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February 28, 2020

Corrina Guardipee-Hall  
 Superintendent  
 Browning Public Schools  
 129 First Avenue SE  
 P.O. Box 610  
 Browning, MT 59417

**Re: Middle School Renovation and High School Sports Complex  
 New Markets Tax Credit Investment**

Dear Ms. Guardipee-Hall:

Based on financial and other information provided by you and your consultant on the proposed middle school improvements and new high school sports complex located in Browning, MT (“Project” or the “QALICB” (“Qualified Active Low-Income Community Business”)), US Bancorp Community Development Corporation (“USBCDC”) is delighted to consider making a New Markets Tax Credit (“NMTC”) equity investment in the Project to facilitate its completion. The terms of such investments are outlined below. It is expected that a subsidiary(ies) of to be determined Community Development Entity(ies) (“TBD CDE(s)”) will act as a Community Development Entity(ies) (“Sub-CDE(s)”) and investee(s) of USBCDC.

Except for the obligations set forth in the section titled Transaction Costs and Confidentiality, the following term sheet does not constitute or create, and shall not be deemed to constitute or create, any legally binding or enforceable obligation on the part of any party and is for discussion purposes only and should not be construed as a commitment to provide loans to, or equity in, the Project. This proposal has not been approved internally, and we have not performed the necessary due diligence to allow us to seek approval. Should these terms be acceptable to you, formal bank approval through USBCDC’s internal credit process will be pursued. During the underwriting and documentation process, the terms and conditions of this proposal may change in material respects.

**NEW MARKETS TAX CREDIT FINANCING:**

USBCDC proposes to fund NMTC equity capital in the form of a Qualified Equity Investment(s) (“QEI(s)”) to a qualified Sub-CDE(s). Such investment is based on the following assumptions:

**Tax Credits:** USBCDC will receive 100% of all NMTCs generated by the QEI(s). In the event that more or fewer credits are awarded, the NMTC Equity would be adjusted based on the price per credit as detailed below:

<u>QEI Amount</u>	<u>Credit Amount*</u>	<u>Price per Credit</u>	<u>Gross Equity**</u>
Up to \$15,000,000	\$5,850,000	\$0.82	\$4,797,000

\* The credit amount is calculated based on a formula of QEI \* 39%  
 \*\* Calculation is prior to fees and expense reimbursements.

**EQUITY PAY-IN:**

The NMTC equity would be paid in pro-rata with the funding of the leverage sources which are expected to be funded 100% at closing. The pricing above assumes all USBCDC equity and Leverage Loan proceeds are fully funded through the NMTC structure into a QALICB owned account in the second quarter of 2020.

**DEAL STRUCTURE:**

This proposal anticipates utilizing a “leveraged structure” for purposes of generating the NMTCs. USBCDC will be the 100% owner of the investment fund (“Investment Fund” or “Fund”). The Fund will purchase a 99.99% interest in the Sub-CDE(s) and will be allocated the NMTCs in addition to a return on its investment. The Sub-CDE(s) will make loans to or equity investments in the QALICB, which will be considered qualified low income community investments (“QLICIs”).

**LEVERAGE LOAN:**

The Leverage Lender and the QALICB must be separate and distinct entities for tax purposes. The Leverage Lender will agree to: (a) forbear from exercising any remedies against the Investment Fund (including but not limited to foreclosure of the pledged collateral) during the NMTC compliance period; and (b) allow the redeployment of all funds returned to the Sub-CDE(s) as new QLICIs to an alternative QALICB to avoid recapture and associated penalties in the event of a foreclosure on the original QLICI(s) by the Sub-CDE(s). Should any funds be returned to the Sub-CDE(s), USBCDC and the CDE(s) shall have the right to redeploy those funds without consent from the Leverage Lender in order to avoid and prevent a recapture of NMTCs.

**CDE FEES:**

The CDE(s) will determine and inform the QALICB of its fee structure, including required QALICB reimbursements for annual CDE audit and tax preparation cost. Upfront fees are paid out of Investment Fund capital, out of the QEI or by the QALICB at closing. Annual fees are generally paid out of cash flow to the CDE(s) and built into the interest rate on the NMTC loans.

**ALLOCATION:**

USBCDC is the most active investor in the industry and is actively seeking NMTC allocation from 3rd party NMTC allocatees, which may select the Project for financing based on its level of community impact, municipal participation, location, and need. USBCDC has strong relationships with many national and regional allocates and has a track record of successfully bringing allocation to its projects.

**INVESTMENT FUND MANAGEMENT AND FEE:**

Twain Financial Partners will be the non-member manager of the Investment Fund, performing such duties for the Investment Fund at an annual fee of \$5,400 for eight years, to be paid by the QALICB from seven years of QLICI interest payments. One year’s worth of the Investment Fund Management Fee will be reserved from capital sources at closing and held in an account at the Investment Fund.

**AUDIT & TAX PREPARATION COSTS:**

Upon request, if required by USBCDC, the Investment Fund and/or the CDE(s), the QALICB, at its own cost, shall also deliver: (a) an audit from a nationally or regionally recognized accounting firm to USBCDC and/or the CDE(s) each year within 75 days in draft form and 90 days in final form after the end of each calendar year; (b) unaudited financial statements within 30 days after the end of each quarter; (c) a tax return including form K-1 within 60 days after the end of the calendar year; (d) semi-annual certifications regarding QALICB status; (e) unaudited financial statements from each QALICB Guarantor as part of the initial underwriting and upon request thereafter; and (f) such other reports as USBCDC may request from time to time.



### **REIMBURSEMENT OF EXPENSES AND SHORT TERM BRIDGE EQUITY:**

Any reimbursement of expenses by the QALICB to an affiliate must conform to the 2015 CDFI Fund Notice of Allocation Availability (NOAA) for NMTC Allocation and related CDFI Fund Compliance Monitoring and Evaluation FAQ. This guidance requires that expenses reimbursed with QLICI proceeds meet certain requirements. QLICIs may be used to reimburse project costs paid to third parties that either: 1) were incurred within 24 months prior to QLICI closing or 2) are less than 5% of total QLICI proceeds. Supporting documentation for these costs must be provided to USBCDC for review in the form of a summary Excel spreadsheet listing all costs by vendor and date paid, with backup electronic scans of all invoices and cancelled checks evidencing payment provided in an organized format.

USBCDC may provide short term bridge equity to facilitate the Leverage Loan or a portion of the Leverage Loan. The fee charged for the short term bridge equity is 50 basis points on the amount of bridge equity provided.

### **TRANSFERS & DISCLOSURES:**

USBCDC reserves the right to transfer its interest in the Investment Fund, the Put Call Option Agreement and in any tax indemnities and guarantees to an affiliate fund without consent of the QALICB, CDE(s), or Leverage Lender(s). USBCDC shall be permitted to disclose all information received pertaining to the Project, including Guarantor financial information, to all parties necessary to facilitate the syndication. USBCDC also reserves the right to make certain disclosures to potential affiliate fund investors including project information, photographs/media.

### **OTHER FINANCING:**

All construction (if any), and all permanent debt for the Project shall be on commercially reasonable terms. USBCDC shall be provided notice of the terms of permanent debt and such terms shall be materially consistent with the final financial projections as accepted by USBCDC and its tax counsel at closing of the investment. These terms are subject to the commitment and availability of the funding sources and NMTC allocation necessary to account for all costs associated with the Project.

### **UNDERWRITING AND OPERATIONS/CONSTRUCTION BUDGET ADJUSTMENTS**

Final budget (sources and uses) and proforma operating numbers are subject to USBCDC's review and approval. These terms are subject to final underwriting and investment committee approval. Should such terms be acceptable to you, formal bank approval through USBCDC's internal credit process will be pursued.

### **DISBURSING AND BANK ACCOUNTS**

Unless all QLICI funds are fully spent by QALICB at NMTC Closing, funds shall be monitored and disbursed by a USBCDC-approved disbursement agent, which may be selected by the Leverage Lender. A disbursement advisor and inspecting architect may be engaged by USBCDC to monitor construction and disbursing at cost to the QALICB. USBCDC shall require the Investment Fund initial contribution and operating bank accounts and the Sub-CDE(s) initial contribution accounts to be maintained at U.S. Bank, NA. Depending on the structure, other entity accounts may be maintained at other bank or financial institutions.

### **USBCDC NMTC EXIT:**

For a period of six months after the conclusion of the NMTC Compliance Period, USBCDC shall have the right to exercise an option to Put its interest in the Investment Fund to an affiliate of the Project at a "Put Price" equal to \$1,000. If USBCDC does not exercise its Put Option within the specified period, the QALICB affiliate will have the right to Call USBCDC's interest in the Investment Fund at a price equal to fair market value. For purposes of the tax opinion furnished to USBCDC by its counsel in connection with the Project, industry standard is to have the financial projections reflect the net present value of the Investment Fund to be at least 10% of USBCDC's capital contribution to such Fund (which minimum may vary based on transaction structure). Depending on the facts and circumstances of a particular project, USBCDC's counsel may be willing to provide a "should level" opinion to USBCDC based on a lower percentage. In such an instance, USBCDC will agree to the projections reflecting such lower percentage.



## **GUARANTEES:**

Browning Public School District No. 9 (“Guarantor”) or other entities satisfactory to USBCDC shall guaranty to USBCDC the following:

- **Recapture due to (a) failure to qualify for or loss of QALICB status, (b) failure to qualify for or loss of QLICI status, (c) QLICI prepayment (whether voluntary or as a result of foreclosure or similar proceeding, and including any recapture resulting from a subsequent redemption by the Sub-CDE of any portion of the QEI, or resulting from the Sub-CDE’s failure to maintain substantially all of the QEI invested in QLICIs following such prepayment), (d) the failure of any tenant on the property to constitute a tenant qualified business, (e) the use of QLICI proceeds constituted an inappropriate or abusive use of such proceeds or that such use is inconsistent with the purposes of Section 45D of the Code and the related Treas. Reg., as provided in Treas. Reg. Section 1.45D-1(g), respectively, (f) any gross negligence, fraud, willful misconduct, malfeasance, material violation of law by the QALICB or any affiliate, or (g) other actions within the control of the QALICB or Guarantor** – In the event of disallowance, or a recapture pursuant to section 45D(g) of the Code, of the NMTCs, the Guarantor shall reimburse USBCDC on a tax effected basis for 1) any disallowed or recaptured NMTCs plus any related interest, penalties or additional taxes due, and 2) the net benefit of any other economic or tax benefit that would have been received by USBCDC if such disallowance or event of recapture had not occurred. If QLICI proceeds are used directly or indirectly to make leverage loans, QALICB counsel will need to provide specific opinions regarding the structure.
- **If QLICI proceeds are utilized to directly or indirectly make a leverage loan (i.e., short term bridge equity)** and are used in a manner other than to reimburse for actual costs incurred by the Sponsor to date, then the QALICB indemnity is expanded to cover any disallowance or recapture other than those that are the result of the invalidity of the allocations or Sub-allocations or the CDE(s) failing to qualify or maintain its status as a CDE(s). Additionally, USBCDC will require that QALICB counsel provide specific opinions related to this structure.
- **Environmental** - Guarantor shall indemnify and hold harmless USBCDC and the Sub-CDE, and all USBCDC and Sub-CDE entities participating in this transaction, for Environmental conditions, claims, etc. relating to the Project.

## **CLOSING CONDITIONS:**

USBCDC shall perform such due diligence and legal review of the transactions contemplated herein, including but not limited to the following:

1. All real estate documentation (plans, specs, contracts, title, etc.);
2. All organizational documents for all entities involved in these transactions;
3. Three years of audited (or reviewed) financial statements on all entities involved in the transaction;
4. Final financial projections, “source and use” statements, etc. from a USBCDC approved accounting firm;
5. All terms and conditions of all agreements, documents and similar items affecting the financing of the Project;
6. All matters deemed necessary by USBCDC, as applicable; and
7. Executed agreements acceptable to USBCDC providing for loan servicing for the Sub-CDE(s), NMTC compliance and monitoring for Sub-CDE(s).
8. By signing this term sheet, parties also acknowledge that, if we successfully negotiate the proposed transaction and reach a closing, then all documents may be signed electronically, using a method that is acceptable to USBCDC (including .pdf signatures and third-party electronic signature providers, such as DocuSign).

USBCDC shall receive the following representations and warranties from the parties to the transactions contemplated herein which shall be consistent with those customary in similar financing arrangements including, but not limited to:

1. Organizational/powers/authorization to enter the applicable transaction;
2. Valid interest in assets;
3. Governmental approval/no conflicts;
4. No “material adverse change” clause;



5. No pending/threatened litigation;
6. Compliance with laws, regulations and agreements;
7. ERISA compliance; and
8. Full disclosure.

USBCDC is a wholly-owned subsidiary of U.S. Bank National Association, a national banking association regulated by the Office of the Comptroller of the Currency. As such, USBCDC is subject to several federal laws that are designed to combat financial crimes, including money laundering, significant fraud, cyber threats, terrorist financing, and transactions with certain persons, companies, or foreign governments designated by U.S. authorities. Therefore, the due diligence and legal review conducted by USBCDC, as well as the representations and warranties that it requests, may be subject to USBCDC's ability to demonstrate its compliance with these laws, and to identify any litigation, criminal action or other administrative proceedings against any party to the transaction.

#### **TIMING OF CLOSING:**

This Term Sheet must be executed and a deposit received by March 13, 2020, or it shall be null and void. Prior to engaging in weekly conference calls, USBCDC will require a set of initial projections from an approved accounting firm and the completion of the underwriting checklist (available upon request). The transaction is expected to close in the second quarter of 2020. Assuming USBCDC elects to continue towards a closing, but the project fails to close by December 31, 2020 (the "Termination Deadline"), USBCDC may choose to no longer proceed toward a closing. All transaction costs incurred by such date shall be immediately due and payable by the Guarantor and/or Project sponsor. USBCDC may apply any deposit amounts to such costs and send an invoice for additional costs to be paid by the Project sponsor. USBCDC, in its sole election, may extend the deadline for closing or payment of transaction costs. Any such extension is not valid unless provided in writing (mail, fax or email).

#### **TRANSACTION COSTS:**

The undersigned agrees to pay all customary third-party transaction expenses associated with USBCDC's proposed investment in the Investment Fund even if the investment in, or loan(s) to, the Project does not close. Expenses shall include, but are not necessarily limited to, USBCDC's legal fees and third party accounting fees.

Additionally, upon execution of this letter, **\$25,000** shall be deposited by the undersigned into the controlled account at USBCDC set forth below. If USBCDC's transaction expenses near \$25,000, then USBCDC may request an additional deposit from the Project, which **must then be paid within 3 business days** or USBCDC may ask its attorney to suspend work until received. USBCDC shall have the right to apply the deposited funds to its third party transaction expenses, at any time after the Termination Deadline. The following are wiring instructions for the deposit:

Bank: U.S. Bank  
Account Name: U.S. Bancorp Community Development Corporation  
1307 Washington Avenue, Suite 300  
St. Louis, MO 63103  
ABA: 091000022  
Account #: 173103169541  
Reference: **Browning Public School District No. 9, #26665**

**Please contact me at [andrew.hammond@usbank.com](mailto:andrew.hammond@usbank.com) or 206.344.5489 when the deposit has been sent.** Such amount is non-refundable and will be credited to the project at closing of the investment.



**CONFIDENTIALITY:**

The terms and conditions of this Term Sheet shall be confidential and shall not be disclosed to any third party without the consent of USB CDC and the sponsor ("Parties"), except that the Parties may disclose the terms and conditions described in this Term Sheet, including its existence, to their respective officers, directors, employees, attorneys and other advisers, provided that such persons agree to the confidentiality restrictions contained herein.

**NON-DISCRIMINATION:**

In accordance with federal law and U.S. Department of the Treasury policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write to Department of Treasury, Office of Civil Rights and Diversity, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220 or call (202) 622-1160.

Thank you for giving USB CDC an opportunity to present these terms for the tax credit financing for the Project. I look forward to discussing the above terms with you at your convenience.

Sincerely,



Drew Hammond  
Vice President  
New Markets & Historic Tax Credit Investments

**Accepted this \_\_\_\_ day of \_\_\_\_\_, 2020  
By Browning Public School District No. 9**

By: \_\_\_\_\_  
Name:  
Its:

