



Agenda Item:

4A

COUNCIL COMMUNICATION City Manager's Office

GENERAL INFORMATION

Agenda Date: 08/17/05
452

Communication No.: 05-

Agenda Item Type: Resolution

Roll Call No.:

Submitted by: Richard Clark, Acting City Manager

SUBJECT—

Approval of the Creation of the Des Moines Community Investment Corporation and authorization to file an application for CDE Certification in order to receive an allocation of New Markets Tax Credits (NMTC).

SYNOPSIS—

Resolution approves the creation of Des Moines Community Investment Corporation (DMCIC) and authorizes staff to file for Community Development Entity Certification (CDE). CDE certification is a requirement to apply for and receive an allocation of NMTC from Community Development Financial Institutions Fund (CDFI Fund), a division of the U.S. Department of the Treasury. Staff and project consultant, Novogradac & Company LLC (Owen Gray, Partner, 246 First Street, 5th Floor, San Francisco, CA, 94105), agree that the best approach is to create a startup nonprofit corporation, DMCIC. The City of Des Moines will be designated as the controlling entity of DMCIC and will therefore control the election of the board of directors and exercise control over the management policies and investment decisions of the CDE and any subsidiary CDEs.

FISCAL IMPACT—

\$20 fee to file Articles of Incorporation with the Secretary of State. Funds are available in the Economic Development Enterprise Account – Fund: SP743 Org: CMO980717.

RECOMMENDATION—

Approval

BACKGROUND—

At the August 1, 2005 City Council Meeting by Roll Call #05-1836 Council approved negotiation of a professional service contract with Novogradac & Company, LLC. (Novogradac) to assist the City in its application for an allocation of NMTC.

August 9, 2005 staff met with Own Gray, Partner, Novogradac in order to finalize the service agreement, establish a project timeline and discuss key steps in the NMTC application. Please see attached Agreement for Professional Services.

Community Development Entity (CDE) certification is the first of a two application NMTC allocation process. A CDE is a domestic corporation or partnership that is an intermediary vehicle for the provision of loans, investments or financial counseling in “Low-income Communities” (LIC).

A startup nonprofit organization, DMCIC is the best approach for the CDE certification as well as the NMTC application. The creation of this entity will: (1) Neutralize possible complications of utilizing an existing organization. (2) Allow use of the City of Des Moines’ economic development history. (3) And, leverage the number of points possible on the NMTC application.

Staff will file Articles of Incorporation for DMCIC with the State of Iowa upon City Council approval of this agenda item in anticipation of the August 22, 2005 CDE Certification deadline. Please see Attachment A for a copy of the DMCIC Articles of Incorporation.

A second application for an allocation of NMTC is due September 21, 2005. Staff will use a pipeline approach for the NMTC application. This method will allow the city to include multiple projects and maximize flexibility. Potential projects include hotels, neighborhood commercial corridor projects, Riverpoint West, and redevelopment of the Younkers Building. Staff will continue to keep Council informed as developments occur and possible projects are solidified.

ARTICLES OF INCORPORATION
DES MOINES COMMUNITY INVESTMENT CORPORATION
(An Iowa non-profit corporation incorporated under Iowa Code Chapter 504)

Article 1. Name of Corporation

The name of this Corporation shall be the Des Moines Community Investment Corporation.

Article 2. Initial Registered Office and Agent

The Registered Office of this Corporation is located in Polk County, Iowa, at 400 Robert D Ray Drive, Des Moines, Iowa 50309-1881. The Registered Agent of this Corporation at the Registered Office is Richard Clark.

Article 3. Purpose

The primary purpose of the Corporation is to serve the low-income communities of Des Moines and residents of the low-income communities of Des Moines by engaging in those investment activities consistent with Chapter 26, Section 45D of the United States Code and the Treasury Regulations issued thereunder, including, but not limited to providing investment capital for the low-income communities of Des Moines and/or low-income persons of Des Moines by making qualified low-income community investments in real estate projects and small businesses that are qualified active low-income community businesses. In furtherance of this mission, the Company's loans and investments may be principally targeted to economically distressed or otherwise underserved communities in Des Moines, including, though not limited to, those areas that have been designated for alleviation of economic distress by Federal, state and/or local government programs.

Article 4. Management

A. This Corporation shall not have members.

B. Management of this Corporation shall be vested in the Board of Directors of this Corporation. The Board of Directors shall consist of five individuals to be nominated by the Mayor of the City of Des Moines, Iowa, and appointed by resolution of the City Council of the City of Des Moines.

C. Three Directors shall be members of the City Council of the City of Des Moines, Iowa, and one of those Directors shall have been elected from a voting jurisdiction where either: i) 50% or more of the census tracts within such voting jurisdiction qualify as a Low-income Community ("LIC") under 26 U.S.C. §45D(e)(1); or ii) 50% or more of the population within such voting jurisdiction reside in census tracts that qualify as a LIC.

D. Two Directors shall be members of the Board of Supervisors of Polk County, Iowa, and one of those Directors shall have been elected from a voting jurisdiction where either: i) 50% or more of the census tracts within such voting jurisdiction qualify as a LIC; or ii) 50% or more of the population within such voting jurisdiction reside in census tracts that qualify as a LIC.

E. The term of each Director shall expire when that Director's term on the Des Moines City Council or Polk County Board of Supervisors, as applicable, expires. However, each Directors shall hold over after expiration of their term and shall continue to serve as a Director until their successor is appointed by the Des Moines City Council.

F. A Director may be removed from office with, or without cause, by resolution adopted by the City Council of the City of Des Moines, Iowa, at a public meeting. Notice of that meeting and of the City Council's intent to consider removal of the Director shall be given at least 10 days in advance to the Director proposed to be removed.

Article 5. Personal Liability of Directors and Officers

A. To the fullest extent permitted by law, a Director, officer or employee of this Corporation shall not be liable on this Corporation's debts or obligations and a Director, officer or employee of this Corporation shall not be personally liable in that capacity for a claim based upon an act or omission of the person performed in the discharge of the person's duties on behalf of this Corporation, except liability for any of the following:

- (1) The amount of a financial benefit received by the person to which the person is not entitled.
- (2) An intentional infliction of harm on the corporation or its members.
- (3) A violation of Iowa Code §504.835 regarding unlawful distributions.
- (4) Intentional violation of criminal law.

B. To the fullest extent permitted by law, this Corporation shall defend and indemnify all Directors, officers and employees from all claims, damages and liabilities resulting from or arising out of any act or omission of the person performed in the discharge of the person's duties on behalf of this Corporation, except liability for any of the following:

- (1) Receipt of a financial benefit to which the person is not entitled.
- (2) Intentional infliction of harm on the corporation or its members.
- (3) A violation of Iowa Code §504.835 regarding unlawful distributions.
- (4) Intentional violation of criminal law.

Article 6. Limitations on Corporate Activities

A. The Corporation shall not assign or transfer any interest in, or allocation of, any form of federal or state tax credits which may come under the control or direction of the Corporation, to any

other entity unless that assignment, transfer or allocation is for a project which has been determined by resolution of the City Council of the City of Des Moines, Iowa, to provide a sufficient level of benefit to low-income persons and/or residents of low income communities to warrant the provision of tax credits.

B. No substantial part of the activities of this Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code), and this Corporation shall not participate in, or intervene in (including the publishing and distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.

C. No part of the net earnings of this Corporation shall inure to the benefit of, or be distributable to, its directors, officers, or other private persons, except that this Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its lawful purposes.

Article 7. Dissolution

No part of the net income or assets of this Corporation shall ever inure to the benefit of any director, officer or employee of the Corporation. Upon dissolution of this Corporation, its assets remaining after payment, or provision for the payment, of all debts and liabilities of this Corporation shall be distributed to the City of Des Moines, Iowa, for use in providing products and services to individuals, businesses and organizations that serve Low-Income Persons or residents of Low-Income Communities as defined in Chapter 26, Section 45D, of the United States Code.

Article 8. Incorporator

The name and address of the incorporator of this Corporation is Roger K. Brown, Assistant City Attorney, City Hall - Legal Department, 400 Robert D Ray Drive, Des Moines, Iowa 50309-1881.

Dated this ____ day of August, 2005.

Des Moines Community Investment Corporation

By: _____

Roger K. Brown, Incorporator