



# LB 840

## A GUIDE TO PROGRAM IMPLEMENTATION

For questions contact:

Deb Poehling

Business Development Consultant

Nebraska Department of Economic Development

402-380-7253

[deb.poehling@nebraska.gov](mailto:deb.poehling@nebraska.gov)

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# NEBRASKA

DEPT. OF ECONOMIC DEVELOPMENT

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# 1. Introduction

## 1.1 Purpose of this Guide:

The Local Option Municipal Economic Development Act (the “Act”), commonly known as “LB 840” (from the first legislative bill in which the Act was introduced and passed into law), is located at §§ 18-2701 to 18-2739 of the Nebraska Revised Statutes. The Act authorizes incorporated cities and villages in Nebraska to appropriate and spend local sources of revenue as part of an economic development program (a “Program”) for certain economic development purposes set forth in the Act.

The manner in which a Program is established, operated, and amended is set forth in the Act. This Guide is intended to assist officials of any city or village who desire to establish and operate a Program under the Act. This Guide does not create law or regulate municipal practices under the Act. **Municipal officials should seek and follow the advice of their city or village attorney in establishing or operating a Program under the Act.**

## 1.2 History of "Local Option Municipal Economic Development Act":

In 1990, the Nebraska Legislature adopted Legislative Resolution 11 CA, which placed an amendment to the Nebraska Constitution on a statewide ballot (Amendment 3). Amendment 3 was proposed to allow the Legislature to authorize any incorporated city or village (or group of two or more cities and villages) to appropriate municipal funds (if approved by its voters) from local sources of revenue levied by the municipality for economic or industrial development programs.

During the November 1990 general election, Nebraska voters approved Amendment 3 by more than 100,000 majority votes, amending the Nebraska Constitution. This, in turn, authorized the Legislature to pass statutes granting cities and villages the power to use local sources of revenue for economic or industrial projects or programs, subject to a vote of the people at the local level.

The enabling legislation (Legislative Bill 840 or “LB 840”) for this new authority was introduced during the 1991 Legislative Session. Legislative Bill 840 was passed by the Legislature and signed into law on June 3, 1991, and it became the Act.

## 1.3 Keys to Success:

The Act is based on the premise that voters of a municipality can choose to spend their own tax dollars in the manner they find best suited to meet their own local development needs. Within certain limits, local municipalities are given latitude in defining local economic development needs and in spending their own tax dollars to meet those needs.

The core of the process involves formulation of a plan (the “Plan”). The Plan forms the foundation for the collection and expenditure of local sources of revenue for economic development and, if the voters approve the Plan, the provisions of the Plan become the basis under which the municipality’s Program operates.

A careful, thoughtful, and fully developed Plan is important to the success of the Program. Generally, voters are more likely to approve the expenditure of their tax dollars if they believe the Plan is comprehensive and workable. If approved by voters, the Plan will define the limits of the Program, limits that often may be changed only through another election process.

The Act is a local economic development tool—there is little state oversight or enforcement mechanism. Care, however, should be taken to avoid violating any provisions in the Act. Local citizens will have the right to seek enforcement of the Act if they feel those provisions have not been followed.

## 1.4 Section 13-315:

§ 13-315 of the Nebraska Revised Statutes authorizes cities, villages, and counties to appropriate general funds or other proprietary function revenues (not to exceed four-tenths of one percent of the taxable valuation of the City, village, or county) for the express purpose of encouraging immigration, new industries, investment, and conducting a publicity campaign to encourage new business investment in the community. § 13-315 was amended by LB 840 at the time of the Act's implementation, and it is specifically addressed by the Act as a separate and distinct economic development tool (§ 18-2723):

*“Appropriations and expenditures made by a City which are authorized by section 13-315 and made according to its provisions shall not be subject to the [Act] and shall be exempt from its requirements.”*

Thus, the Act does not provide any new authority, nor does it remove any previous authority for municipalities that use (or wish to use) the authority granted under § 13-315. LB 840 merely reminds municipalities that other activities, authorized under § 13-315, can be financed as provided by § 13-315 and do not need to comply with the Act.

## 2. Communities Eligible for a Program

The Act generally allows the proponent of a Plan to be a “city”, and the term “city” is defined by the Act as any metropolitan, primary, first, or second class city, or any village, including any city operated under a home rule charter. § 18-2704. Thus, any city or village in Nebraska can utilize the Act to develop a Program. Also eligible as a “city” is any group of two or more incorporated cities acting together under the terms of the Interlocal Cooperation Act or Joint Public Agency Act. If, however, a Program is to be conducted jointly by two or more cities, approval of the Program by the voters of each participating city is required. § 18-2705(7). Counties are not eligible to operate a Program under the Act. Consistent with the statute, the use of the word “City” or “Cities” in this Guide includes cities and villages.

## 3. Creating a Program

This section is intended to outline what is required procedurally to create a Program. Reference or brief statements may be made to what is required in a Plan, or how a Program may be operated, but substantive requirements of the Program are discussed more fully in “Components of a Program.”

### 3.1 Step 1: Prepare a general community and economic development strategy:

The Act requires that a “description of the community's general community and economic development strategy” be included in the Plan. § 18-2710. The Act, however, provides little or no guidance for developing such a strategy. Therefore, it is recommended that the strategy be developed through a community-wide assessment and planning process, involving as many community leaders and stake holders as may be productive. More citizens may ultimately approve the Program if they have participated in its preparation.

A community and economic development strategy describes how a community will fare in the future. The strategy is based on understanding what economic changes are taking place in the community and why. It implies an understanding of how dollars enter the community, where they are spent by residents and businesses, how these dollar movements are changing, and how they might change in the future due to economic activities taking place during the next several years.

A strategy is balanced with growth opportunities and examination of weaknesses that are causing or may cause decline. The strategy should highlight the most important issues, and when properly addressed, can foster opportunities and overcome weaknesses. Goals are identified for each important

issue that is raised. A strategy may also look backwards, towards the current strengths and abilities of the community, incentivizing and strengthening those areas and activities of the community that have proven successful.

In developing a strategy, keep in mind the general components of a Program under the Act, as explained below. Areas of concern or emphasis should be capable of receiving or benefiting from assistance. For instance, generally only certain types of “Qualifying Businesses” can be recipients of funding, so the community strategy should focus on areas where Qualifying Businesses can impact the economic development of the community. The same can be said for the “Eligible Activities” of the Program, as only certain types of activities can be undertaken under the Act.

### **3.2 Step 2: Prepare a Draft Plan for the Governing Body’s Review:**

After the general community strategy is formed, the governing body of the City should review and have an opportunity to comment on a draft Plan for the Program. As explained above, the Plan is the core of every Program under the Act. The Plan is a working document that must include the following elements, explained below in more detail in “Components of a Program” (§ 18-2710):

- A description of the general community and economic development strategy.
- A statement of purpose, describing the general intent and goals of the Program.
- A description of the types of businesses (the “Qualifying Businesses”) and economic activities (the “Eligible Activities”) that may participate in the Program.
- A statement of the total local sources of revenue proposed to be directly collected by the City to finance the Program, including:
  - whether the City desires to issue bonds for the Program;
  - the time period within which the local sources of revenue will be collected for the Program;
  - the time period of the Program’s existence; and
  - a basic preliminary budget of the Program.
- A description of the manner in which a Qualifying Business can submit an application for assistance under the Program, including:
  - the type of information required of the Qualifying Business;
  - the process used to verify information provided; and
  - the steps taken to insure privacy and confidentiality of the business information provided.
- A description of the administrative system to administer the Program, including a description of the personnel structure that will be involved and the duties and responsibilities of the personnel.
- A description of how the City will assure that the City and the Qualifying Businesses receiving assistance will comply with the applicable laws, regulations, and requirements.

An example of a draft Plan is provided in the Appendix to this Guide. Each community should consider all different aspects of its preferred Program and should consult with its attorney before drafting a Plan.

### **3.3 Step 3: Public Hearing for Comment and Discussion on Adopting the Plan:**

After the governing body has reviewed and agreed upon the form of the Plan, a public hearing is required for the public to comment on the Plan. § 18-2712. No advance notice is specified for the hearing in the Act, but it is recommended that Cities follow their normal notice requirements (generally 10 days). Following the public hearing, the governing body may make changes to the Plan to reflect comments received at the hearing.

### 3.4 Step 4: Resolution Adopting Plan and Presenting Program Ballot Question:

Following closure of the public hearing and any final changes to the Plan, the governing body of the City will move to adopt a Resolution that accomplishes two purposes. First, the Resolution officially adopts the Plan which will implement the City's Program. The Resolution may either incorporate the Plan by reference, or it may include the full text of the Plan (§ 18-2712). It is recommended (for ease and simplicity) that the Resolution is drafted to incorporate the Plan by reference. Second, the Resolution presents the Program to the voters (the "qualified electors") of the City for approval, by introducing a question or questions as ballot questions.

The ballot language shall (§ 18-2713):

- Set out the terms, conditions, and goals of the Program, including:
  - the time period of the Program's existence;
  - the time period within which the local sources of revenue will be collected for the Program;
  - the sources of revenue proposed to be directly collected by the City for the Program;
  - the total to be collected for the Program from local sources of revenue; and
  - whether the City desires to issue bonds to fund the Program.
- State whether additional funds from non-City sources will be sought beyond those derived from local sources of revenue.
- If the funds are to be derived from local property tax, state the present annual cost of the Program per ten thousand collars of assessed valuation based upon the most recent valuation of the City certified to the property tax administrator.

In particular, at least one ballot question in the Resolution must state as follows:

*Shall the City of \_\_\_\_\_ establish an economic development Program as described here by appropriating annually from local sources of revenue \$\_\_\_\_\_ for \_\_\_\_ years?"*

The certified copy of the Resolution, once approved by the governing body, is then provided to the Election Commissioner or County Clerk by the following dates (§ 18-2713):

- |  |   |
|--|---|
| • If for a Statewide General Election: | September 1 of the Year of the Election |
| • If for Statewide Primary Election:   | March 1 of the Year of the Election     |
| • If for a Special Election:           | At least 50 Days before the Election    |

If the ballot questions presented also include the imposition of, or the change in terms of, the local option sales tax (as discussed below), the City has an obligation to publish notice of the ballot questions once at least 10 days but not more than 30 days before the election, in a newspaper of general circulation of the City. § 77-27,142.04. This is in addition to any other notice required of the County Clerk or Election Commissioner.

A copy of the Plan, as approved by the governing body in the Resolution, must also be filed with the City Clerk and remain available for public inspection. § 18-2712. An example of a draft Plan and a draft Resolution is included in the Appendix.

### 3.5 Step 5: Adopt Program Following Election:

If the voters approve the ballot questions, the City then approves an Ordinance implementing the Program. § 18-2714(1). The Ordinance must be adopted within 45 days after the approval. If the Program is funded by a newly imposed local option sales tax, or if it increases or decreases the local option sales and use tax rate, a certified copy of the Ordinance must be provided to the Nebraska Department of Revenue. § 77-27,143. The effective date of any newly imposed local tax, or of the

increase or decrease in any tax rate, will take effect on the first calendar quarter that occurs at least 120 days after the Nebraska Department of Revenue receives the certified copy of the Ordinance. If the Program is not funded by a new imposed tax, or if it does not increase or decrease any tax rate, the Ordinance may be effective as soon as provided for in the Plan, the Resolution, or the Ordinance. Thus, for Ordinances following general elections, it may be important to approve an Ordinance in late November for an April 1 calendar quarter start date. Likewise, for Ordinances following primary elections, it may be important to approve an Ordinance no later than late May for an October 1 calendar quarter start date. In any event, the Ordinance must be passed no later than 45 days following the election, so Cities should be cognizant of the need to waive three readings of the Ordinance if necessary.

If the Program includes committees that do not otherwise exist outside of the Program, or if it changes or creates additional duties for municipal personnel, it is important to include provisions in the Ordinance that create the committee or committees and set out the duties of the personnel.

An example of an Ordinance implementing the Program is included in the Appendix.

### **3.6 Note on Local Option Sales and Use Tax:**

In addition to grants, donations, and gifts, the Act defines “local sources of revenue” as a City’s property tax revenue, any local option sales and use tax revenue, and any other general tax levied by the City or generated from municipally owned utilities. § 18-2708. To date, an overwhelming majority of Cities have funded their Program from a local option sales and use tax under the Local Option Revenue Act, §§ 77-27,142 to 77-27,148. Thus, the procedures for creating a Program under the Act are often married with the procedures for imposing a local option sales and use tax, and the voter approval of a Program is co-dependent upon voter approval of the sales and use tax. Use of the term “sales tax” in the remainder of this Guide is considered to include both sales and use tax under the Local Option Revenue Act.

Therefore, the Resolution which proposes the ballot questions will often include additional ballot questions related to the imposition of (or the change to the terms and conditions of) the City’s sales tax. The additional ballot questions, in turn, may provide that voter approval of the Program is co-dependent upon voter approval of the sales tax ballot questions.

Nebraska’s statutes recognize the concurrence of procedures to create a Program under the Act and procedures to impose a sales tax. For instance, the deadlines for submitting the Resolution for a ballot question or ballot questions of the sales tax are the same as those stated in the Act. § 77-27,142.04. Similarly, revenue from any sales tax greater than 1.5% is generally restricted to public infrastructure projects governed by interlocal agreements or joint public agency agreements, but may also be used for voter approved infrastructure related to the Program of the City. § 77-27,142(2). Finally, the Act provides that if the ballot questions for a Program are approved, but the ballot question for funding the Program with a sales tax fails, then the Program must also fail by law, and the City shall not implement the Program. § 18-2713. On the other hand, if the sales tax passes, but the Program fails, then the sales tax (or additional sales tax) is in effect and will accrue. Depending on the ballot language, the City may be able to use the sales tax for other purposes.

In addition, if a sales tax ballot question fails, there is a 23 month moratorium on proposing the question again at an election. § 77-27,142.03. Thus, creating a Program may also be subject to this moratorium if tied to the sales tax question on the ballot.

## **4. Components of a Program**

As indicated above, a Plan created under the Act must include components that are necessary (and should include components that are helpful) under the Act. A brief description of what is required in a Plan is provided above, but this discussion is a more in-depth description of what a Program must and



should include. The following components are suggested: (1) general community and economic development strategy; (2) the purpose of the Program, including its intent and goals; (3) qualifying businesses; (4) eligible activities; (5) local sources of revenue, including funding and budget; (6) duration of the Program; (7) manner of applying for assistance under the Program; (8) administering the Program; and (9) auditing or ensuring compliance. Each topic must and should be a part of the Program.

#### 4.1 General Community and Economic Development Strategy:

As discussed above, the first step in creating a Program under the Act requires the establishment of a community and economic development strategy. § 18-2710(1). Foreseeing the economic future, while embracing successes of the present and past, is important in the strategy. Inclusion of community industries and community leaders is likewise important. The substance of this component is open-ended and flexible, as the Act does not define a “community and economic development strategy,” but note that the strategy should focus on only those “Qualifying Businesses” (explained below) that can receive assistance under the Program.

#### 4.2 Purpose of the Program, including Intent and Goals:

Similarly, the “purpose of the Program” is not defined by the Act, but a purpose must be included. § 18-2710(2). It has been common for many Programs to focus upon quality job creation for current and respective residents of the City, with the hope that quality jobs will create a better standard of living, more disposable income, more local spending, more residential construction, and ultimately a more economically viable and competitive community. A focus on quality job creation is also open-ended and flexible. It can be as specific or as general as desired, although identifying specific goals desired by the community may lead to more widespread public and voter approval. Other examples of specific purposes, intents, and goals may be:

- Increase opportunities for health care services;
- Increase tourism opportunities;
- Promote local infrastructure development necessary to private businesses;
- Increase and improve the available low income or affordable housing;
- Incentivize relocation, creation, or expansion of targeted industries;
- Subsidize the operation and continued existence of desired community amenities, including, but not limited to, grocery stores, hardware stores, theaters, locally-owned retail, “main-street” establishments, exercise facilities, or care facilities;
- Incentivize dilapidated and distressed real estate acquisition and rehabilitation;
- Promote the retention of local business against outside economic pressure; or
- Stay competitive with other cities that may offer similar or greater incentives.

Examples of several different Program purposes and goals are included in the Appendix, showing how intent and purpose of a Program can differ according to local desires.

#### 4.3 Qualifying Businesses:

This component is perhaps the most integral and fundamental component of a Program under the Act. Except for Cities with a population of 2,500 or less, the Program **must** provide assistance only to those businesses and industries that are allowed by the Act **and the Plan** to receive assistance (the “Qualifying Businesses”). That is, the Act provides the parameters of businesses that may receive assistance under the Act, and the Plan may narrow those parameters further than the Act. The Act currently defines a Qualifying Business as any corporation, partnership, limited liability company, or sole proprietorship **that derives its principal source of income** from any of the following trades or industries (§ 18-2709):

- Manufacturing;
- Research and Development;
- Processing, Storage, Transport, or the Sale of Goods or Commodities in Interstate Commerce;
- Sale of Services in Interstate Commerce;
- Headquarters facilities related to a Qualifying Business;
- Telecommunications including services providing advanced telecommunications capability (defined as high-speed, broadband telecommunications capabilities);
- Tourism-related Activities;
- Retail;
- Production of Films;
- Construction or Rehabilitation of Housing (first or second class cities, and villages).
- Early childhood care and education programs (first or second class cities, and villages).

***Principal Source of Income:***

It is important to note that the business must “derive its principal source of income” from the listed trade or industries in order to be a Qualifying Business. Simply “dabbling” or having some minor presence in the trade or industry will not be sufficient.

***Cities of 2,500 Inhabitants or Less:***

For Cities with a population of 2,500 or less, a business that derives its principal source of revenue from any trade or industry may be an applicant or participant of the Program as a Qualifying Business. § 18-2709. The trades or industries listed in the Act do not limit the definition of a Qualifying Business for these Cities. The Plan may, nevertheless, limit the trades or industries available for assistance, although care should be taken not to exclude businesses unnecessarily so as to require a future amendment to the Plan. Also, even though the Act does not place parameters of Qualifying Businesses of Cities with a population of 2,500 or less, the Plan should also make reference to this option.

***Particular Limits on Specific Qualifying Businesses:***

The following additional limits and requirements are required for these specific Qualifying Businesses:

Retail: For businesses that derive their principal source of income from retail trade, no more than 40% of the total revenue generated for the Program during any 12-month period, and no more than 20% of the total revenue generated for the Program during any 5-year period, can be used to assist retail businesses. Retail trade is defined “as a business principally engaged in the sale of goods or commodities to ultimate consumers for their own use or consumption, and not for resale”. § 18-2709(2)(b).

Workforce Housing (cities of the first and second class, and villages only): If a Plan provides assistance to businesses that derive their principal source of income from the construction or rehabilitation of workforce level housing, the City must have a “Workforce Housing Plan”, which may or may not exist independent of the Plan for the Program. A Workforce Housing Plan is defined as a program to construct or rehabilitate single-family housing or market-rate multi-family housing to address a housing shortage that impairs the City’s ability to attract new business or the ability of the City’s existing businesses to recruit new employees. § 18-2709.01. The Workforce Housing Plan must include: (1) an assessment of the current housing stock of the City, including single-family and market-rate multi-family; (2) whether the housing plan itself includes housing for persons of low or moderate income; (3) factors determined by the City to be particularly relevant in assessing the conditions faced by existing businesses in recruiting new employees; and (4) factors determined by the City to be particularly relevant in assessing the conditions faced by persons seeking new or rehabilitated housing in the City. § 18-2710.02.

Low-Income or Moderate-Income Housing (cities of the first and second class, and villages only): In order to provide assistance to businesses that derive their principal source of income from the construction or rehabilitation of housing for low or moderate-income persons, the Plan must specify (1) the income levels which will qualify persons for participation in the housing Program, and (2) the criteria for determining adjustments to be made to the income limits of persons for eligibility in the Program. Income levels must be based upon existing federal guidelines or standards for federal housing assistance programs, but the levels may be modified by the Plan according to existing local and regional economic conditions and income levels. § 18-2710.01(1). In determining the criteria for adjustments to income limits of persons for eligibility in the Program, the Plan must consider (1) the amount of income of the person available for housing needs, (2) the size of the family residing in the housing unit, (3) the cost and condition of housing available in the City, (4) whether the person or any member of the person's family residing in the housing unit is elderly, infirm, or disabled, (5) the ability of the person to compete successfully in the private housing market and to pay the amounts required for safe, sanitary, and uncrowded housing, and (6) other factors the City determines relevant to conditions facing a person seeking new or rehabilitated housing. § 18-2710.01(2).

Affordable Housing Action Plan (cities of the first and second class, and village only): LB 800 of the 107<sup>th</sup> Legislature was passed in 2022, to allow grants, loans, or funds from the Program for construction or rehabilitation for sale or lease of housing as part of an "affordable housing action plan, including a plan under Neb. Rev. Stat. § 19-5505." § 18-2705(3)(a). This "affordable housing action plan" language is distinctly different from the workforce housing plan or the low to moderate income language described by the Act. §§ 18-2709.01, 18-2710.01, and 18-2710.02. It does not contain specific parameters on the manner or type of housing. It is important, however, to note that LB 800 did not add a new Qualifying Business to the Act. Rather, the relevant language on a Qualifying Business for housing continues to be defined as one that derives its principal source of income from the construction or rehabilitation of housing. Thus, the changes made by LB 800 do not allow a community to add housing by governing body amendment as a newly added Qualifying Business (discussed in 5.1 below) to an already existing Plan. But, if a community does have housing as a Qualifying Business in its current Plan, the changes made by LB 800 seemingly broaden the use of its Program funds to any manner of housing provided for in any "affordable housing action plan" adopted by the community.

Production of Film, Commercial, or Television Programs: Production of films includes feature, independent, and documentary films, commercials, and television programs. For Qualifying Businesses that derive their principal source of income from the production of films, the business (upon receiving assistance) shall: (1) provide notice to the Nebraska Film Office, of each project for which the Qualifying Business utilizes the Program; and (2) acknowledge in the production credits the State of Nebraska and the applicable City, unless such production credits are not displayed or if such a requirement is prohibited by local, state, or federal law, rule, or regulation. § 18-2739. The current Nebraska Film Office Activity Form is included in the Appendix.

#### **General Limits on Qualifying Businesses:**

The following limits and requirements are required for all Qualifying Businesses:

Government Entity. A Qualifying Business cannot be a political subdivision, a state agency, or any other governmental entity, except as allowed for cities of the first and second class and villages for rural infrastructure development. §§ 18-2705(4) and 18-2709(5). Rural infrastructure development refers to a natural gas pipeline facility or entering into agreements with an interstate pipeline for the transportation of natural gas necessary to supply unserved or underserved areas. § 66-2102.

Housing. Only cities of the first class, cities of the second class, and villages can provide assistance to a business that derives its principal source of income from the construction or rehabilitation of housing. § 18-2709 (2)(a). Note that a contractor that is involved in activities other than housing

may not qualify under this definition because the other activities may be the principal source of revenue. A subsidiary or affiliate entity which is engaged only in housing may satisfy this requirement, however.

Business Enticement. The Act is not intended to incentivize the solicited relocation of a business from one City to another. A business may relocate as it desires, but it may not do so simply to receive assistance under a Program of a soliciting City. Thus, the Act provides that no Qualifying Business which maintains employment in more than one City shall be a Qualifying Business unless it maintains its average levels of employment in both Cities for twenty-four months following participation in a Program under the Act. § 18-2709(3). Thus, incentivized business expansion to another City may be possible under the Act, but business relocation cannot be assisted under the Act unless the average level of employment exists in both Cities for twenty-four months following relocation. The language of the Act is not as clear as desired on this issue, but the prevention of “business enticement” is the general intent of that Section. For example, Widget Corporation operates a manufacturing facility in Huskerville, Nebraska, where it has employed on average 20 employees during the most recent 12 month period. If Good Life City, Nebraska wishes to provide assistance to Widget Corporation to expand its operation to Good Life City, it may do so only if Widget Corporation maintains its number of employees in Huskerville at an average of at least 20 employees over the next 24 month period.

Nebraska Advantage Act or ImagiNE Nebraska Act. A Qualifying Business must, at the time it applies for assistance in a Program, certify to the City: (1) whether it has filed or intends to file an application with the Nebraska Department of Revenue to receive tax incentives under the Nebraska Advantage Act or the ImagiNE Nebraska Act for the same project for which it is seeking assistance under the Program; (2) whether such application includes or will include a refund of the City’s local option sales and use tax; and (3) whether, if filed, the application under the Nebraska Advantage Act or ImagiNE Nebraska Act (§§ 77-5701 to 77-5735, or §§ 776801 to 77-6843) has been approved. The City may consider this information in deciding whether to grant assistance under the Program. Cities may prohibit or limit assistance if sales tax revenue (including local tax) is diverted. Again, the link between the Act and the local option sales and use tax is clear, and Cities should be cognizant of how the two acts work together. § 18-2710.03.

#### **4.4 Eligible Activities of the Program:**

Perhaps the second-most integral and fundamental component of a Program under the Act is the type of activities that may be employed in order to provide assistance (the “Eligible Activities”). The Plan must include the Eligible Activities that will be employed by the Program. The Act provides examples of Eligible Activities but does not specifically limit types of Eligible Activities like it limits the types of Qualifying Businesses. Generally, an Eligible Activity is any activity that provides direct or indirect financial assistance to a Qualifying Business, which includes but is not limited to the following (§ 18-2705):

- Direct loans or grants to Qualifying Businesses for fixed assets or working capital, or both;
- Loan guarantees for Qualifying Businesses;
- Grants for public works improvements essential to the location or expansion of, or the provision of new services by, a Qualifying Business;
- Grants or loans to a Qualifying Business for job training;
- The purchase of real estate by a Qualifying Business or by the City for economic development related to an eventual or future Qualifying Business, including options for such purchases and renewals or extensions of such option;
- Grants or loans to Qualifying Businesses to provide relocation incentives for new residents;
- The issuance of bonds as provided for in the Act;
- Payment of salaries and support of City staff to implement the Program or develop an affordable housing action plan, or for contracting the administration of the Program to an outside entity;

- Grants or loans for the construction or rehabilitation of housing by a City of the first class, a City of the second class, or a village, as party of an affordable housing action plan, for workforce market housing, or for lower or moderate-income housing;
- For a city of the first class, city of the second class, or a village, grants or loans for a “rural infrastructure project” (a natural gas pipeline for unserved or underserved areas).
- For a city of the first class, a city of the second class, or a village, grants, loans, or funds for early childhood infrastructure development. Note that “early childhood infrastructure” is undefined, although early versions of LB160 (2019) did include a definition. This would seem to indicate that each municipality has some flexibility in how that term is applied. §§ 18-2705(6) and 18-2709(2)(b).

**List Not Exclusive:**

The Act provides for a non-exhaustive list, so other Eligible Activities may be employed. The Act leaves some latitude for Cities to develop creative forms of activities to match the City’s own local conditions and needs. There is a question as to whether a Plan can include “catch-all” provisions and “non-exhaustive” language such as “All other activities eligible and allowable under the Act to achieve and serve the intent of the Program.” *Nebraska Attorney General Opinion No. 15-001 (February 3, 2015)* states that voters must approve, among other matters, a change in the activities of a Plan. The Legislature has subsequently provided for amendment of a Plan without voter approval in the case of adding or removing a type of Qualifying Business (§ 18-2714), but not for adding an activity to a Plan. Based on this, it is recommended that Cities be creative in their language and their Eligible Activities included in the Plan before the Plan is approved.

**Real Estate:**

If real estate purchases are contemplated, the Plan must specify the manner in which tracts of land will be identified for purchase, and whether or not the City proposes to use the proceeds from the future sale of the land for additional land purchases. § 18-2711(1). It is important to note that land purchases as an Eligible Activity must eventually benefit a Qualifying Business, which does not include the City itself. Thus, a City may purchase real estate using funds of the Program for eventual resale or conveyance to a Qualifying Business (e.g., an industrial park), but it cannot simply use funds of the Program to purchase real estate necessary for its own municipal or proprietary operations. Similarly, a City may not use funds of the Program to simply expand or improve its public works improvements or utilities. Only those public works improvements that are *necessary* to the expansion, relocation, or growth of a Qualifying Business may be financed with Program funds.

**Loan Fund:**

A Program may create a separate “loan fund” as an Eligible Activity under the Plan, in order to provide loans to Qualifying Businesses. A separate “loan fund” is not required in order to provide loans to Qualifying Businesses as an Eligible Activity, such as forgivable loans based on performance. If, however, the creation of a separate loan fund is desired, the Plan shall specify: (a) the types of financial assistance that will be available, stating the maximum proportion of financial assistance that will be provided to any single Qualifying Business and specifying the criteria that will be used to determine the appropriate level of assistance; (b) the criteria and procedures that will be used to determine the necessity and appropriateness of permitting a Qualifying Business to participate in the loan fund program; (c) the criteria for determining the time within which a Qualifying Business must meet the goals set for it under its participation agreement; (d) the personnel or other assistance beyond regular city employees will be needed to administer the loan fund and how they will be paid; (e) the investment strategies for the loan fund; and (f) the methods of auditing and verification that will be used by the city to insure against fraud or deceit. § 18-2711(2). All repaid loans shall be returned to the loan fund.

## 4.5 Revenue and Budgeting of the Program:

The Plan must include a statement specifying the total amount of money that is proposed to be collected from local sources of revenue to finance the Program. § 18-2710(4). As discussed above, a “local source of revenue” is defined by the Act as the City’s property tax, the City’s sales tax, or any other general tax of the City or from municipally owned utilities, or grants, donations, or state and federal funds received by the City subject to any restrictions of the grantor, donor, or state or federal law. Funds from municipally owned utilities can be used by the Program only for utility-related purposes or other similar activities associated with the Program as determined by the City’s governing body, such as load management, energy efficiency, energy conservation, incentives for load growth, line extensions, land purchase, site development, and utility demand management measures. § 18-2708. No other sources of revenue, other than return revenue from outstanding projects of the Program, can be considered.

Since nearly all existing Programs rely on a City sales tax to fund a Program, the focus here is on options for the designation of funds from City sales tax. Examples are:

- All or a certain set percentage of the City’s sales tax revenue is earmarked for the Program;
- The Plan may provide a cap of the amount of the City’s annual sales tax revenue that is allocated to the Program, so that excess revenue in a heavy sales tax year may be spent elsewhere;
- The Plan may provide for discretionary funding of the Program from City sales tax as the governing body of the City determines is available and necessary during any given year, again subject to a cap so that the Plan can adequately describe its proposed revenue and its budget;
- The Plan may provide a “trigger point” at which sales tax revenue is diverted to the Program, so that the municipal budget remains steady but excess revenue during heavy sales tax years can be diverted for use by the Program.

The decision as to which option to select is generally based on community economic development needs and what the community’s voters will accept.

### ***Notes on Revenue and Budgeting:***

Sales Tax Rate: If a City’s sales tax is to be used to fund the Program, the sales tax rate effectively cannot be greater than 1.5% for purposes of the Program. See the discussion above under “Note on Local Option Sales and Use Tax” for City sales tax in excess of 1.5%.

Bonds: Revenue bonds are possible under the Act. §§ 18-2724 to 18-2736. To issue revenue bonds, the Plan approved at the election must include the authority of the City to issue the bonds. § 18-2724. The bonds are not general obligation bonds of the City or a pledge of its credit or taxing power except to the extent the City must contribute funds to the Program pursuant to the Act (§ 18-2724), and can be repaid only from the revenue in the separate Program fund. If revenue bonds are contemplated, a City should discuss the matter with its attorney and seek the assistance of bond counsel.

Separate Fund: As noted, whatever the funding source, a Program must establish a separate economic development fund that is not tied to or comingled with general funds of the City. § 18-2718. The separate economic development fund can include: (1) funds from the local sources of revenue used for the Program, (2) earnings from investments of such separate fund, (3) loan payments from outstanding projects, (4) proceeds from the sale or rental of assets purchased by the City for the Program, and (5) proceeds from the issuance or sale of revenue bonds (as explained above). Comingling of the Program funds with other funds of the City is not allowed.

Expected Revenue: In addition to including the funding source in the Plan, the Plan must also include: (1) the total amount to be collected from such funding sources for the Program, (2) the time frame of collecting those funds, and (3) the preliminary budget of the Program. § 18-2710(4). Thus, the City should be aware of how much will be available annually from the funding source

(whether property tax, sales tax, or municipal utility income) based on previous years' receipts, whether a "sunset" date of the funding is desired, and the general rate of increase that can be expected for those receipts during the time frame of collection. Funding sources such as grants, donations, and other state and federal funds are difficult to predict and are generally not included in the Plan's expected amounts to be collected or the Plan's budget.

Budget: Within the preliminary budget, an estimate of the general cost of administering the Program should be included. § 18-2710. Requiring Cities to include preliminary budgets encourages them to take a long, hard look at precisely what the proposed Program requires in the way of municipal resources. How many new people may need to be hired? What qualifications will they need and what kind of salaries will we need to pay to attract them? These and other questions need educated answers before the City implements a Program. The cost of administering the Program is important to its viability and whether or not voters will approve it. This requirement gives the governing body and interested citizens the opportunity to do some practical planning and to establish solid, short-term goals. Expenses to consider in a preliminary budget include salaries and fringe benefits, audit fees, third-party administrator fees, travel, prospect entertainment, insurance, printing; advertising, office equipment, loan funds, land purchases, grants, and administrative items such as telephone, postage, photocopying, etc. Keep in mind that the budget in the Plan is a "basic preliminary proposed budget" only. The actual budgeted amount that is to be expended by the Program each year must also be fixed by the City at the time of making the annual or bi-annual budget, and included in the City's budget. § 18-2716.

Limits on Revenue: There is a cap on the total amount that may be collected from local sources of revenue. § 18-2717. No City shall appropriate more than the lowest of the following alternatives: (1) the amount approved by voters in the election, (2) more than \$5 million in any one year for cities of the metropolitan or primary class, (3) more than \$4 million in any one year for cities of the first class, or (4) more than \$3 million in any one year for cities of the second class and villages. The limitation is on the amount appropriated, not on the amount collected. If the City wishes to collect a 1.5% sales tax which is expected to generate \$4,000,000 each year, but the appropriation limit for that same City is \$3,000,000 in any one year for the Program, the City can collect the 1.5% sales tax, but only \$3,000,000 can be appropriated in any year for the Program. The remainder must be deposited in the separate Program fund and merely invested pursuant to § 77-2341. § 18-2717(3).

Expected Funding Date: As discussed above in creating a Program under the Act, the collection of sales tax cannot occur until the first calendar quarter falling at least 120 days after a certified copy of the Ordinance for the Program is submitted to the Nebraska Department of Revenue. § 77-27,143. Further delay is expected to allow time for the Nebraska Department of Revenue to transfer sales tax receipts. Any increased property tax revenue would likely see a greater delay-time. Thus, in anticipating any new or increased revenue collections for the Program, Cities should be cognizant of a potential funding delay following Program implementation. Likewise, a City may want to set two time periods in the Plan for this reason—one for tax collection and one for the Program's existence. It is possible for the actual Program to start before tax collections begin with, however, the understanding that no incentives will be paid until funding is available.

Re-appropriation of Funds: While a City cannot appropriate more than the limits described above in any one year, it can "roll-over" and re-appropriate unused funds each year without being in violation of the annual limits. § 18-2717(4).

#### **4.6 Duration of the Program:**

The Plan must provide for both: (1) a time period for the collection of local sources of revenue for the Program, and (2) the time period for which the Program will exist. The Act does not limit the length of time for either. It is recommended that the time period for the Program's existence exceed the time period for collection of local sources of revenue. For example, if an Applicant is awarded incentives which are not considered earned for 5 years, and the Applicant defaults after year 2, a portion of the incentives may be paid back to the Program. These repayments represent returned revenue which could continue for years after collection of the revenue source expires. The Program itself should also continue in order to monitor outstanding grants and loans. A Program term of 10 to 15 years beyond the funds collection term is not unreasonable.

#### **4.7 Applying for Assistance from the Program:**

The Plan must include a description of the application process for a Qualifying Business, including the type of information required from the business, the process used to verify the business' information, and the steps that will be taken to ensure privacy and confidentiality of business information. § 18-2710. While the application process can be tailored for each City, the process should be able to answer general questions asked by businesses seeking funds from the City, including:

- What is the process to get funding?
- Who can answer my questions?
- When and where do I submit my application?
- Who reviews the applications?
- Who solicits applications for the City?
- Who reviews the application to determine whether to provide assistance?
- What kinds of businesses are eligible as Qualifying Businesses?
- What types of funding are there, and for what purposes?

Any process established for a Program application should answer these and other basic questions. It is recommended that a written application form be utilized, which requires applicants to answer the appropriate questions and submit the documentation required by the City. For accountability purposes, all requests for assistance should go through the adopted application process. An example of an application for assistance is provided in the Appendix.

If a separate loan fund program is utilized, the applicant must provide appropriate documentation evidencing negotiations with one or more primary lenders and the terms upon which it has received or will receive a portion of the total financing for the project. § 18-2719. Often, even without a separate loan fund program, this information is advantageous for accurate application review.

##### ***Application Review:***

Many Cities utilize an "Application Review Committee" of three to seven members. The Application Review Committee may be comprised of persons that can confidentially review applications with some level of economic development, lending, business, and/or accounting expertise, and then can recommend the approval and manner of assistance for an applicant. After an Application Review Committee's review and recommendation, City staff can prepare an assistance package that is non-confidential in nature for a governing body's consideration, review, and ultimate binding approval at a public meeting. Use of an Application Review Committee eliminates some of the concerns of privacy and confidentiality that exist where the governing body of a City is reviewing application materials in an open meeting.

The Act does not mention or require the existence of an Application Review Committee. Thus, Application Review Committee members do not need to be residents of the City, unless the City



has a separate ordinance that requires members of all boards, commissions and committees to be residents or registered voters.

Smaller Cities may have difficulty finding willing citizens to fill an additional application review committee. It is equally permissible to designate a City staff member to review applications for assistance under the Program, or to contract with a third-party administrator to review applications for assistance under the Program and to recommend assistance to the governing body of the City directly.

***Application Solicitation:***

Often, a City may designate a third-party (such as a community development organization or other economic and business support entity) as the entry point for applications. The third-party may be compensated from the Program's fund in exchange for promoting the Program, soliciting applications for the Program, and generally preparing an applicant for review and consideration by the Program's reviewing body. If a third-party is utilized in this role, it is important to ensure the third-party understands the Act and the Program in order to effectively communicate the Program's abilities and purpose to the community.

***Information Verification:***

To decide what information a City may need in reviewing an application, a Program should focus again on the nature of the Program and the Qualifying Businesses to be assisted. It would be prudent to have enough information to confirm that the applicant is responsible and can follow through with promises made. It is advisable to set up a mechanism to ascertain that any representations about a business's financial condition are accurate. An experienced and relatively unrestrained Application Review Committee is helpful for this purpose. Basic suggestions for what should be in the applications to verify information include (1) a business description verifying that the business satisfies is a Qualifying Business; (2) a business plan; (3) income statements covering several years and financial statements for the same; (4) several years' tax returns; (5) a pro forma or the expected financials for the next several years; (6) financing requirements and commitments from other financial institutions or investors relating to the project; (7) a list of key management and employees, and their skills and experience related to the project; (8) current employment numbers and projected employment after Program assistance; and (9) assets and equity available as collateral for financial assistance.

Once a business has provided required application information, it is advisable to have a verification process in place to check for accuracy. A verification process may involve any number of activities, including calling business references, credit reports, or other background checks.

***Confidentiality:***

In the process of gathering information about an applicant, a City may and likely will receive information about the business which is confidential and, if released, could cause harm to the business or give an unfair advantage to competitors. The Act authorizes the City to maintain confidentiality of the business and project records.

In order to protect the applicants, and to encourage a full and frank disclosure of information relevant and necessary for the application, a City may and should take the following steps to ensure the confidentiality of the information it receives:

- the passage of any resolution or Ordinance which makes such information confidential and punishes disclosure;
- a restriction on the number of people with access to the confidential information, with the City staff primarily responsible for safekeeping and distribution of the confidential information;

- requiring all persons reviewing the applications to sign confidentiality statements regarding all confidential information submitted by applicants; and
- the review of confidential information by an Application Review Committee or Citizen Advisory Review Committee (see below) in closed session, and the exclusion of such items—to the extent permitted by law—from mandatory disclosure as public records of the City. Unfortunately, § 84-1410 does not directly address the review of confidential information in a closed session, and there is disagreement as to whether a closed session is required for such a review. However, § 84-1410(1) does not limit the reasons for a closed session to those specifically itemized, and arguably, it is not possible for a committee to otherwise do its job, as it would not be permitted to review confidential information in open session. Regardless, care must be taken to make sure that the purpose of any closed session is for review of confidential information and not to take action. When in doubt, a City should follow the advice of its City attorney for closed sessions.

#### **4.8 Administering the Program:**

The Plan must include a description of how the Program will be administered. § 18-2710 (6). Often, this is a three-part system. First, there will be someone to administrate the Program. Second, a mechanism for review of applications, as discussed above. Third, a process for monitoring financial compliance by a Qualifying Business receiving assistance.

##### ***Program Administrator:***

§ 18-2710(6) requires “a description of the administrative system that will be established to administer” the Program, and “a description of the personnel structure that will be involved and the duties and responsibilities of those persons involved,” but does not specifically provide for a “Program Administrator”. However, § 18-2715(1) indicates that “an appropriate city official or employee *with responsibility for the administration*” over the Program must serve as an ex officio member of the “Citizen Advisory Review Committee” (defined below). Thus whether the person is called “Program Administrator” or not, there must be a city official who is in charge of administering the overall Program.

When a Program Administrator position is created, it is not unusual for a City Manager, City Administrator or Clerk to serve as the Program Administrator. Some Cities have created the position of Economic Development Director, who may also take on the role of Program Administrator. The Program Administrator is responsible for (1) administering the Program, (2) monitoring any and all reports required of a Qualifying Business receiving assistance, and (3) assisting in the application review process and providing information to the Citizen Advisory Review Committee. Additionally, however, the Program Administrator is generally responsible for receiving applications, providing for review of applications, the oversight of assistance packages, and the oversight of already assisted businesses. While it is possible for a City to contract with an outside entity for the implementation of the Program (§ 18-2705(2)), the city official or employee with overall responsibility for the administration over the Program must be a City official or employee for purposes of § 18-2715(1).

##### ***Loan Administrator:***

If the Program involves a loan fund, the City’s governing body must designate an appropriate individual to assume primary responsibility for loan servicing. The individual may be an employee of the City or the City may contract with an appropriate business or financial institution for loan servicing functions. § 18-2720(1). Thus, while there must be a city official who is in charge of administering the overall Program, the person responsible for administering a loan program does not need to be a City employee.

### ***Financial Compliance:***

Depending upon the Eligible Activities employed, a key part of program administration will be ensuring compliance by assisted Qualifying Businesses. For instance, a Qualifying Business may have received a grant for job creation which requires monitoring and the submission of reports regarding jobs created or retained. Similarly, a Qualifying Business may have received a loan, which requires the monitoring of payments and/or defaults.

The manner of monitoring an assistance package on a routine basis should not be overlooked. A City should be aware of the hours and tasks required in this role and ensure staff is available to assist the Program Administrator where necessary.

### ***Application Review and Assistance:***

As discussed above, an Application Review Committee is often employed to provide citizen input and expertise in financial review and application funding. The committee's role is generally to review the application and make a recommendation concerning any assistance. If an Application Review Committee is not used, the Program Administrator and/or other City staff are tasked with performing these duties.

As stated above, an Eligible Activity can take many different forms. Each different Eligible Activity has different considerations and has different administrative concerns. If land is purchased for economic development, the review and monitoring of that purchase will need to be considered, as will the efforts by the City or third-parties to market the land for sale. If a loan is provided, the terms of the loan and the collateral for the loan are issues that must be determined and agreed upon. If a grant is awarded, the desired conditions of the grant must be stated and understood.

Loan Fund Program: If a separate loan fund program is utilized, the following considerations must also occur: (1) the governing body shall be provided with the status of each outstanding loan, the income of the loan fund program, and monthly updates of current investments and unexpended funds; and (2) records must be kept regarding the name of the borrower, the purpose of the loan, the date of the loan, the amount of the loan, the basic terms of the loan (including interest rate), the maturity date of the loan, and frequency of payments, and a current update of the payments made and the balance. Additionally, the governing body must establish standards for loan delinquency, when a loan shall be declared to be in default, what action shall be taken after default to protect the interests of the Qualifying Business, third parties, and the City, and a process to provide for consultation, agreement, and joint action between the City and the primary lender or lenders following the default of a Qualifying Business to collect amounts owed under the loan. § 18-2720.

Often, the Program Administrator, other City staff, the Application Review Committee, the City attorney, and the applicant will work collaboratively to ensure that an Eligible Activity is involved, and set the terms and conditions of the assistance package. A draft assistance agreement, contemplating both a job creation grant and a loan, is included in the Appendix.

## **4.9 Auditing, Monitoring, and Compliance:**

The Plan must describe how the City will assure that all applicable laws, regulations, and requirements are met by the City and the Qualifying Businesses. § 18-2710(7). Much of this monitoring may be internal with the Program Administrator, the City attorney, and other City staff involved in ensuring compliance with any agreements between the City and a Qualifying Business. The City attorney should also keep the City informed of any relevant legal changes affecting the Program.

In particular, however, two methods are required by the Act and employed for auditing, monitoring, and compliance. The Ordinance creating the Program must provide for the creation of a “Citizen Advisory Review Committee” and the City is required to provide for an annual audit.

**Citizen Advisory Review Committee:**

Unlike the optional Application Review Committee, the Citizen Advisory Review Committee is required under the Act. § 18-2715. The Citizen Advisory Review Committee:

- Consists of 5 to 10 registered voters of the City, appointed by the mayor or chairperson with the approval of the governing body;
- Includes at least one member with expertise in the field of accounting or finance;
- Includes the Program Administrator as an ex-officio member to assist the committee;
- Cannot include a member that is an elected or appointed City official, a member of the planning commission, an employee of the City (other than the ex-officio Program Administrator), a participant in the application review and approval process, an official or employee of a Qualifying Business receiving assistance under the Program, or an official or employee of a financial institution providing lending to a Qualifying Business receiving assistance under the Program.

The role of the Citizen Advisory Review Committee is generally to review the functioning and progress of the Program and to advise the governing body of the City with regard to the Program. Thus, they act as a “watchdog” to ensure compliance with the Act, the Plan, and each individual assistance package. They must meet at least once every 6 months, and report their findings and suggestions to the governing body at a public hearing called for that purpose. The members of the Citizen Advisory Review Committee are subject to the same confidentiality requirements as discussed above.

It is important to note that no member of the Citizen Advisory Review Committee can participate in the application review and approval process. Thus, it is not an appropriate use of the Citizen Advisory Review Committee to consider and make recommendations on applications for funding. If a committee is to be used for that purpose, then an Application Review Committee should be created.

**Annual Audit:**

A City must provide for an annual, outside, independent audit of its Program by a qualified private auditing business. The auditing business shall not, at the time of the audit or for any period during the term subject to the audit, have any contractual or business relationship with any Qualifying Business receiving funds or assistance under the Program or any financial institution directly involved with a Qualifying Business receiving funds or assistance under the Program. The results of such audit shall be filed with the City clerk and made available for public review during normal business hours. § 18-2721.

## **5. Amending and Terminating a Program**

Amending a Program under the Act is intentionally difficult. The voters of the City approved the Plan as presented at the election. Any effort to change the terms and conditions of the voter mandate should not be taken lightly. Conversely, there are several ways to unintentionally and intentionally terminate a Program, without much difficulty.

### **5.1 Amending a Program:**

The Act provides that after adopting the Ordinance establishing the Program, the Ordinance (and, by reference, the Plan) may only be amended after the governing body (§ 18-2714(2)):

- gives notice of and holds at least one public hearing on the proposed changes;
- approves the proposed changes by a two-thirds vote of the members of the governing body;
- submits the proposed changes to a new vote of the registered voters of the City in the same manner as the election.

Thus, not only is a public hearing and a super-majority vote of the governing body required, a new election must also take place. This was the case until 2016, when the Legislature adopted LB 1059 which created an exception to the above provisions. The adopting Ordinance (and, by reference, the Plan) may be amended without a new vote of registered voters for the following amendments (§ 18-2714(3)):

- an amendment adding a type of Qualifying Business to those that are eligible to participate in the Program or removing a type of Qualifying Business from those that are eligible to participate in the Program, if such addition or removal is first recommended by the Citizen Advisory Review Committee;
- an amendment making corrective changes to comply with the Act; or
- an amendment making corrective changes to comply with any other existing or future state or federal law.

Although this procedure avoids the need for approval of the voters, the above steps must be strictly followed.

Prior to LB 1059, § 18-2714(3) provided that Plans could be amended without a new election if the amendment did not fundamentally alter the Plan's basic structure or goals. However, that is no longer the statutory language. Currently, if an amendment does not add or remove a type of Qualifying Business, it can only be corrective in nature. Examples of permissible corrective amendments: (1) if the Act was amended to change the number of members of the Citizen Advisory Review Committee (discussed below), the Plan could be amended to comply with the change in the Act, or (2) amending a provision of a Plan that currently allows members of a Citizen Advisory Review Committee to be a participant in the decision making regarding an expenditure of Program funds.

Since sales tax is often directly tied to a Program, Cities should also be aware that changing any terms and conditions of an approved sales tax ballot question also require a new vote of registered voters. Be careful with how the ballot questions are structured in the Resolution. It is one thing if the Program is tied to the sales tax, but another if the sales tax is also tied to the Program, so that a change in the Program does not also require a new vote due to the sales tax connection.

***Note on Workforce Housing Amendment:***

LB 1059 also amended the Act to authorize grants or loans for the construction or rehabilitation for sale or lease of housing as part of a Workforce Housing Plan. § 18-2705(5). There is a question as to whether § 18-2705(5) allows grants or loans for workforce housing whether or not a Qualifying Business is involved, as housing is not under the general subsection as other Qualifying Businesses in the Act. §§ 18-2705(1), 18-2705(3), and 18-2705(5). Arguably, the legislative intent was to require the involvement of a Qualifying Business. Regardless, the adoption of an amendment that does not require the participation of a Qualifying Business would require an election since that would be more than adding or deleting the types of Qualifying Businesses.

On the other hand, it is clear under § 18-2714(3) that the addition of a business that derives its principal source of income from the construction or rehabilitation of housing as a defined Qualifying Business is permissible without a new election. It would therefore be appropriate to add a "qualifier" in the Plan stating that any grants to such a Qualifying Business be in connection with a Workforce Housing Plan, since such Qualifying Businesses cannot be added to the Plan without a Workforce Housing Plan. Thus, as long as grants or loans for workforce housing are only made through a

housing contractor as a Qualifying Business, then a City can add language concerning a Workforce Housing Plan to a Plan without a vote.

***Note on Early Childhood Infrastructure:***

LB 160 (2019) amended the Act to (1) provide that businesses that derive their principal source of revenue from early childhood care and education programs are Qualifying Businesses and (2) to authorize assistance for early childhood infrastructure development. Plans can be amended to add early childhood businesses to the definition of Qualifying Businesses without having to submit the matter to registered voters. However, the addition of an Eligible Activity for childhood infrastructure development would require a vote of the registered voters.

## **5.2 Terminating a Program:**

As stated, there are several unintentional and intentional ways to terminate a Program. The circumstances in which a Program can be terminated are as follows:

***Sunsetting:***

Often, the terms and conditions of a Plan will include a self-imposed “sunset” provision, so that the Program or funding of the Program will end at a certain date unless amended or renewed by a vote of the registered voters. This “sunset” provision is generally considered politically advantageous, as it gives registered voters opportunities to reconsider the Program and the use of local revenue for the Program on a routine basis. Thus, by its terms, funding of a Program may end (i.e., terminate) simply through inaction or a failed ballot question on any amendment or renewal. As for the actual termination of the Program in relation to funding, see previous comments concerning Duration of Program under Components of a Program under the Act.

***Failure of Ordinance:***

As discussed above, an Ordinance to implement the Program must be passed within 45 days following a successful election. § 18-2714(1). Presumably, although the Act does not specify, failure to meet that time frame may void the successful election and unintentionally terminate the Program. If a sales tax ballot question was co-dependent, sales tax may unintentionally fail as well, which may impose the 23 month moratorium on proposing the question again at an election.

***Lack of Use:***

The Act provides that if, after five full budget years following initiation of the Program, less than 50% of the money collected from local sources of revenue is spent or committed by contract for the Program, the governing body of the City shall place the question of the continuation of the Program on the ballot at the next regular election. § 18-2718(5). Thus, lack of use may force a premature election to end the Program. The Act does not specify what a “regular” election is, compared to a general election or a primary election.

Note that municipal fiscal years end on September 30 of each year, so “five full budget years” may or may not fall within the same time-frame for every Program, depending upon when Program Ordinance is implemented. There also appears to be an ability to prevent an election of this nature through earmarking funds by contract before such date without spending down the funds.

***Governing Body Repeal:***

The governing body of a City may, by a two-third vote, simply repeal the Ordinance implementing the Program, subject only to existing contracts of the Program. The public body must publish notice

and hold a public hearing regarding such vote, but no vote of the registered voters is required. § 18-2714(4).

**Registered Voter Referendum:**

The Act provides that, after one year following the original election for the Program, the registered voters have a right to vote on the continued existence of the Program. § 18-2722. The question is placed on the ballot if petitions calling for the repeal, signed by registered voters of the City in number equal to at least 20% of the number of persons voting in the City at the last preceding general election, are presented to the governing body of the City. Thereafter, a special election is scheduled and held, unless another election is already scheduled within 90 days of that presentation to the governing body. If such petitions are presented, the governing body may also (within fifteen days) simply vote by a two-thirds super-majority of its members to terminate the Program, even without conducting a public hearing.

It is important to note that a strict reading of the Act's referendum rights apply only to a referendum following the "original election" of the Program. Presumably, then, petitions for referendum may be presented any time after an election to amend or continue a Program already in existence, since the "original vote" on the Program would have occurred well before then.

If petitions for a referendum are submitted, the City should discuss the matter with its attorney to determine the proper notices required for a repeal election and the verification of petition signatures.

**5.3 Effect of Termination:**

The Act anticipates the use of funds in the separate Program fund following termination of the Program. § 18-2718. If termination occurs by governing body repeal or by registered voter referendum, the funds in the separate Program fund not otherwise committed by contract are transferred to the general fund of the City and any anticipated revolving funds received in the future from then-current projects are placed in the separate Program fund first and distributed to the general fund of the City at that time. The separate Program fund is terminated only after all projects and contracts related to the Program have been finally completed, and all funds related to them are fully accounted for, with no further City action required, and a final audit is completed.

When the Program is terminated, the governing body shall by resolution certify the amount of money (1) to be transferred from the Program fund to the City general fund and (2) the amount that is anticipated to be received by the City between such time and the final audit of the economic development fund. The sum of those two amounts shall be divided by the number of years in which local sources of revenue were collected for the Program. That result is the yearly amount that must be applied against the City's budgeted expenditures during each succeeding year, to offset or reduce the City's property tax levy. For example, if a City expects to transfer a total of \$100,000 for a Program that lasted five years, \$20,000 (\$100,000 divided by 5) should be applied each year to reduce property tax levies for the next five years. The Act does not specify what may occur if the City does not have a property tax levy, or if the property tax levy is too low to accommodate the mandatory annual reduction.

The Act also does not address how to distribute funds of the Program if a termination occurs in a circumstance other than governing body repeal or registered voter referendum. For instance, if the Program terminates due to sunset or if an Ordinance is not timely passed, the termination provisions do not address the transfer of funds. Cities should contact their City attorney if any Program termination should arise, as different circumstance create different obligations.

## APPENDIX

***The documents included in his Appendix are examples only.*** In no way is the information contained to be considered legal advice and the Department of Economic Development specifically makes no representations or warranties as to the their compliance with the Act. Further, appropriate documents are community-specific and each Grant or Loan is different. Each City needs a thorough and detailed review of the documents used to create, implement, and operate a Program. ***Cities should consult with their attorney*** when considering the creation of the Program and should not rely upon the documents provided in this Appendix without independent legal review. The following examples are included in this Appendix:

1. Economic Development Plan.
2. Resolution approving the Plan and proposing ballot questions.
3. Ordinance implementing the Program following a successful election.
4. Alternate Program purposes.
5. Ordinance Amending a Plan without an Election.
6. Application for assistance.
7. Assistance Agreement for a Qualifying Business.
8. Assistance Agreement for a Small Business.
9. Nebraska Film Office Activity Form.
10. Confidentiality Agreement



## **Economic Development Plan:**

### **Economic Development Plan Effective \_\_\_\_\_**

#### **1. General Community and Economic Development Strategy:**

a. Pursuant to the Nebraska Local Option Municipal Economic Development Act, sections 18-2701, et seq. (the "Act"), Nebraska municipalities are authorized to appropriate and spend local sales tax revenues for certain economic development purposes when authorized by the voters of a municipality. This includes providing direct and indirect assistance to business endeavors in their communities, whether for expansion of existing operations or creation of new businesses through an Economic Development Program (the "Program").

b. The City recognizes that there is a high degree of competition among states and municipalities to provide incentives for businesses to expand or to locate in their respective jurisdictions. The City believes that having the ability to fund economic development through the Program will enhance new employment opportunities in the City and encourage capital investment, which otherwise may not have been realized. By implementing this Economic Development Plan (the "Plan"), the City will be more effective in its efforts to effectively compete with other communities and states.

c. The City's intent for the Program will be to enhance business and commercial investment in the area through direct and indirect financial assistance to prospective or current businesses. The purposes of the Program are to enhance the City's ability to compete for new businesses, and to promote and expand the City's existing businesses. The Program's assistance strategy will include the creation and retention of full-time jobs, along with benefits for those jobs.

#### **2. General Intent and Proposed Goals of the Program:**

The goal of the Program is to provide quality jobs for the citizens of the City and the local area. Funds from the Program will be used to encourage and assist existing and new Qualifying Businesses to create and retain jobs, through direct or indirect financial assistance. This may include direct grants to Qualifying Businesses or indirect assistance through eligible activities under this Plan. The success of the Program will be measured by a combination of (a) jobs created and retained in the City and the local area for the length of the Program, and/or (b) the total payroll provided or increased by Qualifying Businesses participating in the Program.

#### **3. Businesses Eligible for Financial Assistance under the Program:**

a. A business shall be considered eligible for financial assistance under the Program, and shall be referred to as a "Qualifying Business," if it is any corporation, partnership, limited liability company, or sole proprietorship that derives its principal source of income from any of the following trades:

- (1) Manufacturing articles of commerce.
- (2) Conducting research and development.
- (3) Processing, storing, transporting, or selling goods or commodities sold or traded in interstate commerce.
- (4) Selling services in interstate commerce.
- (5) Headquarters facilities related to Qualifying Businesses as listed in this paragraph.

- (6) Telecommunications activities.
- (7) Tourism-related activities.
- (8) Any other activities deemed sufficient to establish eligibility for a Qualifying Business through future amendments to the Act, and incorporated into this Plan and the Program by ordinance of the City Council after amendment to the Act.
- (9) Construction and rehabilitation of housing for housing to persons of low to moderate income, housing pursuant to a Workforce Housing Plan, as provided for below, or housing pursuant to an affordable housing action plan of the City.
- (10) Retail trade.
- (11) Production of films, including feature, independent and documentary films, commercials, and television programs.
- (12) Early childhood care and education programs (first or second class cities, and villages).

b. If a Qualifying Business employs people and carries on activities in more than one city in Nebraska, or will do so at any time during the first year after its application for participation in the Program, it shall only be a Qualifying Business if, in each such city, it maintains employment for the first two years after the date on which the business begins operations in the City as a participant in the Program at a level not less than its average employment level in the other city during the twelve months before participation in the Program.

c. A Qualifying Businesses need not be located within the territorial boundaries of the City.

#### **4. Eligible Economic Activities:**

a. Funds allocated to the Program shall be expended primarily for the purpose of providing direct and indirect financial assistance for Qualifying Businesses. Activities eligible for the Program may include, but are not limited to, the following:

- (1) Direct loans or grants to Qualifying Businesses for fixed assets or working capital, or both.
- (2) Loan guaranties for Qualifying Businesses.
- (3) Grants for public works improvements essential to the location or expansion of, or the provision of new services by, a Qualifying Business.
- (4) Grants or loans for job training.
- (5) The purchase or real estate, options for real estate purchases, and the renewal or extension of such options. If and when real estate is to be purchased or optioned by the City under the Program, the real estate will be identified based upon the need of a particular Qualifying Business or based upon potential needs of Qualifying Businesses not yet identified. All such real estate should be properly zoned with no excessive easements, covenants, or other encumbrances. Any proceeds received by the City from the future sale of such real estate shall be returned to the City's Economic Development Fund for reuse under the Program.
- (6) Issuing bonds as provided for in the Act.

- (7) Paying salaries and support of City staff to implement the Program or develop an affordable housing action plan, or paying expenses of contracting the administration of the Program to an outside entity.
- (8) Providing technical assistance to Qualifying Businesses, such as marketing assistance, management counseling, preparing financial packages, engineering assistance, etc.
- (9) Expenses for locating a Qualifying Business to the local area.
- (10) Equity investment in a Qualifying Business.
- (11) Grants or loans for the construction or rehabilitation for sale or lease of housing for housing to persons of low to moderate income, housing pursuant to a Workforce Housing Plan, as provided for below, or housing pursuant to an affordable housing action plan of the City.

**5. Workforce Housing Plan:**

a. The "Workforce Housing Plan" means a program to construct or rehabilitate single-family housing or market rate multi-family housing which is designed to address a housing shortage that impairs the ability of the City to attract new businesses or impairs the ability of existing businesses to recruit new employees. In connection with the Workforce Housing Plan:

b. The City has participated in a recent housing study (the "Housing Study"). The Housing Study covered the City and the surrounding County area, and other communities within the County. The Housing Study found that the current housing stock in the City and the County, including both single-family and market rate multi-family housing, was deficient in numbers and quality, and that the City has a housing shortage.

c. The Workforce Housing Plan is intended to include all single-family housing and market rate multi-family housing. No special provisions for housing for persons of low or moderate income are provided for.

d. Due to the lack of available housing within the City and the County, existing businesses have difficulty in recruiting new employees; and

e. Construction costs, and the cost of providing infrastructure for housing (to include streets and utilities) are adversely impacting the ability to find housing for persons seeking new or rehabilitated housing in the City.

**6. Funding and Preliminary Budget:**

a. The Program will primarily be funded the City Sales Tax of 1%. The sales tax collections to fund the Program will be collected from October 1, 2019 to September 30, 2029. The Program can also accept funding from grants, or from state or federal funds, or from donations.

b. Notwithstanding the actual amount collected by the City for the benefit of the Program, the City shall not appropriate funds derived directly from City sources of revenue in an amount in excess of the maximum permitted by Nebraska law in effect at the time of appropriation. By way of reference, the current limits as provided by section 18-2717 of the Act prohibit the City from appropriating funds from local sources in excess of:

- (1) \$4,000,000 per year; and

(2) the amount approved by voters at elections approving the Program and the extension of the Program.

c. The above restrictions shall not apply to the reappropriation of funds which were appropriated but not expended during the previous fiscal years, nor shall they apply to appropriation of funds received from other sources.

d. The total amount proposed to be directly collected from local sources is estimated to be as follows:

<u>Fiscal Year Ending:</u>	<u>Estimated Collections</u>
September 30, 2020	\$500,000
September 30, 2021	\$525,000
September 30, 2022	\$550,000
September 30, 2023	\$575,000
September 30, 2024	\$600,000
September 30, 2025	\$625,000
September 30, 2026	\$650,000
September 30, 2027	\$675,000
September 30, 2028	\$700,000
September 30, 2029	<u>\$725,000</u>
Total:	\$6,125,000

e. The Basic Preliminary Budget is (October 1, 2019 through September 30, 2029):

Administration (3%):	\$183,750
Grants for eligible activities:	<u>\$5,941,250</u>
Total:	\$6,125,000

f. The City may issue bonds pursuant to the Act to fund and carry out the Program. The total amount of bonds that may be outstanding at any time shall be set by resolution of the City Council and shall not exceed the anticipated collections and resources which will be available to the Program during its existence.

g. The Program shall continue in existence through September 30, 2040.

## **7. Application Process for Financial Assistance:**

a. For a Qualifying Business to be considered for Program benefits, the Qualifying Business shall first become an "Applicant" by applying to the City for assistance. The application shall contain information as required by this Plan and any additional information as requested by the Administrator and/or Application Review Committee (as explained below).

b. Upon Receipt of an application, the Program Administrator shall make a preliminary determination as to whether: (1) the Applicant is eligible as a Qualifying Business; (2) the proposed activities are eligible; (3) the Applicant has no legal actions underway that may significantly impact its capacity; and (4) the Applicant's business complies with the provisions of the application guidelines.

c. Once the Administrator makes the preliminary determinations above, the application is referred to the Application Review Committee. The Application Review Committee shall review the application, including any financial information furnished, and shall provide recommendations to the Administrator concerning negotiations with the Applicant. Once the Application Review Committee has

completed its review, and following any negotiations conducted by the Administrator, the Application Review Committee shall make a recommendation that: (1) the application be approved; (2) the application be disapproved; (3) the Application Review Committee is not able to make a recommendation on the Applicant due to lack of information or other factors cited by the Application Review Committee; or (4) the application be referred to the City Council for a determination of funding as set forth below.

d. Approval or disapproval will be based on whether the Applicant is able to show: (1) eligibility for funding; and (2) that the type of level of assistance will not unduly enrich the business or be unreasonable in relation to the public benefit to be achieved from the funding. If the recommendation is for disapproval or if the Application Review Committee is unable to make a recommendation, it shall provide reasons for its decision.

e. All approval recommendations from the Application Review Committee shall be submitted to the City Council for consideration of funding. The Application Review Committee may also refer to the City Council certain applications, in its sole discretion, where it is unable to make a recommendation. In making its determination, the City Council shall generally not be presented with any information which has been determined by the Administrator or Application Review Committee as confidential.

f. An Applicant which has been awarded funding under the Program shall thereafter be referred to as a "Funded Business."

g. There shall be no limit on the number of times a Qualifying Business may apply for assistance. Applications shall be received until all funds anticipated for the Program have been committed. The decision of whether or not Program funds shall be granted, including the timing and amount and the allocation of funds where there are not sufficient funds to fulfill the requests of all qualified Applicants, is at the sole discretion of the City.

#### **8. Information Required from Applicants:**

a. Applications for assistance submitted by an Applicant shall include the following information:

- (1) Application in a form prescribed and provided by the Administrator;
- (2) Business Plan which includes financial projections for the next 3 years where appropriate;
- (3) Signed copies of the most recent 2 years' fiscal tax returns, or copies of all years where the applicant has been in existence for less than 2 years.
- (4) Signed copies of financial statements of the Applicant for the 2 most recent fiscal years, or copies for all fiscal years where the applicant has been in existence for less than 2 years.
- (5) Where the applicant is a closely held entity, signed balance sheets from holders of more than 25% of the ownership interests in the entity; and
- (6) Other information as requested by the Administrator or the Application Review Committee.

b. The Administrator may waive the furnishing of all or any portion of the above items where the Administrator is able to obtain reasonable assurances as to the stability of the Applicant from other reliable sources or information to include audited financial statements and filing with regulatory agencies (i.e., SEC filings).

c. The Administrator may also waive the furnishing of all or any portion of the above items where the Applicant agrees that no funds shall be paid to the Applicant until the Applicant has performed according to agreed-upon criteria.

d. The Administrator may use any reasonable methods to verify the information provided by the Applicant.

**9. Confidentiality:**

a. In the process of gathering information about an Applicant or Qualifying Business, the City may receive information about the business which is confidential and, if released, could cause harm to the business or give unfair advantage to competitors. Nebraska law authorizes the City to maintain confidentiality of business and project records which come into its possession.

b. In order to protect the Applicants, and to encourage them to make full and frank disclosures of information relevant and necessary for the application, the City may take the following steps to ensure the confidentiality of the information it receives:

- (1) The continuation of any resolution or ordinance which makes such information confidential and punished disclosure;
- (2) A restriction on the number of people with access to confidential information, with the Administrator primarily responsible for their safekeeping and any distribution of confidential information; and
- (3) Requiring personnel reviewing the applications and other Program review to sign statements of confidentiality regarding all confidential information submitted by Applicants and Qualified Businesses.

**10. Administration:**

a. The Program Administrator shall be the City Manager unless (1) another city official is appointed by the City Council to serve as Administrator, or (2) the City by action of the City Council enters into a contract with a third party to administer the Program.

b. The Administrator shall be responsible for (1) generally administering the Program, (2) monitoring any and all reports required of Funded Businesses, and (3) assisting the Application Review Committee and the Citizen Advisory Committee (as provided below) by providing necessary information.

c. The Application Review Committee will be composed of 5 members to be appointed by the Mayor, subject to the approval of the City Council. At least 3 members of this Committee shall be residents of the City. At least one member must have experience in banking or lending and at least one member must be a Certified Public Accountant. The Program Administrator shall serve as an ex-officio, but non-voting member of the Application Review Committee. The Mayor, subject to the approval of the City Council, may also appoint up to 2 alternate members to the Application Review Committee, at least one of whom shall be a resident of the City. In the event that a Committee member is not available, or has a conflict of interest, with respect to a matter before the Committee, the Program Administrator may designate one of the alternates to act in the place of that Committee member.

d. In the event that the City has contracted with a third party for the administration of the Program, then the City Council shall designate a City employee as "Program Liaison Officer" to serve as an ex-officio, but non-voting member of the Application Review Committee and the Citizen Advisory Committee, and to keep the Council generally informed concerning the Program.

**11. Review Process:**

a. In order to provide assurance that all applicable laws, regulation, and requirements are met by the City and all Funded Businesses, the City shall require annual reports, in the form to be prescribed

by the Administrator, from all Funded Businesses unless the circumstances of the grant are such that annual reports are not appropriate and the City determines that annual reports will not be necessary at the time of the grant. In addition, the Administrator may conduct reviews of Funded Businesses as the Administrator deems appropriate.

- b. A Citizen Advisory Committee shall be established which shall:
  - (1) Review the functioning and progress of the Program at regular meetings, and advise the City Council with regard to the Program; and
  - (2) Report to the City Council on its findings and suggestions at a public hearing called for that purpose, at least once every six months.

c. The Citizen Advisory Committee shall consist of not less than 5 or more than 10 registered voters of the City who shall be appointed by the Mayor subject to the approval of the City Council. At least one member of this Committee shall have expertise or experience in business finance or accounting. Except for ex-officio members, no member shall be an elected or appointed City official, an employee of the City, a participant in a decision-making position regarding expenditures of the Program funds, an official or employee of any Funded Business under the Program, or an official or employee of any financial institution participating directly in the Program.

d. At least once per year, the City shall provide for an outside, independent audit of the Program by a qualified private auditing businesses. The auditing business shall not, at the time of the audit or for any period of the term subject to the audit, have a contractual or business relationship with any Qualifying Business receiving assistance from the Program or any financial institution directly involved with a Qualifying Business receiving assistance from the Program. The results of the audit shall be filed with the City Clerk and made available to the public during normal business hours.

**12. Amendment:**

This Plan shall be amended only to (1) add or remove a Qualifying Business, to the extent recommended by the Citizen Advisory Committee, (2) make corrective changes to comply with the Act; or (3) make corrective changes to comply with other state or federal laws. Any such amendment shall first require notice and a public hearing and shall be approved by a 2/3 vote of the members of the City Council. No other amendment shall occur without submitting the proposed changes to a new vote of the registered voters of the City, except as otherwise permitted by law.

**Resolution approving a Plan:**

**Resolution No.** \_\_\_\_\_

**Be it resolved by the Mayor and City Council of the City:**

1. The City currently imposes a City Sales and Use Tax in the amount of 1.0% pursuant to the Local Option Revenue Act, sections 77-27,142, *et seq.* of the Nebraska Revised Statutes. The current City Sale and Use Tax expires on October 1, 2019, unless extended by a vote of the electors before that date:
2. The City intends to have an Economic Development Plan pursuant to the Local Option Municipal Economic Development Act, sections 18-2701, *et seq.* of the Nebraska Revised Statutes. The appropriation of the City Sales and Use Tax for the funding of this Plan is intended to begin on October 1, 2019.
3. The attached Plan for the City's Program is incorporated in this Resolution by reference. This Plan was reviewed at a public hearing on August \_\_\_\_\_, 2018, and is now adopted by this Resolution. A copy of the Plan has been filed with the City Clerk, who shall make it available for public review at City Hall during regular business hours.
4. At the November \_\_\_\_\_, 2018 general election, the ballot will include the opportunity for the qualified electors of the City to:
  - a. Extend the existing Sales and Use Tax; and
  - b. Appropriate the Sale and Use Tax toward the City's Economic Development Program and to adopt the Plan and the Program for the City.
5. The following Propositions in the form shown below shall be submitted to the qualified electors of the City for their approval or disapproval at the general election:

**Proposition No. 1:**

Shall the City Council of the City continue to impose a Sales and Use Tax in the amount of 1.0% upon the same transactions within the City on which the State of Nebraska is authorized to impose a tax, subject to the terms and conditions of the Proposition as set out below?

- \_\_\_\_\_ Yes (For continuing the Sales and Use Tax)
- \_\_\_\_\_ No (Against continuing the Sales and Use Tax)

**Terms and Conditions:** The terms and conditions of Proposition No. 1 are as follows:

- a. Economic Development Portion: If Proposition No. 2 passes, the City Sales and Use Tax shall be appropriated to the Economic Development Program as provided for in the Plan set out in Proposition No. 2. If Proposition No. 2 fails, the City's Sales and Use Tax shall terminate on October 1, 2019.
- b. Termination of Tax: The City Sales and Use Tax shall automatically terminate on September 30, 2029, unless the tax is extended by a vote of the electorate prior to that date.



**Proposition No. 2**

Shall the City adopt an Economic Development Program as described below by appropriating annually from local sources of revenue approximately \$500,000 per fiscal year during the time period for which the City Sales and Use Tax provided for in Proposition No. 1 is in existence, if Proposition No. 1 passes:

\_\_\_\_\_ Yes (For continuing the Program)

\_\_\_\_\_ No (Against continuing the Program)

**Description of the Economic Development Program:** The Economic Development Program, as amended and approved by the City Council, is summarized as follows:

a. General Description of the Program: The goal of the Economic Development Program is to provide quality jobs to the citizens of the City. Activities included in the Economic Development Program are direct loans or grants to qualifying businesses for fixed assets or working capital or both, loan guaranties for qualifying businesses, grants for public works improvements and job training, real estate purchases and options, issuance of bonds, the costs of implementing the program, technical assistance, industrial recruitment activities, expenses for locating qualifying businesses into the area, the equity investment. Qualifying businesses include those which derive their principal source of income from (1) manufacturing, (2) conduct of research and development, (3) processing, storage, transport, or sale of goods or commodities in interstate commerce, (4) the sale of services in interstate commerce, (5) headquarters facilities relating to eligible activities, (6) telecommunications activities, (7) tourism-related activities, (8) production of films, (9) construction or rehabilitation of housing, (10) retail trade, or (11) any other business deemed to be qualifying businesses through future amendments to Nebraska law.

b. Duration of the Program: The Economic Development Program is currently in existence and shall be extended until October 1, 2040.

c. Years of Collection of Funds: Collection of funds for the Economic Development Program shall be on all taxable sales beginning on October 1, 2019 and shall end on September 30, 2029.

d. Source of Funds: The source for Economic Development Funds shall be a the City Sales and Use Tax as provided for in Proposition No. 1. The City may issue bonds pursuant to the Local Option Municipal Economic Development Act.

e. Total Amount to be Collected: The total amount to be collected from local sources of revenue shall be the lesser of (1) \$725,000 per fiscal year for the next 10 fiscal years, or (2) the amounts allocated to the Economic Development Program pursuant to the City Sales and Use Tax provided for in Proposition No. 1.

f. Additional Sources of Funds: Additional funds from other non-city sources will be sought beyond those derived from local sources of revenue.

6. Electors desiring to vote in favor of or against the propositions shall do so in the manner specified in the ballot form as provided by the County Clerk.

7. The general election shall be conducted by the County Clerk at polling places established by the County Clerk in each of the City's precincts. The polls shall be open from 7:00 a.m. through 7:00 p.m. on the day of the general election.

8. The foregoing notice required by law shall be published in the City Newspaper, a legal newspaper of general election in the City, not more than 30 days nor less than 10 days before the date of the election, the notice shall be in substantially the following form:

**City  
Notice of Election**

Notice is given that at the general election on Tuesday, November \_\_\_\_, 2018, at the usual polling place in each precinct of the City, the ballot will include for the electors of the City for their approval or rejection, the following propositions:

[Insert text of Proposition No. 1 and Proposition No. 2 from Paragraph 5 of this Resolution in the notice]

The polls will be open from 7:00 a.m. through 7:00 p.m. on the election day. Absent, disabled, and confined voters' ballots may be obtained from the County Clerk as provided by law. Copies of the propositions may be obtained at the office of the City Clerk.

Dated: August \_\_\_\_, 2018.

/s/ City Clerk

9. The City Clerk shall cause a certified copy of this Resolution to be delivered to the County Clerk.

Passed and Approved on August \_\_\_\_, 2018.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

**Ordinance Implementing a Program:**

**ORDINANCE NO.** \_\_\_\_\_

AN ORDINANCE IMPLEMENTING AMENDED USE OF THE CITY SALES AND USE TAX, ADOPTING THE ECONOMIC DEVELOPMENT PLAN, AS VOTED UPON AT THE GENERAL ELECTION HELD ON NOVEMBER \_\_\_\_\_, 2018, ESTABLISHING AN ECONOMIC DEVELOPMENT PROGRAM APPLICATION REVIEW COMMITTEE; ESTABLISHING AN ECONOMIC DEVELOPMENT PROGRAM CITIZEN ADVISORY REVIEW COMMITTEE; REPEALING ALL OTHER CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it ordained by the Mayor and City Council of the City:

1. On November \_\_\_\_\_, 2018, at the General Election, a majority of the qualified electors of the City voting at the election passed the following propositions which were submitted on the ballot at the election:

**Proposition No. 1:**

Shall the City Council of the City continue to impose a Sales and Use Tax in the amount of 1.0% upon the same transactions within the City on which the State of Nebraska is authorized to impose a tax, subject to the terms and conditions of the Proposition as set out below?

\_\_\_\_\_ Yes (For continuing the Sales and Use Tax)

\_\_\_\_\_ No (Against continuing the Sales and Use Tax)

**Terms and Conditions:** The terms and conditions of Proposition No. 1 are as follows:

a. Economic Development Portion: If Proposition No. 2 passes, the City Sales and Use Tax shall be appropriated to the Economic Development Program as provided for in the Plan set out in Proposition No. 2. If Proposition No. 2 fails, the City's Sales and Use Tax shall terminate on October 1, 2019.

b. Termination of Tax: The City Sales and Use Tax shall automatically terminate on September 30, 2029, unless the tax is extended by a vote of the electorate prior to that date.

**Proposition No. 2**

Shall the City adopt an Economic Development Program as described below by appropriating annually from local sources of revenue approximately \$500,000 per fiscal year during the time period for which the City Sales and Use Tax provided for in Proposition No. 1 is in existence, if Proposition No. 1 passes:

\_\_\_\_\_ Yes (For continuing the Program)

\_\_\_\_\_ No (Against continuing the Program)

**Description of the Economic Development Program:** The Economic Development Program, as amended and approved by the City Council, is summarized as follows:

a. General Description of the Program: The goal of the Economic Development Program is to provide quality jobs to the citizens of the City. Activities included in the Economic Development Program are direct loans or grants to qualifying businesses for fixed assets or working capital or both, loan guaranties for qualifying businesses, grants for public works improvements and job training, real estate purchases and options, issuance of bonds, the costs of implementing the program, technical assistance, industrial recruitment activities, expenses for locating qualifying businesses into the area, the equity investment. Qualifying businesses include those which derive their principal source of income from (1) manufacturing, (2) conduct of research and development, (3) processing, storage, transport, or sale of goods or commodities in interstate commerce, (4) the sale of services in interstate commerce, (5) headquarters facilities relating to eligible activities, (6) telecommunications activities, (7) tourism-related activities, (8) production of films, (9) construction or rehabilitation of housing, (10) retail trade, or (11) any other business deemed to be qualifying businesses through future amendments to Nebraska law.

b. Duration of the Program: The Economic Development Program is currently in existence and shall be extended until October 1, 2040.

c. Years of Collection of Funds: Collection of funds for the Economic Development Program shall be on all taxable sales beginning on October 1, 2019 and shall end on September 30, 2029.

d. Source of Funds: The source for Economic Development Funds shall be the City Sales and Use Tax as provided for in Proposition No. 1. The City may issue bonds pursuant to the Local Option Municipal Economic Development Act.

e. Total Amount to be Collected: The total amount to be collected from local sources of revenue shall be the lesser of (1) \$725,000 per fiscal year for the next 10 fiscal years, or (2) the amounts allocated to the Economic Development Program pursuant to the City Sales and Use Tax provided for in Proposition No. 1.

f. Additional Sources of Funds: Additional funds from other non-city sources will be sought beyond those derived from local sources of revenue.

2. As a result of the above propositions being voted upon favorably, on October 1, 2019, of 1% City Sales and Use Tax shall be appropriated to fund the City's Economic Development Program.

3. The City adopts the Economic Development Plan for the City's Economic Development Program, to be implemented October 1, 2019. Funding the Economic Development Program through the use of the City sales and use tax for the Economic Development Program will begin October 1, 2019 and will automatically terminate on September 30, 2029, unless extended by a prior vote of the electorate.

4. The sales and use tax imposed by this Ordinance shall continue to be administered as provided in the Nebraska Local Option Revenue Act.

5. The City shall adopt and approve all applications, materials, and regulations necessary to carry out the functions and structure of the City's Economic Development Program under the Economic Development Plan.

6. Article 1 of the City Code of Ordinances is repealed in total, and adopted as follows:

## **“Article \_\_\_\_ – Economic Development Program Committees**

### **Application Review Committee; Members; Terms**

There is established the Economic Development Program Application Review Committee. The Economic Development Program Application Review Committee will be composed of 5 members to be appointed by the Mayor, subject to the approval of the City Council. All members of this Committee shall be residents of the City. The Program Administrator shall serve as an ex-officio, but non-voting member of the Application Review Committee. The Mayor, subject to the approval of the City Council, may also appoint up to 2 alternate members to the Application Review Committee. In the event that a Committee member is not available, or has a conflict of interest, with respect to a matter before the Committee, the Program Administrator may designate one of the alternates to act in the place of that Committee member. Terms of initial members shall be staggered so that at least two members serve a four-year term, beginning October 1, 2019, and the other three members serve two-year terms, each beginning October 1, 2019. Thereafter, members shall serve four-year terms. *[Note: Dates and terms of office are intended as examples only.]*

### **Application Review Committee; Duties**

The Economic Development Program Application Review Committee shall perform the following duties:

- A. Review applications for assistance under the Economic Development Program, and make recommendations as provided for in the City's Economic Development Plan, as amended from time to time.
- B. Provide recommendations to the Administrator of the City's Economic Development Program concerning negotiations and funding of an applicant to the City Economic Development Program.

### **Citizen Advisory Review Committee; Members; Terms**

There is established an Economic Development Program Citizen Advisory Review Committee. The Economic Development Program Citizen Advisory Committee shall consist of not less than 5 or more than 10 registered voters of the City who shall be appointed by the Mayor subject to the approval of the City Council. At least one member of this Committee shall have expertise or experience in business finance or accounting. Except for ex-officio members, no member shall be an elected or appointed City official, an employee of the City, a participant in a decision-making position regarding expenditures of the Program funds, a member of the City planning commission, an official or employee of any business receiving funding under the Economic Development Program, or an official or employee of any financial institution participating directly in the Economic Development Program. The Program Administrator of the Economic Development Program shall serve as an ex-officio member of the Economic Development Program Citizen Advisory Committee. Each member shall serve a term of two-years and no member shall serve more than two consecutive terms. The existing terms of all members as of October 1, 2019 shall remain not be disturbed by any amendment to the Economic Development Program.

### **Citizen Advisory Review Committee; Duties**

The Economic Development Program Citizen Advisory Review Committee shall perform the following duties:

- A. Review the functioning and progress of the Program at regular meetings, and advise the City Council with regard to the Economic Development Program; and
- B. Report to the City Council on its findings and suggestions at a hearing called for that purpose, at least once every six months.

**SECTION 1-4: CONFIDENTIAL INFORMATION; VIOLATION**

Members of the Economic Development Program Application Review Committee, of the Economic Development Program Citizen Advisory Review Committee, and the staff and representatives of the City may receive information about businesses which is confidential and, if released, could cause harm businesses or give unfair advantage to competitors. Information received and reviewed in that process is considered confidential under the Economic Development Program, and Nebraska law authorizes the City to maintain confidentiality of business information which comes into its possession for the Economic Development Program. Unauthorized disclosure of any confidential business information shall be a misdemeanor under the City's Revised Municipal Code."

*[Note: An option is to provide for members of the Application Review Committee that reside within the City's Zoning Jurisdiction, for example, but generally require the majority to be residents. This may be permissible for the Application Review Committee, depending on other City ordinances and policy, however, all members of the Citizen Advisory Review Committee must be registered voters as per § 18-2715(1).]*

- 7. All other ordinances inconsistent with or in conflict with this Ordinance are hereby repealed as of the effective date of this Ordinance.
- 8. This Ordinance shall become effective upon its passage, approval, and publication as provided by law.

Passed and approved on \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

## Examples of Alternate Program Purposes:

### [Example 1: Local Business Retention]

The goal of the Program is generally to provide and foster an environment conducive to business retention and expansion for the current citizens and businesses of the City, extending capital, assistance, and infrastructure where necessary to support local business growth. Funds from the Program will generally be used to encourage and assist existing and new businesses within the City to create and maintain viable and contributing service-providers, employers, and merchants to the City's commercial landscape, through direct or indirect financial assistance. This may include direct grants to businesses or indirect assistance through eligible activities under this Plan. The success of the Program will be measured generally by the local businesses created or grown within the City.

### [Example 2: Job Creation]

The goal of the Program is to provide quality jobs for the citizens of the City and the local area. Funds from the Program will be used to encourage and assist existing and new Qualifying Businesses to create and retain jobs, through direct or indirect financial assistance. This may include direct grants to Qualifying Businesses or indirect assistance through eligible activities under this Plan. The success of the Program will be measured by a combination of (a) jobs created and retained in the City and the local area for the length of the Program, and/or (b) the total payroll provided or increased by Qualifying Businesses participating in the Program.

### [Example 3: Regional Competitiveness]

The City recognizes that there is a high degree of competition among states and municipalities to provide incentives for businesses to expand or to locate in their respective jurisdictions. The City believes that having the ability to fund economic development through the Program will enhance new expansion or relocation opportunities in the City, and will encourage capital investment, which otherwise may not have been realized. The goal of the Program will be to incentivize business expansion or relocation through infrastructure development, relocation stipends, technological training, housing development for new employees, and job credits or jobs created through expansion. The goal success of the Program will be measured by a combination of increases sales tax revenue, expansion of municipal infrastructure for commercial development, increase of affordable housing stock, employment rates, and jobs created through expansion.

**Example of an Ordinance Adopting an Amendment to Plan:**

**ORDINANCE NO.** \_\_\_\_\_

AN ORDINANCE AMENDING THE ECONOMIC DEVELOPMENT PLAN TO PROVIDE FOR ADDITIONAL QUALIFYING BUSINESSES.

Be it ordained by the Mayor and City Council of the City:

1. The City Council, has by Ordinance, adopted an Amended Economic Development Plan (the "Plan"), which was effective as of April 1, 2020.
2. The Citizen Advisory Committee has recommended an amendment to the Plan as provided for in this Ordinance, and the City Council has held a public hearing on the recommended amendment.
3. Paragraph 3.a. of the Plan is amended to add the following Qualifying Businesses:  
“(12) a business that derives its principal source of income from early childhood care and education programs;”
4. This Ordinance was approved by a two-thirds vote of the members of the City Council. It shall become effective upon its passage, approval and publication. Publication shall be in pamphlet form.

Passed and approved on \_\_\_\_\_.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

:



## Example of an Application for Assistance:

City of \_\_\_\_\_  
Economic Development Assistance Application

**1. Applicant Information:**

Business Name:

Address:

Applicant Contact:

Business Phone:

E-mail address:

**2. Business Information:**

Structure of Business (proprietorship, partnership, LLC, corporation, etc.):

Ownership breakdown (include percentages for each Owner):

General Description of Business:

Products/Services:

Number of years in Business (or if a new Business, describe Owners experience in this type of business):

Proposed Location Address:

Current Zoning Classification:

**3. Employment:**

Base (current) number of full-time positions:

Full-time positions to be created:

Salary/Wage Range:

Benefits provided to employees (include any contribution required by Employees):

**4. Financial Need:**

Total project cost estimate:

Breakdown of use of funds:

Date funds are needed:

Investment to be made by Applicant (Amount & Source):

Loan(s) to be obtained (Amount & Bank Name):

LB840 financial assistance amount requested for the Project:

\*\*The committee reserves the right to make part of the assistance in the form of a Grant (forgivable loan) and part of the assistance as a Loan, which in non-forgivable and has repayment terms.

Other Loans/Grants (CDBG, TIF, Re-Use, etc.):

**5. Security Available:**

Guarantor(s):

Real Estate:

Existing Liens:

Personal Property:

Existing Liens:

Stock / LLC Interests:

Other:

**6. Eligibility:**

Principal Source of Income from (circle one):

- a. Manufacturing
- b. Research & development
- c. Processing, storage, transport or sale of goods or commodities in interstate commerce
- d. Sale of Services in interstate commerce
- e. Headquarters facilities relating to eligible activities
- f. Telecommunications activities
- g. Tourism-related activities
- h. Construction and rehabilitation of housing
- i. Retail trade
- j. Film production (Nebraska Film Office Activity Registration Form is also required).
- k. Early childhood care and education programs

Statement of how project is consistent with the goals of the Economic Development Program:

Describe any pending legal action(s), to include the amount at risk and a summary of how ownership is reacting to the action(s):

**7. Additional Information to be submitted:**

- a. Resumes of Owners, Management & Key Employees (include experience, training, credentials & work history).

- b. Brief history of your business and where you see your business going in the next 5 years, with emphasis on the impact to the City.
- c. Personal Financial Statement of Guarantors and anyone owning 25% or more of the business. Note: documentation verifying assets and liabilities shall be made available upon request.
- d. Income statement covering the past 2 years of business operations, if in business for that long. Copies of filed tax returns are acceptable and the most recent year's return must be included.
- e. Business Plan, to include:
- Total project costs to include itemized use of funds
  - Lender Commitments
  - Investor Commitments
  - Financial projections for the next 3 years.
  - Employment projections for the next 3 years
  - Identification of jobs created by description, number, average wage, benefits, etc.
  - Information as to suppliers, and in particular, those in the area
- f. References, to include name, position, address and phone number:
- g. Any other information that you feel will assist the City in evaluating your Application. Please include any marketing or sales brochures.
- h. With respect to the Business, or any persons owning 25% or more of the business and any officers, indicate if there is any past or pending litigation which either has resulted in or could result in a judgment against the Business or any such person. List the nature of the judgment or pending action, and whether any portion remains unpaid as of this date.
- i. With respect to any persons owning 25% or more of the business and any officers, indicate any who have been convicted of or plead guilty to any criminal charge or violation of law, excepting minor traffic offenses. List the nature of the charge, where the charge occurred and the year and month of the conviction or plea.
- j. Applicant agrees to sign waiver form provided by the City for Background and Credit Check.

**8. Nebraska Advantage Act:**

The Applicant certifies to the city as follows (select one):

\_\_\_\_\_ The Applicant has not filed nor does it intend to file an application with the Nebraska Department of Revenue to receive tax incentives under the Nebraska Advantage Act with respect to this project.

\_\_\_\_\_ The Applicant has filed or intends to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for this project. If so, indicate if such application includes or will include, as one of the tax incentives, a refund of the City's local option sales tax revenue: \_\_\_\_\_; and whether such application has been approved under the Nebraska Advantage Act: \_\_\_\_\_.

I certify that the information presented in connection with this Application for Economic Development Assistance is true and correct. Consent is given to the City to contact references, conduct one or more credit checks, criminal background checks, and to verify the information contained in this Application.

Dated:

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

EXAMPLE ONLY - Obtain Legal Assistance

## Assistance Agreement with Job Credits:

### ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on \_\_\_\_\_, between the City of \_\_\_\_\_, Nebraska (the "City") and \_\_\_\_\_ (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 Economic Development Application Review Committee (the "Committee") have reviewed the Application and recommended to the City Council (the "Council") that a grant (the "Grant") and a loan (the "Loan") be made to the Applicant from the City of \_\_\_\_\_ Economic Development Fund (the "Fund") as provided for in this Agreement. The City Council has approved the Committee's recommendation.

d. The parties desire to enter into this Agreement for the purpose of setting out the terms and conditions of the Grant and the Loan.

#### Agreement:

##### 1. Purpose of Assistance:

The Applicant owns and operates a business known as \_\_\_\_\_ (the "Business"). The proceeds of the Grant and the Loan shall be used for the purpose of \_\_\_\_\_.

##### 2. Amount of Grant and Loan:

The Grant and the Loan shall be disbursed from the Fund at the Closing (as provided for below) as follows:

a. The Grant shall be in the amount of \$\_\_\_\_\_ (the "Grant Amount").

b. The Loan shall be in the amount of \$\_\_\_\_\_ and shall be represented by a promissory note (the "Note") to be signed at the Closing in the form of the attached "Exhibit A". The Note shall be interest free until \_\_\_\_\_ (the "Note Interest Date"), at which time the Note shall carry interest at the rate of \_\_\_% per annum, and shall be repaid over \_\_\_ equal \_\_\_\_\_ payments of principal and interest. The first payment shall be due on \_\_\_\_\_, with each additional payment due on the same day of each subsequent \_\_\_\_\_ until the Note is paid in full.

##### 3. Closing:

As soon as the Applicant has satisfied the conditions to Closing (as provided for below), the Grant Amount and the Note Amount shall be scheduled as a claim at a City Council meeting. The "Closing" shall then occur within 10 business days after the Council meeting where the claim is approved.

**4. Possible Grant Repayment:**

The Grant Amount shall be subject to repayment (the "Repayment") to the City if the Applicant does not fully earn the Job Credits (as provided for below). In connection with the calculation of the Job Credits:

- a. The effective date of this Agreement for Job Credit calculation purposes shall be \_\_\_\_\_ (the "Job Credit Effective Date").
- b. The term of this Agreement for Job Credit calculation purposes shall begin on the Job Credit Effective Date and shall continue for 5 years from the Job Credit Effective Date (the "Term").
- c. A "Year" shall mean the 12-month period ending as of the day prior to each annual anniversary of the Job Credit Effective Date.

**5. Employee Definitions:**

a. "Full Time Employee" shall mean a bona fide employee of the Applicant who (1) is classified by the Applicant as full time; and (2) subject to normal and reasonable waiting periods, is eligible for the employer's normal fringe benefit package. The normal fringe benefit package must, at the least, include a health insurance plan which provides for employee coverage substantially paid for by the Applicant.

b. "Eligible Full Time Employee" shall mean a Full Time Employee who: (1) primarily works in the City, and (2) resides within 60 miles of the corporate limits of the City; provided, however any Full Time Employee who does not reside within 60 miles of the corporate limits of the City at the time that the Full Time Employee is hired by the Applicant, shall nevertheless be considered an Eligible Full Time Employee if the Full Time Employee moves to a residence within the required geographic area within 6 months of the hiring of the Eligible Full Time Employee.

c. "Full Time Equivalent" Employees (the "FTE's") shall be the total of (i) the number of Eligible Full Time Employees which are paid based on a salary, plus (ii) with respect to hourly Eligible Full Time Employees, the number arrived at by dividing the total hours paid by the Applicant to its hourly Eligible Full Time Employees during a Year divided by 2080 hours, and then rounded down to the nearest tenth; provided, however, the maximum hours paid that can be counted for any one hourly Eligible Full Time Employee shall not exceed 2080 hours.

**6. Job Credits:**

"Job Credits" shall be calculated as follows:

- a. The Applicant shall receive an "Annual Job Credit" during the Term equal to the FTE's multiplied by \_\_\_\_\_.
- b. The amount of the Annual Job Credit may not exceed \$\_\_\_\_\_ per Year (the "Maximum Annual Credit").
- c. In the event that the Applicant earns credits in excess of the Maximum Annual Credit in any one Year, the excess credits may be carried back to one or more prior Years where the Maximum Annual Credit was not earned, as long as the Maximum Annual Credit is not exceeded for any one Year. Excess credits may not be carried forward

**7. 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 \_\_\_\_\_, 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 have 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. 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.

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 the Applicant is a party or by which it is bound.

d. The Applicants principal source of revenue is from \_\_\_\_\_ [designate the eligible activity].

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

**8. 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.

**9. 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 Advantage Act for the Business. In the event that the Application files such an application, it shall advise the City in writing, and the City shall have the option to review the status of the Grant and the Loan, to include determining that (i) all or any portion of the Grant, and (ii) the balance of the Loan, is due and payable if the Applicant is awarded incentives under the Nebraska Advantage Act.

**10. Conditions to Closing:**

The City's obligation to proceed with the Closing is subject to the Applicant's fulfillment of each of the following conditions at or prior to the Closing:

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.

(2) A copy of the current and correct \_\_\_\_\_ [describe organizational documents such as Articles of Incorporation and Bylaws or Certificate of Organization and Operating Agreement] of the Applicant certified by the secretary to be correct;

(3) Certified resolutions of the \_\_\_\_\_ [Board of Directors or Members] authorizing this Agreement and providing for signature authority.

c. In order to secure the Loan and the Repayment, the Applicant shall have delivered to the City the following:

(1) A guaranty (the "Guaranty") of \_\_\_\_\_. The Guaranty shall be in the form of the attached "Exhibit B".

(2) A Security Agreement covering the Applicant's equipment. The Security Agreement shall be in the form of the attached "Exhibit C". The Security Agreement shall be second in priority to a lien held by \_\_\_\_\_ [Bank].

(3) A Deed of Trust covering the Applicant's real estate. The Deed of Trust shall be in the form of the attached "Exhibit D". The Deed of Trust shall be second in priority to a lien held by \_\_\_\_\_ [Bank].

d. 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.

e. 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.

f. In requesting the disbursement of the Loan, the Applicant is considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

#### 11. **Annual Reports:**

In order to obtain Job Credits, the Applicant shall annually, within 60 days of the end of each Year, provide to the Administrator a report in form and substance acceptable to the Administrator which calculates the Annual Job Credit for the Year (the "Annual Report"). The Administrator shall have the right at any time to (i) require that the Annual Reports be reviewed at the Applicant's expense by a Certified Public Accountant reasonably acceptable to the Administrator, or (ii) hire, at the Administrator's own expense, an independent Certified Public Accountant or other Practice or financial expert, to review the books and records of the Applicant pertaining to the Annual Report and any other terms and conditions as provided for in this Agreement. If after a review or audit of the Applicant's records it is discovered that the Annual Job Credit claimed on the Annual Job Credit Report exceeds 10% of the Annual Job Credit as determined by the Administrator, then the Administrator may require the Applicant to reimburse the Fund for the actual cost of the audit.

#### 12. **Default:**

The Applicant shall be in default in this Agreement and the Note if any of the following happen:

a. Failure to comply with any of the terms of this Agreement, the Note, the Security Agreement or the Guaranty 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 any 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 ceases to conduct the Business, reports FTE's less than \_\_\_\_ for any one Year, or moves the Business outside of the City.

**13. Assignability:**

The Administrator may assign his interest in this Agreement to any successor administrator designated by the City Council. The Applicant may not assign or transfer its interest in this Agreement without the consent of the Administrator. Assignment shall include a transfer of ownership of the Applicant which results in the \_\_\_\_\_ [current Shareholders /Members] owning less than 51% of the ownership interests of the Applicant.

**14. 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.

**15. 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, 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 \_\_\_\_\_

Attention: City Manager

b. If to the Applicant:

**16. 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 to follow]*

EXAMPLE ONLY - Obtain Legal Assistance

## Assistance Agreement –Small Business:

### ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on September \_\_\_\_, 2018, between the City of \_\_\_\_\_, Nebraska (the “City”) and \_\_\_\_\_ (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 Economic Development Application Review Committee (the “Committee”) have reviewed the Application and recommended to the City Council (the “Council”) that a grant (the “Grant”) be made to the Applicant from the City of \_\_\_\_\_ Economic Development Fund (the “Fund”) as provided for in this Agreement. The City Council has approved the Committee’s recommendation.

d. The parties desire to enter into this Agreement for the purpose of setting out the terms and conditions of the Grant.

#### Agreement:

##### 1. Purpose of Assistance:

The Applicant operates a business known as \_\_\_\_\_ (the “Business”). The proceeds of the Grant shall be used for \_\_\_\_\_ (the “Authorized Expenses”).

##### 2. Amount of Grant:

The Grant shall be in the maximum amount of \_\_\_\_\_ and shall be disbursed from the Fund as provided for below.

##### 3. Closing and Disbursement of Funds:

As soon as the Applicant has satisfied the conditions to Closing (as provided for below), the Closing shall be considered to have occurred. The Applicant may then request disbursements of the Grant (each, a “Disbursement”) as follows:

a. The Applicant shall deliver to the City invoices or receipts for Authorized Expenses as they are incurred.

b. Upon approval of the documentation submitted, the amount of the approved Authorized Expenses shall be scheduled as a claim at the next Council meeting for which the claim may be reasonably scheduled. Disbursement of shall be made within 10 business days after the Council has approved a claim.

##### 4. Conditions:

The Grant is being made based on the condition that the Applicant comply with the following:

a. The Business shall remain open for 3 years from the Closing Date (the “Term”).

b. During the Term, by each April 15, the Applicant shall deliver a balance sheet and a copy of its federal income tax return to the City.

If the Business does not remain open or is sold during the Term, or the Applicant is not in compliance with the above condition, then the entire amount of the Grant shall be repaid (the "Repayment"). If the Repayment is not paid within 15 days after the Repayment is due, then the Repayment shall then carry interest at the rate of 7% per annum until paid.

**5. 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 \_\_\_\_\_, 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 have 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. 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.

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 agreement or instrument to which the Applicant is a party or by which it is bound.

d. The Applicants principal source of revenue is from \_\_\_\_\_ [designate the eligible activity].

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

**6. 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.

**7. 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 Advantage Act for the Business. In the event that the Applicant files such an application, it shall advise the City in writing, and the City shall have the option to review the status of the Grant, to include determining that the Repayment is due and payable if the Applicant is awarded incentives under the Nebraska Advantage Act.

**8. Conditions to Closing:**

The City's obligation to proceed with the Closing is subject to the Applicant's fulfillment of each of the following conditions at or prior to the Closing:

- 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.
  - (2) A copy of the current and correct \_\_\_\_\_ [describe organizational documents such as Articles of Incorporation and Bylaws or Certificate of Organization and Operating Agreement] of the Applicant certified by the secretary to be correct;
  - (3) Certified resolutions of the \_\_\_\_\_ [Board of Directors or Members] authorizing this Agreement and providing for signature authority.
- c. In order to secure the Repayment, the Applicant shall have delivered to the City the following:
  - d. A guaranty (the "Guaranty") of \_\_\_\_\_.
  - c. A Security Agreement covering the Applicant's equipment. [add other types of security if desired]
  - e. 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.
  - f. 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.
  - g. In requesting each Disbursement, the Applicant is considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

**9. Default:**

The Applicant shall be in default in this Agreement and the Note if any of the following happen:

- a. Failure to comply with any of the terms of this Agreement or the Security 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 any 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 ceases to conduct the Business or moves the Business outside of the City.

**10. Early Termination:**

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

b. The City 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 City.

c. In the event of a termination as described in this paragraph, the Repayment shall then be immediately due and payable to the Fund. Interest shall accrue at the rate of 7% per annum on any amounts not immediately paid.

**11. Assignability:**

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

**12. 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.

**13. 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, 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 \_\_\_\_\_

Attention: City Manager

b. If to the Applicant:

**14. 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 to follow]*

EXAMPLE ONLY - Obtain Legal Assistance

**Film Office Registration Form:**



Today's Date \_\_\_\_\_ Release/Air Date \_\_\_\_\_

Title of Project \_\_\_\_\_

Production Manager/Coordinator \_\_\_\_\_

Email \_\_\_\_\_ Production Office Email \_\_\_\_\_

Production Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ Country \_\_\_\_\_

Current Title of Project \_\_\_\_\_

Pre-production to Begin \_\_\_\_\_ Principle Photography to Begin \_\_\_\_\_

Proposed Number of Shooting Days \_\_\_\_\_ Distribution Deal \_\_\_\_\_

**Check the Appropriate Categories**

- |                                     |                                       |   |   |
|-------------------------------------|---------------------------------------|---|---|
| <input type="checkbox"/> TV Movie   | <input type="checkbox"/> Feature Film | <input type="checkbox"/> Short            | <input type="checkbox"/> Other, Please Identify |
| <input type="checkbox"/> TV Series  | <input type="checkbox"/> Documentary  | <input type="checkbox"/> Industrial Video | _____   |
| <input type="checkbox"/> Commercial | <input type="checkbox"/> Music Video  | <input type="checkbox"/> Webisode         |   |

**List Proposed Nebraska Locations for Project**

\_\_\_\_\_

**Reason for Shooting in Nebraska**

\_\_\_\_\_



**Projected Expenditures on Local Resources, and Equipment Rentals or Purchases**  
*THESE ARE LOCAL NEBRASKA PRODUCTION EXPENSES ONLY.*

Local Crew \$ _____	<b>Number of Room Rental Nights (hotel/motel accommodations)</b> _____
Local Talent \$ _____	Average Room Rate or Rack Rate for Nebraska Stay \$ _____
Local Extras \$ _____	Other Non-Hotel/Motel Lodging \$ _____
Local Equipment Purchase or Rental \$ _____	Total Lodging Expense in Nebraska \$ _____
Local Office Rental \$ _____	<b>Total Projected Production Expenditures while in Nebraska</b> \$ _____
Other \$ _____	
Please Identify _____	

**EMAIL COMPLETED FORM**

lrichards2@neb.rr.com

**OR MAIL**

Laurie Richards / Nebraska Film Office  
PO Box 94666  
301 Centennial Mall S. 4  
Lincoln, NE 68509-4666 USA



**Confidentiality Agreement:**

**CONFIDENTIALITY AGREEMENT**

The City of \_\_\_\_\_ conducts an Economic Development Program (the "Program") pursuant to a Plan authorized under the Local Option Municipal Economic Development Act, §§18-2701, *et seq.* of the Nebraska Statutes. In the course of acting in the position listed below, I understand that I may have access to or may review information concerning applicants or participants under the Program, which information is considered proprietary and confidential either under Nebraska law or by agreement with applicants or participants ("Confidential Information").

I agree that all Confidential Information reviewed by me in connection with my participation in the Program will be held in confidence by me and shall not be used for any purpose other than in connection with the carrying out of my duties under the Program. I understand that unauthorized disclosure of any Confidential Information may subject me for prosecution for violation of applicable City Ordinance(s) and State Statute(s).

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Position: \_\_\_\_\_

EXAMPLE ONLY - Obtain Legal Assistance