

City of Scottsbluff, Nebraska

Monday, May 17, 2021

Regular Meeting

Item Reports2

Council to discuss and consider action on the Workforce Housing Investment Fund City of Scottsbluff Local Match Agreement between the City of Scottsbluff and Twin Cities Development Association, Inc. and authorize the Mayor to sign the Agreement.

Staff Contact: Starr Lehl, Economic Development Director

Workforce Housing Investment Fund City of Scottsbluff Local Match Agreement

This “Agreement” is by and between the City of Scottsbluff, Nebraska (the “City”), and Twin Cities Development Association, Inc. (“TCD”).

Recitals:

a. TCD is a § 501(c)(4) organization, based in Scotts Bluff County, Nebraska. TCD has submitted and been awarded as of April 30, 2021 a grant under the Nebraska Rural Workforce Housing Fund (“RWHF”), as created under Neb. Rev. Stat. § 81-1230 *et. seq.* and implemented by the Nebraska Department of Economic Development.

b. TCD was awarded a total matching grant of \$915,000 from the Nebraska Department of Revenue, pursuant to its RWHF application. The matching grant is a dollar-for-dollar match of local funds contributed to TCD as part of its RWHF application.

c. Additionally, at the time of the RWHF application, TCD receives its principal source of income (roughly 70%) from rental proceeds of residential housing that it constructed or rehabilitated and which at the time of construction or rehabilitation was not habitable for housing.

d. 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”). TCD has made an application for assistance under the Program as part of the local match for the RWHF application.

e. The Administrator of the Program (the “Administrator”) and the City’s Economic Development Application Review Committee (the “Committee”) reviewed the application for assistance and recommended a pledge of \$350,000 from funds of the Program (the “Match”) towards the local match of the RWHF application of TCD. The City Council (the “Council”) approved Match of \$350,000, pursuant to Council Resolution 20-12-03.

f. Following the award of the RWHF matching grant, the City and TCD enter into this Agreement for purposes of funding the City’s Match and providing the terms and conditions upon which the City pledges the Match from the funds of the Program.

Agreement:

1. Purpose of the Match:

a. TCD shall receive the Match in the amount of \$350,000 from Funds of the Program and shall deposit the Match to an account or accounts pursuant to its RWHF application and the RWHF guidelines distributed by the Nebraska Department of Economic Development.

b. The purpose of the Match is to fund the construction or rehabilitation of workforce housing for sale or rental. The City has determined that the guidelines of the RWHF meet the requirements and purposes of the workforce housing plan in its Plan, which is to construct or rehabilitate single-family or market rate multi-family housing to address a housing shortage as outlined in TCD's RWHF application.

2. Match Closing:

The City agrees to provide the Match to TCD, to be disbursed from the funds of the Program. Disbursement shall occur after (1) a claim of \$350,000 has been approved by the Council for the purposes of this Agreement no later than the next Council meeting following approval of this Agreement by Council, and (2) TCD has provided all documents and met all conditions to Closing required under paragraph 4 below. At Closing, TCD shall deposit the Match funds into its funds for the RWHF application.

3. Restrictions and Conditions on Use of Match:

a. On the first expenditure, TCD shall use the Match funds only for the following projects (the "Eligible Projects") of its RWHF program:

i. The Match funds must be distributed and used by a business that derives its principal source of income from the construction or rehabilitation of housing for sale or lease (each, a "Qualifying Business");

ii. the Qualifying Business must use the City's Match funds for working capital or capital costs of constructing or rehabilitating housing for sale or lease;

iii. the construction or rehabilitation of housing for each Qualifying Business must occur within the municipal limits of the City;

iv. the construction or rehabilitation of housing must meet the requirements and requirements of the RWHF application and program, which is aimed for workforce level housing; and

v. the expenditure of Match funds under the above requirements must be approved by the Administrator of the City before expenditure.

b. For purposes of paragraph 3.a.V above, the TCD shall notify the City's Administrator within 10 days before Match fund expenditure and shall provide the Administrator with all documents requested by the Administrator to review and consider the approval. The Administrator's review shall be made in good faith, and the Administrator's approval shall not be unreasonably withheld, and the Administrator shall approve or deny approval within 3 days before the proposed Match fund expenditure. For any approval that is denied or for any approval that is made conditional, the Administrator shall provide the reason or reasons for such denial or condition.

c. After the first use of Match funds as set forth above, if TCD should receive proceeds or repayments on the expenditure of such Match funds from a project of a Qualifying Business for purposes of maintaining and operating a revolving fund (the "Reuse Funds"), TCD shall be able to access and use the Reuse Funds without restriction so long as (1) the Reuse Funds continue to be subject to the guidelines and requirements of the RWHF application, and (2) either (a) the Reuse Funds continue to be provided to a Qualifying Business for Eligible Projects (as defined above), or (b) TCD at the time of expending Reuse Funds continues to receive its principal source of income (at least 51%) from rental proceeds of residential housing that it constructed or rehabilitated. Provided, however, that for purposes of Eligible Projects under option (2)(a) above, it shall not be a requirement that the project funded by Reuse Funds be located within the municipal limits of the City.

d. From time to time, on request of the City, but in no event at a frequency greater than quarterly, TCD shall provide a detailed accounting of the use of the Match funds to the City, which accounting shall show the expenditure of the Match funds, an earmark of the Match funds compared to the other RWHF monies, a description of the Qualifying Businesses that received the Match funds, a description of the Eligible Projects on which the Match funds were spent, the date or dates of the expenditures, and the expectation or contractual obligations for return proceeds from the Match funds as Reuse Funds described above. TCD realizes that Match funds which require the approval of the Administrator before expenditure may be considered funds of the City for auditing purposes, and that because of such designation TCD may be required to disclose to the City and its agents all information requested on the RWMF program during a financial audit of the City funds.

e. Should the City determine that a violation of any restriction or condition occur, the City shall provide TCD with notice of such violation, and an opportunity to cure such violation within thirty (30) days. If such violation shall not be cured, the City may demand the return of all the Match funds. If the violation is not cured or Match funds are not returned, TCD agrees and understands that the City may not be made whole through an award of damages, due to the nature of a violation affecting the City's obligation to maintain and use its funds and tax revenue in compliance with State statutes, regulations, and the Plan, and therefore the City may exercise rights to equitable relief, including the right to seek a court order or injunction for a cure of the violation or a return of the remaining Match funds.

f. If TCD is not able or does not expend all Match funds within the time required by the State of the Nebraska, and the State of Nebraska requires the return of all or the remaining RWHF funds provided by the State to TCD, TCD agrees to reimburse and return the Match funds to the City according to the same ratio and proportion of other local matching funds that it received for its RWHF application.

4. Conditions to Closing:

Closing and disbursement of the Match funds to TCD shall be conditional of the following:

- a. TCD providing the City with a certificate of good standing of the Nebraska Secretary of State.
- b. All representations and warranties of the both parties, including those in this Agreement, shall remain true and correct as of Closing.
- c. A copy of the current and correct Articles of Incorporation and Bylaws of TCD shall have been delivered to the City, certified by its secretary to be correct.
- d. A Certified resolutions of the Board of Directors of TCD authorizing this Agreement and providing for signature authority.
- e. TCD having received a binding commitment from the State of Nebraska for its RWHF application in an amount of at least \$350,000, to equal the Match under this Agreement.
- f. There shall have been no material adverse change in the operation or financial status of TCD and the Closing shall constitute TCD's representations that there has been no such material adverse change.
- g. TCD 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.

5. Representations and Warranties of the Applicant:

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

- a. TCD is a corporation organized, existing, and in good standing under the laws of Nebraska. TCD has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. TCD's execution, delivery and performance of this Agreement have been authorized by all necessary action on the part of TCD. This Agreement, and each agreement and instrument delivered by TCD pursuant to it, is the legal and binding obligation of TCD, enforceable against TCD in accordance with its terms.
- b. No representation or warranty made by TCD 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 TCD 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 TCD is a party or by which they are bound.

6. Representations and Warranties of the City:

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

i. 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.

ii. 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. Default:

a. TCD shall be in default if any of the following happen:

i. Failure to comply with any of the terms of this Agreement to include an assignment not permitted under this Agreement;

ii. Any warranty, representation or statement made or given to the City by TCD proves to have been false in any material respect when made or given.

iii. Dissolution or liquidation of TCD, the termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or bankruptcy of TCD.

b. Any addition to the right of equitable relief set forth above, upon default, the City may exercise other remedies available to it, including the right to seek an award of damages suffered, to include post-judgment interest and the repayment of costs and attorney's fees of the City.

8. Assignability:

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

9. 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 ensure that any financial and proprietary information provided in connection with this Agreement by TCD 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.

10. 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 facsimile 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

- b. If to TCD:

Twin Cities Development Association, Inc.
1620 Broadway
Scottsbluff, NE 69361
Attention: Executive Director

11. 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 FOLLOWS]

City of Scottsbluff, Nebraska

Twin Cities Development Association, Inc.

By: _____
Jeannie McKerrigan, Mayor

By: _____
Todd Lewis, Board President