

City of Scottsbluff, Nebraska

Monday, April 1, 2024

Regular Meeting

Item Resolut.6

Council to discuss and consider action on the Redevelopment Contract with Rockstep Scottsbluff, LLC and Scottsbluff KM Redevelopment, LLC and authorize the Mayor to sign the Contract and Resolution.

Staff Contact: Kevin Spencer, City Manager

Redevelopment Contract

This Redevelopment Contract is entered into on _____, 2024 among the Community Redevelopment Authority of the City of Scottsbluff, Nebraska (the “Authority”), the City of Scottsbluff, Nebraska (the “City”), Rockstep Scottsbluff LLC, a Texas Limited Liability Company (“Rockstep”), and Scottsbluff KM Redevelopment, LLC, a Delaware limited liability company (“KM”).

Recitals:

- A. The City Council has declared the Site (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, the Authority and City Council approved and adopted the Amended Redevelopment Plan for the Former Monument Mall, now Uptown Mall, Rehabilitation and Former K Mart Site Rehabilitation (the “Plan”). The Plan is incorporated into this Redevelopment Contract by this reference.
- C. By adoption of the Plan, the City Council and Authority have designated the Site as an Enhanced Employment Area according to the Act, and such designation is ratified by this Contract.
- D. This Redevelopment Contract amends and restates the Redevelopment Contract dated June 1, 2015 between the City, the Community Development Agency of the City of Scottsbluff, and Rockstep (the “2015 Contract”).
- E. This Redevelopment Contract has been prepared according to the Act in order to implement the Plan.
- F. This Redevelopment Contract is entered into by the Authority and City to provide financing for an approved redevelopment project.

In consideration of these 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 have the following definitions.

- a. “Contract” means this Redevelopment Contract and all amendments, modifications, and extensions.
- b. “EEA Revenues” means the occupation tax revenues generated according to the Occupation Tax Ordinance, less any administrative expenses as provided in the Occupation Tax Ordinance.
- c. “Holder(s)” means the registered owner or owners of the Indebtedness issued by the Authority.
- d. "Indebtedness" means any bonds, notes, loans, and advances of money or other indebtedness, incurred by the Authority according to this Contract or the 2015 Contract to provide financing for the Project Costs. The Indebtedness will consist of one or more Tax Increment Financing Notes (“TIF Indebtedness”) and one or more Occupation Tax Revenue Bonds (“EEA Indebtedness”). Currently, Tax Increment Development Revenue Bond (Scottsbluff Monument Mall Rehabilitation Project, Series 2015 (the “2015 TIF Bond”) and Occupation Tax Revenue Bond (Scottsbluff Monument Mall Project), Series 2015B (the “2015 EEA Bond”) are issued and outstanding.

- e. "Occupation Tax Ordinance" means the City Ordinance No. 4327 authorizing the levy, collection, and enforcement of the occupation tax imposed on the Site according to the Act. The Occupation Tax Ordinance is being adopted by the City in conjunction with its approval of this Contract. The Occupation Tax Ordinance will supersede City Ordinance No. 4159 which was passed on May 18, 2015 (the "2015 Ordinance"). The Occupation Tax Ordinance will increase the applicable occupation tax from 0.5% to 2.0% and expand the occupation tax to the KM Site.
 - f. "Project" means the Project as described in the Plan.
 - g. "Project Costs" means the costs for those activities described on Schedule B and reimbursable to Redeveloper under the Act. The amount of the Project Costs will be the amount the Redeveloper actually incurs for such activities, and the estimates on Schedule B are provided for budgeting purposes only.
 - h. "Public Improvements" include, without limiting the generality of the description for public improvements, all improvements related to the Project required by the City to be completed, which may be on City property or in the City right of way or relating to City services, utilities, or infrastructure.
 - i. "Redeveloper" means Rockstep and KM. A reference to the Redeveloper means each Redeveloper, severally, and Rockstep and KM, jointly, unless the context otherwise clearly requires, as further explained in subsection 1(k) below.
 - j. "Resolution" means any resolution of the Authority authorizing the issuance of Indebtedness or approving this Contract.
 - k. "Site" means the real estate described on Schedule A together with all buildings, improvements and fixtures located thereon and portions of the adjacent public right of way and property as contemplated to be used under the Plan or as otherwise related to the Project. Schedule A divides the Site between the "Rockstep Site" and the "KM Site." Rockstep owns the Rockstep Site and KM owns the KM Site; the use of the terms "Redeveloper" and "Site" in this Contract should be interpreted accordingly.
 - l. "TIF Revenues" means that portion of the ad valorem real estate taxes generated by the Project on the Site and allocated to the Authority according to NEB. REV. STAT. § 18-2147(1)(b).
- 2. 2015 Contract:** This Contract amends and restates the 2015 Contract. However, this Contract shall not result in the cancellation of any indebtedness issued according to the 2015 Contract, except as expressly provided in this Contract or unless otherwise agreed by parties.
- 3. Representations and Warrants of the Redeveloper:** The Redeveloper represents and warrants that:
- a. 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.
 - b. 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.
 - c. The Project as set forth in the Plan would not be economically feasible or occur in the project area without tax increment financing.

- d. The Project will result in at least ten new employees on the Site and a new investment on the Site of at least \$500,000.00.
- e. Redeveloper will only use funds granted by the Authority for the purposes set forth in the Act.
- f. Redeveloper acknowledges that interest on the Indebtedness is not tax-exempt interest under state or Federal law.
- g. Redeveloper acknowledges that the Indebtedness, including any note or bond, is not registered under the Securities Act of 1933, as amended, and that the Authority and City are not presently required to register under Section 12 of the Securities and Exchange Act of 1934. Redeveloper recognizes that if the Redeveloper may wish to sell or resell any Indebtedness as held by it, there may not be any available current business and financial information about the Authority, the City, or the Project. Redeveloper acknowledges that no trading market presently exists or is ever expected to exist for the Indebtedness. The Redeveloper acknowledges 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. 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 related transactions
- i. Any acquisition of Indebtedness by Redeveloper will be 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. Redeveloper has been offered an opportunity to ask questions of and receive answers from the City and 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. Redeveloper understands the liability of the Authority and City is limited to the TIF Revenues and EEA Revenues received by the Authority with respect to the Project available to pay the Indebtedness (as applicable) and the Redeveloper shall look exclusively thereto for the payment on the Indebtedness.
- l. The Redeveloper acknowledges that the Indebtedness has been set based on estimates and assumptions, all of which may vary substantially and materially, including (i) expectations as to the completion of construction and valuations suggested by the Redeveloper; (ii) certain costs of the Project to be incurred by the Redeveloper; and (iii) sales projections that may occur on the Site. Redeveloper acknowledges that TIF Revenues and EEA 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. No broker, dealer, or municipal securities dealer will participate in the sale or purchase of Indebtedness. The Indebtedness is 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 TIF REVENUES OR EEA 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 Redeveloper. In addition to the Redeveloper’s other obligations in this Contract, the Redeveloper agrees to the following:

- a. Redeveloper has delivered to the City and Authority documents as required by the Authority showing who has authority to sign the Contract and related documents on behalf of the Redeveloper. The City and Authority may rely on such documents unless they are revoked and replaced in writing by the Redeveloper.
- b. Redeveloper will with reasonable diligence pursue and implement the Project. Redeveloper is responsible for obtaining all permits and approvals necessary to construct the Project. Until construction of the Project is complete, Redeveloper will report the progress of the Project to the Authority and City. Redeveloper will furnish to the City a Certificate of Completion upon full completion of the Project.
- c. At any time, whether before or after commencement of the Project, the Authority may require any or all of the following:
 - i. That any general contractor chosen by the Redeveloper or the Redeveloper itself obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations naming the Authority and/or City as additional insureds.
 - ii. That any contractor chosen by the Redeveloper or the Redeveloper itself purchase and maintain property insurance upon the Project to the full insurable value thereof which insure against the perils of fire and extended coverage, includes “All Risk” insurance for physical loss or damage, and insures all stored materials.
 - iii. That the contractor or the Redeveloper, as the case may be, furnish the Authority with a Certificate of Insurance evidencing policies as may be required above and providing that the Authority be given prior written notice in the event of cancellation of or material change in any of any of the policies.

- iv. That the Redeveloper 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 related to the Project. Any security furnished by the Redeveloper may be required to be up to the amount of the actual cost of the Public Improvements. It is contemplated that the Redeveloper will enter into one or more contracts for the construction of the Public Improvements. The actual cost of the Public Improvements will be determined by the provisions of such contract. If any required 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 security required by the Authority is insufficient to complete the Public Improvements, the Redeveloper will remain directly liable to the Authority 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.
- v. That the Redeveloper furnish or cause to be furnished to the Authority or City, a payment bond in the amount of the Public Improvements with a corporate surety authorized to do business in the State of Nebraska and approved by the Authority or City, 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 its subcontractors with labor, materials, equipment, or supplies for the Public Improvements and indemnifying and saving harmless the Authority or City to the extent any payments under this Contract which the Authority or City may be required to make under law. The Authority or City may allow, in lieu of this surety bond, a cash bond in the amount determined by the Authority or City, to be held by the Authority or City for the purposes set forth in this subsection. The cash bond shall be refunded to the Redeveloper upon the completion of the applicable Public Improvements and the Authority's or City's receipt of evidence, satisfactory to the Authority or City, that all persons having performed labor or furnished materials, equipment, or supplies for such Public Improvements have been fully paid.
- d. Redeveloper shall timely pay all costs, expenses, fees, charges and other amounts associated with the Project.
- e. The location, size and layout and construction of the Public Improvements shall be according to (i) plans and specifications approved in writing by the City in advance of commencement of construction, which approval will not be unreasonably withheld, (ii) all ordinances and codes adopted by the City in effect at the time that the Public Improvements are constructed, and (iii) any other agreement related to the Public Improvements between the Redeveloper and the City. This Contract does not replace or supersede the need for the Redeveloper to obtain other agreements, consents, permits, licenses from the City related to the Public Improvements or other improvements as may be required by the City for the type of work to be performed.
- f. The Redeveloper will hold the Indebtedness or arrange for the purchase of the Indebtedness in a private placement satisfactory to the Authority. The Authority and City shall have no obligation to sell the Indebtedness.
- g. The Redeveloper will pay the Authority the fees in the amounts and at the times as set forth on Schedule C.
- h. The Redeveloper shall retain copies of all documents and records associated with the Plan and Project received or generated by the Redeveloper and make such documents available to the City and Authority, upon request, for at least three years after the end of the last fiscal year in which ad valorem real estate taxes are divided for the Project.

- 5. Issuance of Indebtedness.** The following provisions apply separately to the TIF Indebtedness and EEA Indebtedness, and these provisions should be interpreted accordingly.
- a. The Authority will authorize the issuance of the Indebtedness, subject to such terms and conditions set forth in this Contract and the Resolution. The maximum amount of the Indebtedness is limited to the sum of all applicable Project Costs incurred by the Redeveloper. No Indebtedness will be issued until Redeveloper has become obligated for a portion of the Project Costs.
 - b. The interest rate of the Indebtedness will be the Wall Street Journal Prime Rate (as of the date of issuance), plus 1%, or as agreed upon by the Redeveloper and the Authority.
 - c. The Authority shall create a fund to collect and hold the TIF Revenues and EEA Revenues. Such fund shall be used for no other purpose other than to pay the applicable Indebtedness.
 - d. The Authority will make a grant to the Redeveloper, up to the amount of the Indebtedness, 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 according to Section 6(a) of this Contract or the amount as provided in the Plan. 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.
 - e. Upon the issuance of any new TIF Indebtedness according to this Contract that is secured by TIF Revenues derived from any portion of the Rockstep Site, the 2015 TIF Bond will be cancelled by Rockstep and returned to the Authority.
- 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 may submit to the Authority a grant disbursement request (the “Disbursement Request”) executed by an authorized representative of the Redeveloper. The Disbursement Request shall: (i) certify the actual Project Costs incurred by the Redeveloper in the completion of such portion of the Project and (ii) include documentation to the Authority’s satisfaction that such Project Costs have been incurred and all other requirements under this Contract relating to the work have been met. All Disbursement Requests are subject to review and approval by the Authority. Determinations by the Authority whether costs included in the Disbursement Request are properly included as Project Costs as defined in this Contract shall be made in the sole discretion of the Authority and shall be conclusive and binding on the Redeveloper.
 - b. The Authority shall inform the Holder in writing of the amount of the Disbursement Request allocated to the Indebtedness for reimbursable Project Costs under this Contract. Upon notification from the Authority, the Holder (if other than the Redeveloper) may make deposits to the Authority in such amount necessary to pay the Project Costs set forth in the Disbursement Request. Such amounts shall be proceeds of the Indebtedness to be granted to the Redeveloper under Section 5(d) of this Contract. If the Redeveloper is the Holder, the grant to the Redeveloper shall be offset by the increase in the principal balance of the Indebtedness by the amount of the Project Costs of the approved Disbursement Request.

7. **TIF Revenues:** The Authority pledges the TIF Revenues derived from the Site as security for and to provide payment of the TIF Indebtedness. No other funds of the City or Authority secure or will be paid toward the TIF Indebtedness. The Authority will pay the Holder of the TIF Indebtedness the TIF Revenues according to the terms of the TIF Indebtedness and this Contract. Any shortfall in TIF Revenues to pay the TIF Indebtedness shall be borne entirely by the Redeveloper and Holder without recourse of any kind against the Authority or the City.

The TIF Indebtedness will be paid with priority based on the order of issuance. If more than one tax increment financing notes are issued at the same time, then the TIF Revenues will be paid toward such notes in priority or proportion as agreed to by the Authority, KM, and Rockstep at the time such TIF Indebtedness is issued.

TIF Revenues will be derived from the Site as follows:

- a. Any ad valorem real estate tax on the Site (or any portion of the Site as determined by Redeveloper) for the benefit of any public body may be divided for a period of fifteen (15) years.
- b. The Site may be developed in phases over an extended period. Redeveloper will decide, from time to time, when to begin the division of real estate taxes on a particular tax parcel within the Site (each a "TIF Site"). When Redeveloper determines that it would like to begin the division of real estate taxes on a particular tax parcel, Redeveloper will notify the Authority of (i) the tax parcel and (ii) the effective date of the division of the real estate taxes on such parcel. Redeveloper and the Authority will then execute an amendment of this Contract to specify such terms (a "TIF Site Designation Amendment"). The City Manager, as Secretary of the Authority, may execute each TIF Site Designation Amendment without further approval of the Authority or City.
- c. The ad valorem real estate taxes on a TIF Site will be divided as follows:
 - i. That portion of the ad valorem real estate tax on the TIF 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
 - ii. That portion of the ad valorem real estate tax on the TIF 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 notify the County Assessor and County Treasurer and all ad valorem real estate taxes upon the TIF Site shall be paid into the funds of the respective public bodies; and
 - iii. Any interest and penalties due for delinquent taxes shall be paid in the funds of each public body in the same proportion as are all other taxes collected by or for the public body.
- d. Within 30 days after a TIF Site Designation Amendment is executed, the Authority will file with the County Assessor a notice for dividing the ad valorem real estate tax on the TIF Site, as described in Section 18-2147(6) of the Act.
- e. Before any real estate taxes are divided on a TIF Site within the Rockstep Site according to this Contract, the Authority will cancel the current notice to divide taxes on the Rockstep Site.

- 8. EEA Revenues:** The Authority and the City agree to impose an occupation tax on the Site according to the Occupation Tax Ordinance. The Authority pledges the EEA Revenues derived from the Site as security for and to provide payment of the EEA Indebtedness. No other funds of the City or Authority secure or will be paid toward the EEA Indebtedness. The Authority will pay the Holder of the EEA Indebtedness the EEA Revenues according to the terms of the EEA Indebtedness and this Contract. Any shortfall in EEA Revenues to pay the EEA Indebtedness shall be borne entirely by the Redeveloper and Holder without recourse of any kind against the Authority or the City. The EEA Revenues will be paid in the following priority:

First Priority: The 2015 EEA Bond.

Second Priority: EEA Indebtedness issued after the date of this Contract will be paid with priority based on the order of issuance. If more than one occupation tax bonds are issued at the same time, then the EEA Revenues will be paid toward such bonds in priority or proportion as agreed to by the Authority, KM, and Rockstep at the time the such EEA Indebtedness is issued.

- 9. Redeveloper's Obligations While the Indebtedness is Outstanding.** While any Indebtedness is outstanding, Redeveloper shall:

- a. Not protest a taxable valuation of the Site so as to reduce the taxable valuation;
- b. Not convey the Site or structures thereon to any entity which would be exempt from paying real estate taxes, except any Public Improvements to be transferred to the City;
- 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. Maintain the Site in good repair and in a safe and clean condition;
- g. Provide progress reports and any relevant financial records regarding the Project to the City or Authority upon request; and
- h. Include the restrictions in this Section 9 in any subsequent sale, assignment, sale-leaseback or other transfer of the Site or any portion thereof. If such restrictions are included, the Redeveloper shall not otherwise be responsible for the action or inaction of third parties if these covenants are breached by third parties and the Redeveloper no longer owns the Site.

- 10. Environmental Conditions.** In the development of the Site, the Redeveloper and its contractors shall not violate any applicable laws, ordinances and regulations relating to industrial hygiene or environmental protection (collectively referred to herein as "Environmental Laws"), and not do anything to introduce to the Site substances deemed to be hazardous or toxic under any Environmental Laws.

- 11. Indemnity.** To the fullest extent permitted by law, the Redeveloper shall indemnify, defend, and hold harmless the Authority and City from and against all claims, damages, losses, fines, assessments, and expenses, including, but not limited to, attorneys' fees (collectively, "Losses"), arising out of or resulting from (a) the negligent or intentional acts or omissions of the Redeveloper, any of Redeveloper's contractors or subcontractors, or anyone directly employed by any of them, or anyone for whose acts any of them may be liable or (b) the noncompliance with this Contract. The Redeveloper also agrees to indemnify and hold the City and Authority harmless for any claims for amounts which are the responsibility of the Redeveloper charged by persons or entities providing labor or materials for the Project. Notwithstanding the foregoing, in no event shall Redeveloper be required to indemnify, defend, or hold harmless the Authority or City for Losses to the extent such Losses are caused by the active negligent or intentional acts or omissions of the Authority or City.
- 12. 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.
- 13. Immigration Status.** Redeveloper agrees that all of its contractors providing services on the Site will utilize the federal immigration verification system, as defined in NEB. REV. STAT. § 4-114 to determine the work eligibility status of new employees physically performing services on the Project.
- 14. 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.
- 15. 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.
- 16. Covenants Running with the Land.** This Contract shall be binding upon the Redeveloper's successors and assigns, and shall run with the Site. The Authority and City will 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.
- 17. Status of Parties.** The Authority and City are not and shall not be regarded as partners, joint venturers, or other jointly acting parties with the Redeveloper for any purpose whatsoever, and the undertakings and agreements on the part of the Authority and City are provided solely according to the provisions of the Act and for the governmental purposes of promoting and encouraging redevelopment in blighted and substandard areas.
- 18. Approvals by the Authority and City.** Whenever, under the terms of this Contract, the Authority or City has agreed that it will take an action or cause an action to be taken and applicable statutes require public notice and a hearing or other procedures relating to approval, the terms and conditions of this Contract shall be understood as subject to such requirements.

19. Default. In the event of any default of this Contract, the defaulting party shall, upon written notice from 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. In addition, in the event of a default by the Redeveloper which is not timely cured as set forth above, then the Authority and City may suspend its performance under this Contract or rescind or terminate this Contract. 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, pandemics, quarantine, strikes, freight embargos, or delays of contractors 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.

20. 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 Rockstep: Rockstep Scottsbluff LLC
Attn: _____

If to KM: Scottsbluff KM Redevelopment, LLC
Attn: _____

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

If to City: City of Scottsbluff
Attn: City Manager
2525 Circle Drive
Scottsbluff, NE 69361

A party may give notice of a change in contact information in the manner specified above. Other methods of notice will be sufficient if the sender can show the date of receipt by the intended recipient.

21. 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 the parties to be bound by the amendment. *Provided that*, the terms of any Resolution passed by the Authority or City related to the Indebtedness are made a part of and incorporated into this Contract.

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

23. Schedules. All schedules referenced in this Contract are part of this Contract.

24. Intent. This Contract is entered into by the Authority and City to provide financing for an approved redevelopment project.

25. Counterparts. This Contract may be signed in one or more counterparts.

[The signature page is the next page]

**Community Redevelopment Authority
of the City of Scottsbluff, Nebraska**

By: _____
William Trumbull, Chair

**Rockstep Scottsbluff LLC, a Texas
Limited Liability Company**

By: _____
[Name, Title]

City of Scottsbluff, Nebraska

By: _____
Jeanne McKerrigan, Mayor

**Scottsbluff KM Redevelopment, LLC,
a Delaware Limited Liability Company**

By: _____
[Name, Title]

State of Nebraska; County of Scotts Bluff) ss.

This Redevelopment Contract was acknowledged before me on _____, 2024 by William Trumbull, Chair on behalf of the Community Redevelopment Authority of the City of Scottsbluff, Nebraska.

Notary Public

State of Nebraska; County of Scotts Bluff) ss.

This Redevelopment Contract was acknowledged before me on _____, 2024 by Jeanne McKerrigan, Mayor on behalf of the City of Scottsbluff, Nebraska.

Notary Public

State of _____; County of _____) ss.

This Redevelopment Contract was acknowledged before me on _____, 2024 by _____ [name], _____ [title] on behalf of Rockstep Scottsbluff LLC, a Texas Limited Liability Company.

Notary Public

State of _____; County of _____) ss.

This Redevelopment Contract was acknowledged before me on _____, 2024 by _____ [name], _____ [title] on behalf of Scottsbluff KM Redevelopment, LLC, a Delaware Limited Liability Company.

Notary Public

Schedule A

The Site

Rockstep Site:

Lot 3, Block 3, Third Replat of Lots 3 and 4, Block 3, Northeast Second Addition Replat No. 2, an Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska (2302 Frontage Road, Scottsbluff, NE)

Lot 2, Block 3, Northeast Second Addition Replat No. 2, an Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska (2410 Frontage Road, Scottsbluff, NE)

KM Site

Lots 1 and 2, Block 1, Subdivision of Block 1, Northeast Second Addition Replat No. 1, an Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska (804 and 802 East 27th Street)

Schedule B
Estimated Project Costs

Uptown Mall TIF Expenditures		Uptown Mall TIF Bond	
Building rehab	\$ 316,000.00		
Total Uptown TIF Expenditures	\$ 316,000.00	\$	316,000.00
Uptown Mall EEA		Uptown Mall EEA Bond	
Building rehab:			
Tenant imp; roof; HVAC	\$ 5,344,950.00		
Parking lot	\$ 1,000,000.00		
Lighting	\$ 250,000.00		
Landscaping & signage	\$ 200,000.00		
Arch/Promotion	\$ 800,000.00		
Total EEA	\$ 7,594,950.00	\$	7,590,000.00
Former K Mart TIF Expenditures		Former K Mart TIF Bond	
Site acquisition reimbursement	\$ 2,470,000.00	\$	2,050,000.00
Former K Mart EEA Expenditures		Former K Mart EEA Bond	
Site preparation/subdivision	\$ 2,040,000.00		
Demolition	\$ 300,000.00		
Building rehabilitation	\$ 12,063,000.00		
Pad sites construction	\$ 3,050,000.00		
Total EEA Expenditures	\$ 17,453,000.00	\$	2,400,000.00

Expenses may shift between categories without further approval.
Direct payment to tenants for tenant improvements are authorized rehabilitation expenditures.

Schedule C
Fees

Processing Fees: Reimbursement of City's and Authority's attorney's fees related to: Plan review and approval; Occupation Tax Ordinance review and approval; Contract drafting and approval; Indebtedness drafting, approval, and issuance; and Disbursement Request review and approval. The Processing Fees are payable at each issuance of Indebtedness and each approval of a Disbursement Request.

TIF Administrative Fee: \$5,000.00. The TIF Administrative Fee is payable at the issuance of the TIF Indebtedness.

EEA Administrative Fee: The EEA Administrative Fee is collected according to the Occupation Tax Ordinance.

RESOLUTION NO. _____

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SCOTTSBLUFF, NEBRASKA:

Recitals:

a. An Amended Redevelopment Plan for the Former Monument Mall, now Uptown Mall, Rehabilitation and Former K Mart Site Rehabilitation (the “Redevelopment Plan”) has been submitted to the Scottsbluff Community Redevelopment Authority (“Authority”) according to the Community Development Law, NEB. REV. STAT. § 18-2101 *et seq.* (the “Act”). 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.

b. The area to be redeveloped and designated as an Enhanced Employment Area is described as: Lot 3, Block 3, Third Replat of Lots 3 and 4, Block 3, Northeast Second Addition Replat No. 2, an Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska (2302 Frontage Road); Lot 2, Block 3, Northeast Second Addition Replat No. 2, an Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska (2410 Frontage Road); and Lots 1 and 2, Block 1, Subdivision of Block 1, Northeast Second Addition Replat No. 1, an Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska (804 and 802 East 27th Street).

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

d. The Authority and the City Council have both approved and adopted the Redevelopment Plan.

e. The City Council desires to enter into a Redevelopment Contract (the “Contract”) with the Authority and Rockstep Scottsbluff LLC, a Texas Limited Liability Company (“Rockstep”), and Scottsbluff KM Redevelopment, LLC, a Delaware limited liability company (“KM”). KM and Rockstep are referred to together as the “Redeveloper.” Under the terms of the Contract, the Authority will provide tax increment financing and enhanced employment area occupation tax revenue to the Redeveloper for the implementation of the Redevelopment Plan.

Resolved:

1. The Contract between the City, Authority, and Redeveloper as presented is approved. The Mayor and City Clerk are authorized to sign the Contract on behalf of the City. The Mayor, upon consultation with the City Manager and City Attorney, may make changes and amendments to the Contract and take all actions and execute all documents that the Mayor deems in the best interest of the City in connection with the Redevelopment Plan.
2. The Mayor and Clerk are authorized and directed to execute such documents and take such further actions as are necessary to carry out the purposes and intent of this Resolution and the Redevelopment Plan.
3. This Resolution shall become effective immediately upon its adoption.

PASSED and APPROVED on April 1, 2024

Mayor

ATTEST:

City Clerk (Seal)