

# ORDINANCE RECORD

No. 728-REFIELD & COMPANY INC., OMAHA

## ORDINANCE NO. 1421

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL, LA VISTA, NEBRASKA, MAKING FINDINGS; APPROVING RECOMMENDATIONS, APPLICATION SUPPLEMENT AND ADDITIONAL AWARD OF \$2.5 MILLION UNDER CITY ECONOMIC DEVELOPMENT PROGRAM FOR EVENT CENTER TO BE CONSTRUCTED BY CITY CENTRE MUSIC VENUE, LLC, SUBJECT TO SPECIFIED CONDITIONS; AUTHORIZING FURTHER ACTIONS; AND PROVIDING 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, as subsequently amended, 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 City of La Vista voter-approved Economic Development Program is codified in La Vista Municipal Code Chapter 117 ("La Vista Economic Development Program" or "Program"). In establishing the La Vista Economic Development Program, the Mayor and City Council stated a 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.
4. 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.
5. 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

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construed, and all incidental powers necessary to carry the Act into effect are expressly granted to and conferred upon the City.

6. Section 117.14 of the La Vista Economic Development Program provides broad authority for the City to provide financial assistance to qualifying businesses, including direct loans or grants to qualifying businesses.
8. Ordinance No. 1388 approved the initial application ("Original Application") of City Centre Music Venue, LLC on behalf of itself and Astro Theater, LLC ("Applicant") and \$3.0 million award ("Initial Award") under the Economic Development Program in connection with approval of the event center in La Vista City Centre - a proposed state of the art, best in market live specialty indoor/outdoor performance and entertainment event center and related improvements in the Mixed Use Redevelopment Project of the 84<sup>th</sup> Street Redevelopment Area, scaled and operated in a manner unique to the region and expected to draw new performers and visitors to La Vista ("Event Center").
9. A supplement to the Original Application ("Application Supplement") was submitted for an additional \$2.5 million Program award ("Incremental Award"), with the Initial Award to be discharged upon completion of the Event Center, and the Incremental Award repaid with interest no later than September 30, 2029 and secured by a bank letter of credit or other security satisfactory to the City Administrator or City Administrator's designee. Features of the Event Center remain as described in the Original Application approved by the City Council.
10. Total estimated cost to design, construct, acquire, and equip the proposed project is \$23.6 million. Applicant will finance and contribute funds to pay remaining costs of the project in excess of Program award(s). 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 Program award(s), agrees that the Event Center and related parking in perpetuity will be subject to the City's Right of Use not less than ten (10) days per year as described in applicable documents including Ordinance No. 1388. Such Right of Use will be subject to any additional requirements specified in connection with Program award(s) or as agreed in writing by the City and Applicant.
11. The Program Administrator of the La Vista Economic Development Program by memorandum ("Program Administrator Memorandum") made and communicated to the Application Review Committee findings and determinations including a preliminary determination that the Application Supplement (and Original Application as modified by the Application Supplement) appeared to be viable pursuant to La Vista Municipal Code Section 117.16(B), based on the following, and subject to the conditions specified in the Program Administrator Memorandum:
  - The Applicant is a qualifying business and eligible under the La Vista Economic Development Program. The Application Supplement 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. The Event Center is expected to be a catalyst for eliminating and preventing recurrence of substandard and blighted areas of the 84<sup>th</sup> Street Redevelopment Area, and any employment related requirements will be satisfied;
  - The proposed Incremental Award and activities are eligible under the La Vista Economic Development Program;
  - Applicant in connection with the Application Supplement 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 ("Program Administrator Preliminary Determination").
12. The Program Administrator, pursuant to La Vista Municipal Code Section 117.16(C), referred the Application Supplement, together with the Program

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Administrator Memorandum and any supplemental financial or other information, to the Application Review Committee for the Committee to review and otherwise perform responsibilities under the Economic Development Program. The Program Administrator also provided such information to the Citizen Advisory Review Committee to advise the Mayor and City Council; and further provided such information to Stone Planning, LLC ("City Consultant"), which analyzed the Original Application, for analysis and feedback. After reviewing the Application Supplement, City Consultant, among other things, concluded that this is an excellent opportunity for the City.

13. The Application Review Committee reviewed the Application Supplement and other information described above, and the findings and determinations including the preliminary determination in the Program Administrator Memorandum, 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 Supplement and other information provided, found and determined that the Applicant under the Application Supplement (and Original Application as modified by the Application Supplement) demonstrated the following 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 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 the Committee determines is likely to be achieved from the funding is reasonable and efficient in relation to the cost of funding provided.

The Application Review Committee recommended that the Application Supplement and \$2.5 million Incremental Award be approved and funded in addition to the \$3.0 million Initial Award; and that said Application Supplement 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:

- 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 Supplement 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 award(s) under the Program. 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, or requirements of or from Applicant as Program Administrator from time to time may determine necessary or appropriate; and
- d. Satisfaction of any conditions specified in the Program Administrator Preliminary Determination.

14. The Citizen Advisory Review Committee subsequently ratified and adopted the Program Administrator Preliminary Determination and Application Review Committee Recommendation and recommended to the Mayor and City Council that the Application Supplement and \$2.5 million Incremental Award be approved and funded in addition to the \$3.0 million Initial Award, subject to satisfaction of any conditions specified in the Program Administrator Preliminary Determination or Application Review Committee Recommendation, or any other terms or

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conditions as the Mayor, City Council, or Program Administrator, or any designee of the Mayor, City Council, or Program Administrator, determines necessary or appropriate.

15. 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 Supplement.
16. The City Council finds and determines that the Application Supplement and the Applicant thereunder, have satisfied all applicable requirements, including requirements of the La Vista Economic Development Program.
17. The City Council desires to accept and approve the recommendations of the Program Administrator, Application Review Committee, and Citizen Advisory Review Committee and take and authorize further actions with respect to the Application Supplement, subject to such conditions as set forth below.

**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, documents, actions and recommendations of the Program Administrator, Application Review Committee, or Citizen Advisory Review Committee with respect to the Application Supplement are hereby ratified, affirmed, adopted and approved;
2. All Application Review Committee and Citizen Advisory Review Committee recommendations of approval of the Application Supplement and \$2.5 million Incremental Award are hereby accepted, adopted and approved; and
3. The Application Supplement (and Original Application as modified by the Application Supplement) and \$2.5 million Incremental Award (in addition to the \$3.0 million Initial Award) are approved and shall be funded.

**SECTION 3. Conditions.** Actions and approvals of this Ordinance, including, but not limited to, approval and disbursements of the Incremental Award, shall be subject to the following conditions to the satisfaction of the Program Administrator:

1. City Right of Use of the Event Center in perpetuity;
2. Any conditions set forth in Section 1 or 2 above, or in any findings, recommendations, actions, or conditions of the Program Administrator, Application Review Committee, or Citizen Advisory Review Committee;
3. Commitment and funding of a third party lender and private funds in sufficient amounts and on satisfactory terms for Applicant to acquire, develop, construct, equip, and complete the Event Center;
4. Approval, closing, issuance and availability of proceeds of any City bond or other financing to provide the Incremental Award, in addition to the Initial Award;
5. Commencement and diligently proceeding to completion of construction and equipping of the Event Center in accordance with applicable requirements;
6. Execution or delivery of an Award Agreement, Promissory Note, and Letter of Credit, initial drafts of which as presented and on file with the City Clerk at this meeting are approved subject to any additions, subtractions or modifications, or additional, different, or other documents or instruments, as the Program Administrator or Program Administrator's designee determines necessary or appropriate;
7. Performance of applicable terms, conditions, and requirements of all agreements, documents, and instruments of the City or La Vista Community Development Agency 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, City Centre 2, LLC, or E&W, LLC; and
8. Such further information, assurances, certifications, or requirements 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, or City Clerk, or any designee of any such City official, each shall be authorized to take all actions, including without limitation approving, executing or

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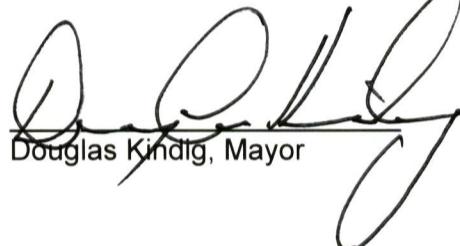
delivering documents or instruments, as he or she determines necessary or appropriate to carry out the Incremental Award, Initial Award, or actions approved in this Ordinance.

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 constitutionality or 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.

PASSED AND APPROVED THIS 1ST DAY OF JUNE, 2021.

CITY OF LA VISTA



Douglas Kindig, Mayor

ATTEST:



Pamela A. Buethe

Pamela A. Buethe, CMC  
City Clerk