed

flow of funds. Following additional discussion, it was moved by Schaff and seconded by Marx that a grant be awarded to the Applicants in the amount of \$306,400, to be paid at the rate of \$6,383.33 monthly, retroactive to September 2017. Payments would continue for a total of four years. The Grant is contingent upon the City of Mitchell renegotiating its agreement with RHD. In addition, RHD must maintain all required licensing, continue to be accredited for Medicare and Medicaid patients, and not be in default with the City of Mitchell with their agreement to operate the Mitchell Health Center. Voting yes: Trumbull, Hadden, Marx, and Schaff. Voting no: None.

Due to prior commitments of Committee Members, discussion regarding the Gering Industrial Park Agreement will be postponed to a later meeting.

City Manager Johnson indicated that the reason why the Application for Pioneer Animal Health Clinic was removed from the Agenda was due to the fact that all but two of the Committee Members had conflicts of interest. As a result, there would not have been sufficient votes to make a recommendation. The Committee currently has one alternate (Dave Schaff) and has a vacancy for a second alternate. The City Manager invited Committee Members to make suggestions as to individuals to fill that alternate position. The plan is to nominate an additional alternate to be approved at the City Council's January 2nd meeting. Once the alternate is approved, this Application will be placed on the Agenda of a future meeting.

The meeting was then adjourned at 9:23 a.m.

Nathan Johnson, Program Administrator

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on January ____, 2018, between the City of Scottsbluff, Nebraska (the “City”) and Rural Health Development, Inc. and Mitchell Health Care, Inc. (the “Applicants”).

Recitals:

a. The City has adopted an Economic Development Plan pursuant to the Nebraska Local Option Municipal Economic Development Act (the “Plan”). Pursuant to the Plan, the City has implemented an Economic Development Program (the “Program”).

b. The Applicants have made application for assistance from the Program (the “Application”);

c. The Administrator of the Program (the “Administrator”) and the City Council (the “Council”) have reviewed the Application. The Council has determined that a grant (the “Grant”) be awarded to the Applicants from the City of Scottsbluff Economic Development Fund (the “Fund”) as provided for in this Agreement.

d. The parties now desire to enter into this Agreement for the purpose of setting out the terms and conditions of the Grant.

Agreement:

1. Purpose of Grant and Application of Funds:

a. The Applicants operate and provide services under contract to the City of Mitchell for the operation of the Mitchell Care Center (the “Center”). The Center serves residents from western Nebraska and neighboring states.

b. The Grant will be used to provide funding to pay management fees, job training and technical assistance, as provided for in the revised Application.

2. Amount of Grant:

The amount of the Grant awarded to the Applicants is \$306,400. The Grant shall be payable from the Fund at the rate of \$6,383.33 per month retroactive to September 2017, as follows:

a. \$38,300 shall be payable at the Closing (the “Closing Payment”). The Closing Payment represents payments for the 6 month period from September 2017 through February 2018.

b. All future monthly payments (each, an “Additional Payment”) shall be paid on or before the 15th day of each month beginning March 2018 and ending in August 2021.

3. Closing:

As soon as the Applicants have satisfied the conditions to the Closing, the Closing Payment shall be scheduled as a claim at the next Council meeting for which the matter may be reasonably scheduled. The Closing, to include delivery of the Closing payment, shall then occur within 10 business days after the Council has approved the claim for the Closing Payment.

4. Representations and Warranties of the Applicant:

The Applicants represent and warrant the following, all of which shall survive the Closing:

a. The Applicants are corporations organized, existing, and in good standing under the laws of Nebraska. The Applicants have full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. The Applicants’ execution, delivery and performance of this Agreement have been authorized by all necessary action on the part of the Applicants. This Agreement, and each agreement and instrument delivered by the Applicants pursuant to it, is the legal and binding obligation of the Applicants, enforceable against the Applicants in accordance with its terms.

b. No representation or warranty made by the Applicants in this Agreement contains or will contain any untrue statement of any material fact, or omits or will fail to state any material fact known to the Applicants that are required to make the statements not misleading.

c. The execution and performance of this Agreement will not violate any provision of law, or conflict with or result in any breach of any of the terms or conditions of, or constitute a default under any indenture, mortgage, agreement or other instrument to which the Applicants are a party or by which they are bound.

All representations and warranties made by the Applicants shall survive the Closing.

5. Representations and Warranties of the City:

The City represents and warrants the following, all of which shall survive the Closing:

a. The City is a municipal corporation organized and existing under the laws of Nebraska, and has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. The City’s execution, delivery and performance of this Agreement has been authorized by all necessary action on the part of the City. This Agreement, and each agreement and instrument delivered by the City pursuant to it, is the legal and binding obligation of the City, enforceable against the City in accordance with its terms.

b. No representation or warranty made by the City in this Agreement contains or will contain any untrue statement of any material fact, or omits or will fail to state any material fact known to the City that is required to make the statements not misleading.

6. Certification of the Applicant:

The Applicants certify to the City that they have not filed nor do they intend to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for the Center.

7. Conditions to Closing:

The City's obligation to proceed with the Closing is subject to the Applicant's fulfillment of each of the following conditions at or prior to the Closing:

- a. All representations and warranties of the Applicants shall be true as of the Closing.
- b. The Applicants shall have delivered to the City:
 - (1) Evidence of Good Standing of the Applicants from the Nebraska Secretary of State.
 - (2) A copy of the current and correct Articles of Incorporation and Bylaws of the Applicants certified by their respective secretaries to be correct;
 - (3) Certified resolutions of the directors of the Applicants authorizing the Applicants entering into this Agreement and providing for signature authority.
- c. Rural Health Development, Inc. shall have entered into a new or amended Agreement with the City concerning the operation of the Center.
- d. The Applicants shall in all material respects have performed their obligations, agreements, and covenants contained in this Agreement to be performed by them, on, or before the Closing.
- e. There shall have been no material adverse change in the operation or financial status of the Applicants and the Closing shall constitute the Applicant's representations that there has been no such material adverse change.
- f. In accepting each Additional Payment under this Agreement, the Applicants are considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

8. Early Termination:

- a. Both Applicants acting together shall have the right at any time to terminate their participation in the Program by notifying the Administrator in writing of their desire to do so.
- b. The Administrator shall have the right to terminate the Applicants' participation in the Program if the Applicants are in default of any of the terms and conditions of this Agreement, which default is not cured within 30 days of written notice by the Administrator.
- c. In the event of a termination as described in this paragraph, then the Applicants shall have no further right to receive Additional Payments.

9. Default:

The Applicants shall be in default if any of the following happen:

- a. Failure to comply with any of the terms of this Agreement to include an assignment not permitted under this Agreement.
- b. Any warranty, representation or statement made or given to the City by the Applicants proves to have been false in any material respect when made or given.
- c. Dissolution or liquidation of any the Applicants, the termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or bankruptcy of the Applicant.
- d. Rural Health Development, Inc. ceases to operate the Center, is no longer licensed to operate the Center, or is no longer eligible to receive payment for Medicare and/or Medicaid patients.
- e. Either of the Applicants are in default in their agreements with the City of Mitchell.

10. Assignability:

The Administrator may assign his interest in this Agreement to any successor administrator designated by the City Council. The Applicants may not assign or transfer their interest in this Agreement without the consent of the Administrator. Assignment shall include a transfer of stock of the Applicants so that Ron Ross does not own at least 51% of the stock of either or both Applicants

11. Confidentiality:

It is agreed that this Agreement and its terms are public record and are not confidential. However, the City agrees to take reasonable steps to insure that any financial and proprietary

information provided in connection with this Agreement by the Applicant shall remain confidential and shall not be revealed or disclosed to outside sources unless the information is public knowledge, is independently developed, or is required to be disclosed by law or legal process.

12. Notices:

Any notices or other communications between the parties shall be personally delivered, sent by certified or registered mail, return receipt requested, by Federal Express or similar service that records delivery, or by email transmission combined with any of the above methods of notice, to the addresses set out below, or to such other address as a party may designate, from time to time, by written notice to the other. A notice shall be deemed effective upon receipt.

a. If to the City:

City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69361
Attention: City Manager
Email: njohnson@scottsbluff.org

b. If to the Applicants:

Rural Health Development, Inc.
Mitchell Health Center, Inc.
[Address]

Attention: Ron Ross
Email: ron.ross@rhdconsult.com

With a copy to:

City of Mitchell
1280 Center Ave
Mitchell, NE 69357
Attention: City Administrator
Email: cityadmin@mitchellcity.net

13. Miscellaneous:

a. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, and may only be modified by a writing signed by both of the parties.

b. The City's waiver of any one default shall not be a waiver of the same or any other default in the future. In addition, the City's failure to exercise any right given to it by this Agreement shall not be a waiver of any later exercise of that right.

c. The provisions of this Agreement are severable and if any provision is held to be invalid, the remainder of the Agreement shall remain in effect.

d. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute a single instrument.

e. This Agreement shall be governed by the laws of Nebraska.

f. This Agreement shall be binding on the successors and assigns of the parties.

[Signatures on Following Page]

**Signature Page to Economic Development Assistance Agreement between
the City of Scottsbluff, Nebraska, Rural Health Development, Inc.
and Mitchell Health Center, Inc.**

City of Scottsbluff, Nebraska

Rural Health Development, Inc.

By: _____

Economic Development
Program Administrator

By: _____

Ron Ross, President

Mitchell Health Center, Inc.

By: _____

Ron Ross, President