



GUIDANCE MEMORANDUM

PROGRAM: Nebraska Rural Projects Act

MEMO: 23-01

DATE: January 12, 2023

SUBJECT: Costs Related To Investment And Use Of Matching Funds

This guidance document is advisory in nature but is binding on the Department of Economic Development (DED) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DED and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

ISSUES:

- I. Which paid costs are eligible to be counted as investment for purposes of generating matching funds under the Rural Projects Act (“Act”)?
- II. Which costs are eligible to be paid using matching funds?

ANALYSIS:

- I. Investment is the amount paid by the nonprofit economic development corporation (“Recipient”) for the development of its industrial rail access business park, excluding any matching funds received pursuant to the Act. (Neb. Rev. Stat. § 81-12,201). Matching funds spent on the development of the business park do not generate additional matching funds and are not included when calculating the amount of investment.
- II. Subject to the exclusions and/or limitations contained in the Act or the Rural Projects Act contract (“Contract”) (e.g. Neb. Rev. Stat. §§ 81-12,201 and 81-12,210; Contract ¶ (II)(C)(3)), investment that generates matching funds consists of the following direct costs of developing the business park: site acquisition, site preparation, utility extensions, rail spur construction, and any such expenses incurred to assist an initial tenant at the business park that conducts business in the manufacturing, processing, distribution, or transloading operations. (Neb. Rev. Stat. § 81-12,203; Contract ¶ (II)(C)(3)).
- III. Matching funds may only be applied toward areas of the business park that were secured by purchase options within the contractually prescribed period and may only be used for the following direct costs of developing the business park: site acquisition, site preparation, utility extensions, rail spur construction,

any such expenses incurred to assist an initial tenant at the business park that conducts business in the manufacturing, processing, distribution, or transloading operations, and repayment of principal on debt financing related to the development of the business park. (Neb. Rev. Stat. §§ 81-12,203 and 81-12,212(1); Contract ¶ (II)(C)(3)).

CONCLUSIONS:

- I. Subject to the exclusions and/or limitations contained in the Act or Contract, Recipient's payment of costs or fees constitutes investment if the cost or fee is expended to develop the industrial rail access business park and is an ordinary and reasonable cost or fee necessitated by Recipient's site acquisition, site preparation, utility extensions, rail spur construction, or any such expenses incurred to assist an initial tenant at such business park that conducts business in the manufacturing, processing, distribution, or transloading trades. For example, real estate purchase price, permitting fees, engineering costs, construction costs, document stamps, title fees, etc. would likely be regarded as ordinary costs necessitated by site acquisition, site preparation, utility extensions, rail spur construction, or any such expenses incurred to assist an initial tenant. Attorney fees for services to assist Recipient in its development of the business park (e.g. drafting purchase agreements for site acquisition or contract review for site preparation) may be regarded as ordinary costs necessitated by Recipient's development of the business park if Recipient can demonstrate that the services and costs were exclusively directed towards Recipient's development of the business park. Attorney fees related to pre-litigation or litigation at any stage do not constitute investment in the business park and their payment does not generate matching funds. Repayment of debt financing—irrespective of whether payments go toward principal, interest, or loan fees—does not constitute investment and does not generate matching funds. The amount of Recipient's investment is determined by the DED Director upon review of Recipient's annual reports. Determinations of what constitutes ordinary and reasonable costs or fees necessitated by Recipient's development of the industrial rail access business park are made by the DED Director upon review of Recipient's annual reports.

- II. Subject to the exclusions and/or limitations contained in the Act or Contract, matching funds must be used to pay for the development of the industrial rail access business park. This includes the ordinary and reasonable fees associated with debt financing to develop the business park, as well as the ordinary and reasonable costs or fees necessitated by site acquisition, site preparation, utility extensions, rail spur construction, or any such expenses incurred to assist an initial tenant at such business park that conducts business in the manufacturing, processing, distribution, or transloading trades. For example, loan fees, real estate purchase price, permitting fees, engineering costs, construction costs, document stamps, title fees, etc. would likely be regarded as ordinary costs necessitated by debt financing, site acquisition, site preparation, utility extensions, rail spur construction, or any such expenses incurred to assist an initial tenant. Matching funds may be used to repay the principal on debt financing utilized for the development of the industrial rail access business park. Matching funds may not be used toward interest on debt financing. A Recipient will be required to submit sufficient documentation to allow DED to verify the proper use and expenditure of matching funds.

END OF GUIDANCE MEMORANDUM