

ORDINANCE RECORD

No. 728-REFIELD & COMPANY INC., OMAHA

ORDINANCE NO. 1388

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL, LA VISTA, NEBRASKA, TO APPROVE APPLICATION OF CITY CENTRE MUSIC VENUE, LLC UNDER THE CITY OF LA VISTA ECONOMIC DEVELOPMENT PROGRAM; TO MAKE CERTAIN FINDINGS; TO APPROVE RECOMMENDATIONS AND \$3.0 MILLION ECONOMIC DEVELOPMENT PROGRAM GRANT; TO SPECIFY CERTAIN CONDITIONS AND AUTHORIZE FURTHER ACTIONS IN CONNECTION WITH SUCH GRANT; AND TO PROVIDE FOR SEVERABILITY, PUBLICATION AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Findings. The Mayor and City Council find, determine, ratify, affirm and approve the following:

1. The Nebraska Legislature made the following findings in Neb. Rev. Stat. Section 18-2702:
 - a. There is a high degree of competition among states and municipalities in our nation in their effort to provide incentives for businesses to expand or to locate in their respective jurisdictions;
 - b. Municipalities in Nebraska are hampered in their efforts to effectively compete because of their inability under Nebraska law to respond quickly to opportunities or to raise sufficient capital from local sources to provide incentives for the provision of new services or business location or expansion decisions which are tailored to meet the needs of the community;
 - c. The ability of a municipality to encourage the provision of new services or business location and expansion has a direct impact not only upon the economic well-being of the community and its residents but upon the whole state as well; and
 - d. There is a need to provide Nebraska municipalities with the opportunity of providing assistance to business enterprises in their communities, whether for expansion of existing operations, the creation of new businesses, or the provision of new services, by the use of funds raised by local taxation when the voters in the municipality determine that it is in the best interest of their community to do so.
2. Based on these findings, the Legislature enacted the Local Option Municipal Economic Development Act ("Act"), Neb. Rev. Stat. Sections 18-2701 to 18-2738, in 1991, allowing municipalities including cities of the first class in Nebraska to establish economic development programs and use local sources of revenue for financial assistance to qualifying businesses upon voter approval.
3. The voters of La Vista approved the proposed economic development program by a majority affirmative vote of registered voters voting at a special election held September 30, 2003.
4. In accordance with said voter approval, the Mayor and City Council subsequently established the economic development program as codified in La Vista Municipal Code Sections 117.01 et seq. ("La Vista Economic Development Program"). In establishing the La Vista Economic Development Program, the Mayor and City Council stated the purpose of the Economic Development Program as giving the City flexibility to quickly respond to desirable opportunities for community or economic development using funds raised from local sources of revenue to provide incentives or investment in the La Vista community or its infrastructure for the location or expansion of services or businesses or rehabilitation of residential neighborhoods in or near the City.
5. Neb. Rev. Stat. Section 18-2738 provides that the powers conferred by the Act shall be in addition and supplemental to the powers conferred by any other law and shall be independent of and in addition to any other provisions of the law of Nebraska, including the Community Development Law.

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6. Neb. Rev. Stat. Section 18-2738 further provides that the Act and all grants of power, authority, rights, or discretion to the City under the Act shall be liberally construed, and all incidental powers necessary to carry the Act into effect are expressly granted to and conferred upon the City.
7. Section 117.14 of the La Vista Economic Development Program provides broad authority for the City to provide financial assistance to qualifying businesses, including grants.
8. City Centre Music Venue, LLC, on behalf of itself and affiliated Astro Theater, LLC, (Applicant") submitted an application and request for Program benefits ("Application") for a proposed state of the art, best in market specialty indoor/outdoor live performance venue and related facilities in La Vista City Centre of the 84th Street Redevelopment Area, constructed and operated at a scale and in a manner to bring new performers to the market and attract visitors to the City ("Event Center"). Total estimated cost to design, construct, acquire, and equip the proposed project is \$22.6 million. Applicant requests the City provide a \$3.0 million grant for development, construction, acquisition, and equipping of the Event Center ("Grant"). Applicant will directly pay or finance all remaining costs of the project. The City would not have any responsibility with respect to the Event Center, including without limitation, its construction, equipping, upkeep, maintenance, repairs, or replacement. Applicant, as a condition of the Grant, agrees that the Event Center and related parking in perpetuity will be available for use or events of the City or its designee ("Right of Use") each calendar year on days when other events are not previously scheduled for events of Applicant, for a total of not less than ten days per year, fully staffed by Applicant and at no cost or expense to City or its designee, except actual costs of entertainment and labor, and no markup or profit. If ticket services are used for such events, Applicant will provide ticket services at no cost or additional charge to City, its designee, or attendees. Such City Right of Use will be subject to any additional requirements specified in connection with the grant or as agreed in writing by the City and Applicant.
9. The Program Administrator of the La Vista Economic Development Program made a preliminary determination that the Application appeared to be viable pursuant to La Vista Municipal Code Section 117.16(B), in part based on the following:
 - The Applicant is a qualifying business and eligible under the La Vista Economic Development Program. The Application states that the Applicant is a limited liability company which, upon opening of the Event Center, derives its principal source of income from tourism-related activities, and any employment related requirements will be satisfied. Consequently, the Applicant is eligible under the La Vista Economic Development Program;
 - The proposed grant and activities are eligible under the La Vista Economic Development Program;
 - The Application indicates that the Applicant does not have any actual or potential legal actions or other risks that may significantly impact its ability to perform; and
 - The Applicant has complied with application requirements to the satisfaction of the Program Administrator.
10. The Program Administrator, pursuant to La Vista Municipal Code Section 117.16(C), referred the Application to the Application Review Committee for review and for the Committee to perform responsibilities under the Economic Development Program. The Program Administrator also sought advice of the Citizen Advisory Review Committee to the Mayor and City Council. A copy of the Application also was provided to Stone Consulting ("City Consultant"), the City's consultant which specializes in assessing and advising municipalities regarding such developments, for analysis and feedback. In summary, the City Consultant concluded that the project described in the application is an excellent opportunity for the City. Presented at this meeting is a copy of the Program Administrator's Memorandum presented at the meetings of the Application Review Committee and Citizen Advisory Review Committee with respect to the proposed project described in the Application.

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11. The Application Review Committee reviewed the Application, any supplemental financial or other information furnished, the above-referenced Memorandum, and City Consultant findings, and provided any recommendations to the Program Administrator concerning negotiations with the Applicant and whether any further information, assurances, certifications, requirements or guarantees from the Applicant are desired. Once the Committee completed its review, and following any additional negotiations by the Program Administrator, the Application Review Committee, based on its review of the Application and other information provided, found and determined that the Applicant under the Application demonstrated to the satisfaction of the Application Review Committee:
 - The Applicant's eligibility for funding under the La Vista Economic Development Program;
 - That the type and amount of assistance requested in the Application is appropriate and desirable for the City;
 - A desirable level, type and quality of public benefit to the City or its residents from the Applicant's proposed use of the funding; and
 - That the timing, type, magnitude and probability of public benefit that is likely to be achieved from the funding is reasonable and efficient in relation to the cost of funding provided.
12. The Application Review Committee recommended approval of the Application; and that said Application be submitted to the La Vista City Council for consideration of approval and funding ("Application Review Committee Recommendation"); subject, to the following conditions to the satisfaction of the Program Administrator or her designee ("Conditions"):
 - a. Submittal, satisfaction, or waiver of any additional information or requirements as Program Administrator determines advisable to the satisfaction of the Program Administrator;
 - b. Applicant indicated in the Application that Applicant will directly pay or finance through a third-party lender all costs of constructing and acquiring the facilities, except as provided by the proposed City grant. The Program Administrator or the Program Administrator's designee shall confirm appropriate documentation evidencing negotiations with one or more primary lenders for financing construction of the Event Center and the terms on which said financing will be provided. Applicant shall update said documentation from time to time for any material changes or as otherwise required by the Program Administrator;
 - c. Such further due diligence, information, assurances, certifications, requirements or guarantees from Applicant as Program Administrator from time to time may determine necessary or appropriate; and
 - d. Grant receipt in form and content satisfactory to the Program Administrator.
13. The Citizen Advisory Review Committee ratified and adopted the Application Review Committee Recommendation and recommended to the Mayor and City Council that the Application be approved and funded, subject to any terms or conditions as the Mayor, City Council, Program Administrator, or any designee of any of them determines necessary or appropriate.
14. The City Council agrees with the findings, determinations, conclusions and recommendations of the Program Administrator, Application Review Committee, and Citizen Advisory Review Committee with respect to the Application.
15. The City Council finds and determines that the Application and the Applicant thereunder, have satisfied all applicable requirements, including requirements of the La Vista Economic Development Program.
16. The City Council desires to accept and approve the recommendation of the Program Administrator and Committees and take further actions with respect to the Application, subject to such conditions as set forth below.

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SECTION 2. Approval. The Mayor and City Council hereby approve the following, subject to the conditions specified in this Section or Section 3 below:

1. All findings, determinations, conclusions, proceedings, actions and recommendations of the Program Administrator, Application Review Committee, and Citizen Advisory Review Committee with respect to the Application are hereby ratified, affirmed, adopted and approved.
2. The Application Review Committee and Citizen Advisory Review Committee recommendations of approval of the Application are hereby accepted, adopted and approved; and said Application is hereby approved..
3. The Application and \$3.0 million Grant requested in the Application are hereby approved.

SECTION 3. Conditions. Actions and approvals contained in this Ordinance, including, but not limited to, approval and disbursements of the Grant, shall be subject to the following conditions:

1. City Right of Use of the Event Center in perpetuity;
2. Conditions set forth in Section 1;
3. Commitment of a third party lender and private funds on satisfactory terms for Applicant to acquire, develop, construct, equip, and complete the Event Center ("Applicant Commitments");
4. Approval, closing, issuance and availability of proceeds of any City bond or other financing to provide the Grant;
5. Closing and funding of Applicant Commitments to the satisfaction of Program Administrator or Program Administrator's designee;
6. Commencement and diligently proceeding to completion of construction and equipping the Event Center;
7. Execution or delivery of such receipts, agreements, instruments, or other documents, information, or requirements as the Program Administrator or Program Administrator's designee determines necessary or appropriate in connection with the Grant or any Grant disbursement;
8. Performance of applicable terms, conditions, and requirements of all agreements, documents, and instruments of the Agency or City to which Applicant or any affiliated entity is a party or bound, including without limitation, Astro Theater, LLC, La Vista City Centre, LLC, City Centre I, LLC, or E&W, LLC; and
9. Such further information, assurances, certifications, requirements of Applicant as the Program Administrator or Program Administrator's designee from time to time may determine necessary or appropriate.

SECTION 4. Authorization of Further Actions. The Mayor, City Administrator, City Engineer, City Clerk, and any designee of any of the foregoing, each shall be authorized to take such further actions, including without limitation executing documents and instruments, as he or she determines necessary or appropriate to carry out the actions approved in this Ordinance.

SECTION 5. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this ordinance and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

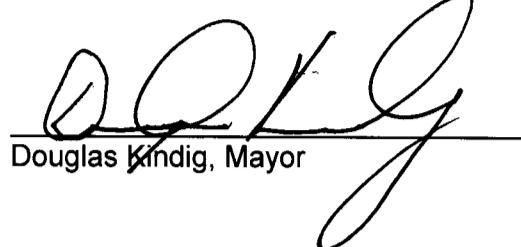
SECTION 6. Effective Date. This ordinance shall be in full force and effect from and after passage, approval and publication in accordance with applicable law.

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PASSED AND APPROVED THIS 3RD DAY OF MARCH, 2020.

CITY OF LA VISTA



Douglas Kindig, Mayor

ATTEST:



Pamela A. Buethe

Pamela A. Buethe, CMC
City Clerk