

City of Scottsbluff, Nebraska

Monday, September 17, 2018

Regular Meeting

Item Reports4

Council to approve the Economic Assistance Grant for Der Topfer Gallery and Studio.

Staff Contact: Nathan Johnson, City Manager

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on September ____, 2018, between the City of Scottsbluff, Nebraska (the “City”) and Rod Clause (the “Applicant”).

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 Applicant has made application for assistance from the Program (the “Application”).

c. The Administrator of the Program (the “Administrator”) and the City Economic Development Application Review Committee (the “Committee”) have reviewed the Application and recommended to the City Council (the “Council”) that a grant (the “Grant”) be made to the Applicant from the City of Scottsbluff Economic Development Fund (the “Fund”) as provided for in this Agreement. The City Council has approved the Committee’s recommendation.

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 Assistance:

The Applicant operates a business known as “Der Töpfer Gallery and Studio” at 1211 3rd Avenue, Scottsbluff (the “Business”). The proceeds of the Grant shall be used to develop a website, for marketing and equipment purchases (the “Authorized Expenses”).

2. Amount of Grant:

The Grant shall be in the maximum amount of \$10,000 and shall be disbursed from the Fund as provided for below.

3. Closing and Disbursement of Funds:

As soon as the Applicant has satisfied the conditions to Closing (as provided for below), the Closing shall be considered to have occurred. The Applicant may then request disbursements of the Grant (each, a “Disbursement”) as follows:

a. The Applicant shall deliver to the City invoices or receipts for Authorized Expenses as they are incurred.

b. Upon approval of the documentation submitted, the amount of the approved Authorized Expenses shall be scheduled as a claim at the next Council meeting for which the claim may be reasonably scheduled. Disbursement of shall be made within 10 business days after the Council has approved a claim.

4. Conditions:

The Grant is being made based on the condition that the Applicant comply with the following:

a. The Business shall remain open for 3 years from the Closing Date (the “Term”).

b. During the Term, by each April 15, the Applicant shall deliver a balance sheet and a copy of his federal income tax return to the City.

If the Business does not remain open or is sold during the Term, or the Applicant is not in compliance with the above condition, then the entire amount of the Grant shall be repaid (the “Repayment”). If the Repayment is not paid within 15 days after the Repayment is due, then the Repayment shall then carry interest at the rate of 7% per annum until paid.

5. Representations and Warranties of the Applicant:

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

a. The Applicant has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. This Agreement, and each agreement and instrument delivered by the Applicant pursuant to it, is the legal and binding obligation of the Applicant, enforceable against the Applicant in accordance with its terms.

b. No representation or warranty made by the Applicant 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 Applicant 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 agreement or instrument to which the Applicant is a party or by which it is bound.

d. The Applicants principal source of revenue is from the manufacturing or the sales of services in interstate commerce.

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

6. 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.

7. Certification of the Applicant:

The Applicant certifies to the City that it has not filed nor does it intend to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for the Business. In the event that the Applicant files such an application, it shall advise the City in writing, and the City shall have the option to review the status of the Grant, to include determining that the Repayment is due and payable if the Applicant is awarded incentives under the Nebraska Advantage Act.

8. 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 Applicant shall be true as of the Closing.
- b. In order to secure the Repayment, the Applicant shall have delivered to the City a Security Agreement covering the Applicant's equipment.
- c. The Applicant shall in all material respects have performed its obligations, agreements, and covenants contained in this Agreement to be performed by them, on, or before the Closing.
- d. There shall have been no material adverse change in the operation or financial status of the Applicant and the Closing shall constitute the Applicant's representations that there has been no such material adverse change.
- e. In requesting each Disbursement, the Applicant is considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

9. Default:

The Applicant shall be in default in this Agreement and the Note if any of the following happen:

- a. Failure to comply with any of the terms of this Agreement or the Security Agreement to include an assignment not permitted under this Agreement.
- b. Any warranty, representation or statement made or given to the City by the Applicant proves to have been false in any material respect when made or given.
- c. Dissolution or liquidation of any of the Applicant, the termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or bankruptcy of the Applicant.
- d. The Applicant ceases to conduct the Business or moves the Business outside of the City.

10. Early Termination:

- a. The Applicant shall have the right at any time to terminate its participation in the Program by notifying the City in writing of its desire to do so.
- b. The City shall have the right to terminate the Applicant's participation in the Program if the Applicant is 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 City.
- c. In the event of a termination as described in this paragraph, the Repayment shall then be immediately due and payable to the Fund. Interest shall accrue at the rate of 7% per annum on any amounts not immediately paid.

11. Assignability:

The Administrator may assign his interest in this Agreement to any successor administrator designated by the City Council. The Applicant may not assign or transfer its interest in this Agreement without the consent of the Administrator.

12. 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.

13. 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, 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

b. If to the Applicant:

Rod Clause
1211 3rd Avenue
Scottsbluff, NE 69361

14. 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.

[Signature page to follow]

**Signature Page to Economic Development Assistance Agreement between
the City of Scottsbluff, Nebraska and Rod Clause**

City of Scottsbluff, Nebraska

By: _____
Economic Development
Program Administrator

Rod Clause