

City of Scottsbluff, Nebraska

Monday, October 17, 2022

Regular Meeting

Item Reports2

Council to discuss and consider action on the Economic Development Assistance Agreement with Mesner Development Co. and authorize the Economic Development Program Administrator to sign the Agreement.

Staff Contact: Starr Lehl, Economic Development Director

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on October 17, 2022, between the City of Scottsbluff, Nebraska (the “City”) and Mesner Development Co. (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 Council (the “Council”) have reviewed the Application. The Council has determined that a grant (the “Grant”) be awarded to the Applicant 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 Applicant is a Nebraska corporation with its principal source of income being the development of housing for sale or lease. The Applicant desires to purchase real estate for the construction of four residential duplexes (eight units) in the City of Scottsbluff on Circle Drive between 24th and 26th Streets, currently Lots 1 through 5, Block 6, Northeast Second Addition (the “Project”), and the Applicant desires assistance from the Program to offset the purchase price of the real estate for the Project in lieu of other TIF incentives that may be available for other real estate.

b. The City agrees to provide assistance for the Project in the form of a maximum \$50,000 Grant to the Applicant.

c. The Grant will be used to incentivize the Project and assist the Applicant with the Project.

2. Amount of Grant:

The amount of the Grant awarded to the Applicant is a maximum of \$50,000. The Grant shall be payable from the Fund as follows:

a. \$12,500 shall be payable to the Applicant after the Applicant obtains a certificate of occupancy from the City for each duplex, which shall not be unreasonably withheld. If only

one unit of a duplex obtains a certificate of occupancy at one time, \$6,250 shall be payable to the Applicant per unit.

b. Assuming all conditions to payment have been met, as set forth below, upon receiving each certificate of occupancy, the Applicant shall provide the certificate of occupancy to the Administrator, and the amount of the Grant to be paid shall be scheduled as a claim on the next reasonably available Council meeting. After claim approval by the Council, the City shall pay the amount of the Grant within ten days of claim approval.

3. Representations and Warranties of the Applicant:

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

a. The Applicant is a corporation organized, existing, and in good standing under the laws of Nebraska. The Applicant has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. The Applicant's execution, delivery and performance of this Agreement has been authorized by all necessary action on the part of the Applicant. 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. The Applicant's principal source of income is the construction of housing for sale or lease.

c. 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.

d. 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 Applicant is a party or by which they are bound.

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

4. 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.

5. 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 ImagiNE Act.

6. Conditions to Payment:

The City's obligation to proceed with payments of the Grant under this Agreement is subject to the Applicant's fulfillment of each of the following conditions at or prior to a payment:

- a. All representations and warranties of the Applicant shall be true as of the Closing.
- b. The Applicant shall have delivered to the City:
 - (1) Evidence of Good Standing of the Applicant from the Nebraska Secretary of State before each payment;
 - (2) A copy of the current and correct Articles of Incorporation and Bylaws of the Applicant certified by its secretary to be correct;
 - (3) Certified resolutions of the Board of Directors authorizing the Applicant's entering into this Agreement and providing for signature authority;
 - (4) Closing of the real estate purchase for the Project, construction of the duplexes for the Project, and obtaining a certificate of occupancy for each duplex (or the units therein);
 - (5) The Applicant entering into an agreement with Twin Cities Development for financial assistance on the Project from Twin Cities Development's rural workforce housing fund.
 - (6) The Applicant providing an accurate W-9 to the City.
- 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 accepting each payment of the Grant under this Agreement, the Applicant is considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

7. Early Termination:

a. The Applicant shall have the right at any time to terminate their participation in the Program by notifying the Administrator in writing of its desire to do so.

b. The Administrator 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 Administrator.

c. In the event of a termination as described in this paragraph, then the Applicant shall have no further right to receive Grant payments.

8. Default:

The Applicant 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 Applicant proves to have been false in any material respect when made or given.

c. Dissolution or liquidation 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 does not obtain any certificates of occupancy for duplexes on the Project within three years of October 17, 2022, or the Applicant sells the real estate, or any lot thereon (as replatted), of the Project before obtaining a certificate of occupancy for that lot.

9. Assignability:

The Administrator may assign his or her interest in this Agreement to any successor administrator designated by the City Council. The Applicant may not assign or transfer their interest in this Agreement without the consent of the Administrator. Assignment shall include a transfer of ownership of the Applicant of greater than 50% of the shares of the Applicant to a new owner.

10. 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.

11. 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 or 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
Fax: (308) 632-2916

b. If to the Applicant:

Mesner Development Co.
1415 16th St., Suite 200
PO Box 335
Central City, NE 68826
Attention: Cliff Mesner or Chris Lenz

12. 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 and Mesner Development Co.**

City of Scottsbluff, Nebraska

Mesner Development Co.

By: _____
Economic Development
Program Administrator

By: _____
President

CITY OF SCOTTSBLUFF
ECONOMIC DEVELOPMENT APPLICATION REVIEW COMMITTEE
October 11, 2022

A meeting of the Economic Development Application Review Committee was advertised for October 11, 2022 at 9:00 a.m. at City Hall, 2525 Circle Drive, Scottsbluff, Nebraska. A quorum of the Committee was not available and no actions were taken.

Present were Committee members Jim Trumbull and Dennis Hadden. Also present were Adam Hoelsing, Deputy City Attorney, Sharaya Toof, Small Business Outreach/Public Relations Coordinator for the City, Kevin Spencer, co-City Manager, and Elizabeth Loutzenhiser, co-City Manager. Member Trumbull presided over the discussion.

The first item of the agenda discussed was the presentation by Mesner Development Co. for its application for assistance. The Applicant has a principal source of income being the construction of housing for sale or lease. The Applicant desires to purchase real estate, construct, and sell four residential duplexes (eight units) in the City of Scottsbluff on Circle Drive between 24th and 26th Streets, currently Lots 1 through 5, Block 6, Northeast Second Addition (the "Project"), and the Applicant desires assistance from the Program to offset the purchase price of the real estate for the Project in lieu of other TIF incentives that may be available for other real estate. Mr. Cliff Mesner and Mr. Cliff Lenz presented on behalf of the Applicant. The Applicant desires a \$50,000 grant, which will be payable in prorated payments for 8 duplex units once each unit obtains a certificate of occupancy. The Applicant is also ready to obtain loan financing from Twin Cities Development for the project, which financing is part of the rural workforce housing fund that the City of Scottsbluff previously contributed \$350,000 as a match. The Applicant further requested this grant would allow the purchase of the real estate at competitive market rates that would incentivize the project without the use of TIF financing. The Applicant desires to close the real estate purchase in October of 2022 and begin concrete work shortly thereafter. A timeframe for the project is expected to be completed units by the end of 2023, and a deadline for the rural workforce housing fund is the end of 2023. It was important that the Applicant close on the real estate in October 2022 to begin concrete work before winter.

The Committee, due to lack of quorum, was unable to make a recommendation to the City Council on the application. Members of the committee present were generally in favor of the application. Due to the time sensitive nature of the Applicant's desires, the members of the Committee that were present forwarded the application and economic development agreement approval directly to the City council without Committee recommendation, per the terms of the City's economic development plan.

Thereafter, annual program reports for year ending March 31, 2022 and June 30, 2022 were provided to the members of the Committee present. Discussion was had regarding the size and success of the program portfolio and the program in general. The members of the Committee present then ended discussion at approximately 9:34 AM.

Starr Lehl, Economic Development Director