

# **City of Scottsbluff, Nebraska**

**Monday, December 18, 2017**

**Regular Meeting**

## **Item Reports2**

**Council to consider the LB840 Economic Development Assistance grant for Inventive Media of Nebraska, LLC.**

**Staff Contact: Starr Lehl, Economic Development Director**

**City of Scottsbluff**  
**Economic Development Application Review Committee**  
**December 8, 2017**

A meeting of the Economic Development Application Review Committee was held on December 8, 2017, at 8:00 a.m. at City Hall, 2525 Circle Drive, Scottsbluff, NE.

The meeting was convened at 8:02 a.m. Present were Committee Members, Jim Trumbull, Dennis Hadden, Marla Marx, Hod Kosman and Lee Glenn. In attendance on behalf of the City were Program Administrator, Nathan Johnson, Deputy City Attorney, Rick Ediger, and City Economic Development Director, Starr Lehl.

Chairman Trumbull called the meeting to order and stated that a copy of the Nebraska Open Meetings Act is located on the South wall of the Council Chamber. There were no changes in the Agenda, nor were there any citizens with business not scheduled on the Agenda. However, it was decided to switch the order of items 6 and 7 on the Agenda.

It was moved by Marx and seconded by Hadden that the Minutes of the August 15, 2017 Committee Meeting be approved. Voting yes: Trumbull, Hadden, Marx, Kosman, and Glenn. Voting no: None.

The next order of business concerned an Application for assistance from Mitchell Health Center, Inc. ("MHC"). Present on behalf of the Applicant were Ron Ross, the President and CEO of the Applicant. Also present was Jeff Sprock, the Mitchell City Administrator. Mr. Ross presented on behalf of MHC. MHC is a professional employer organization whose sole purpose is to provide the employees for the Mitchell Care Center (owned by the City of Mitchell). The Mitchell Care Center is managed by Rural Health Development ("RHD"), of which Mr. Ross is also the president. Mr. Ross explained the reason for cash flow concerns that exist with respect to the Mitchell Care Center, due in part to the fact that a significant number of the residents are Medicaid patients. The City of Mitchell pays RHD a monthly fee to manage their property. Otherwise, the City of Mitchell pays all expenses and gets all income from the facility. From the City of Mitchell's perspective, the concern is that the Mitchell Care Center has not generated sufficient revenue to pay the annual bond payment remaining from the construction of the Care Center (five years remaining). The proposal from the Application is for funds to be used for employee benefits and to provide additional cash flow to enable MHC and RHD to provide cash flow for the City in making the bond payments.

Next was a presentation by Matt Larsen on behalf of Inventive Wireless of Nebraska d/b/a VistaBeam. Mr. Larsen explained that he currently has 17 full-time employees and is looking at adding an additional 10 employees in connection with the continued expansion of his business. If awarded, the grant would be used to fund the purchase of equipment for small cell infrastructure in smaller communities and to upgrade existing wireless broadband equipment. Much of the company's recent expansion has been to Mitchell, Morrill and Torrington, and an additional crew is needed to provide adequate service to the expanded areas.

Discussion was had by the committee concerning the Application of Mitchell Health Center. A significant concern was how any funds awarded to the Applicant could be used to provide additional funding to pay off the balance of the bond. The Committee was not interested in a situation where funding was provided for 5 years and additional funding would be required again. It was moved by Trumbull and seconded by Marx that the Committee table consideration of this matter until additional information can be obtained as to how the cash will flow between the City of Mitchell, MHC, and RHD, if a grant is awarded. Voting yes: Trumbull, Hadden, Marx, Kosman, and Glenn. Voting no: None.

Consideration was then given to the Application of VistaBeam. Kosman and Glenn indicated they had conflicts due to VistaBeams banking relationship with Platte Valley Companies. Deputy City Attorney Ediger also indicated that his firm had a conflict of interest as well. It was moved by Marx and seconded by Hadden that the Committee recommend that a Grant be awarded to Inventive Media in the amount of \$100,000. The Grant is made in consideration of 10 jobs to be added. The Applicant can earn credits in order to earn the Grant at the rate of \$2,000 per employee for 5 years (above the current base employee level of 17). Collateral for the repayment shall consist of a Guaranty from Matt Larsen and a Deed of Trust on the Applicant's headquarters building in Gering, subject to existing liens. Voting yes: Trumbull, Hadden and Marx. Voting no: None. Abstain: Kosman and Glenn.

Next, a draft of the City's proposed agreement outlining terms of any concerning involvement in the Gering industrial park was presented. The Committee will be given time to review the Agreement and it will be discussed at a later meeting.

The meeting was then adjourned at 9:27 a.m.

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Nathan Johnson, Program Administrator

## **ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT**

This Agreement is made on December \_\_\_, 2017, between the City of Scottsbluff, Nebraska (the “City”) and Inventive Wireless of Nebraska, L.L.C. (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 Scottsbluff Economic Development Fund (the “Fund”) as provided for in this Agreement. The City Council has approved the Committee’s recommendation.

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

### **Agreement:**

#### **1. Purpose of Grant:**

The Applicant’s business known as “Vistabeam” is continuing the expansion of its business (the “Business”). The Grant is to be used to fund to purchase of equipment for small cell infrastructure implementation and to upgrade wireless broadband equipment.

#### **2. Amount of Grant:**

The Grant shall be in the amount of \$100,000 (the “Grant Amount”) representing the addition of 10 employees. The Grant Amount shall be payable to the Applicant from the City of Scottsbluff Economic Development Fund (the “Fund”) at the Closing (as provided for below).

#### **3. Closing:**

The Grant Amount shall be scheduled as a claim at the next Council meeting following the signing of this Agreement. The “Closing” shall occur following the satisfaction of all conditions to Closing as provided for below, but no earlier than 5 business days after the Council meeting where the claim is approved.

#### **4. Possible Grant Repayment:**

The Grant Amount shall be subject to 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 July 1, 2018 (the “Effective Date”).

b. The term of this Agreement shall begin on the Effective Date and shall continue for 5 years from the 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 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 Applicant’s normal fringe benefit package. This normal fringe benefit package must, at the least, include a health insurance plan which provides for at least 75% of the premium for employee’s coverage to be paid by the Applicant.

b. “Eligible Full Time Employee” shall mean a Full Time Employee who: (1) primarily works in Scotts Bluff County, 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.

d. “Eligible FTE’s” shall mean the FTE’s calculated for a Year less 9 (allowing for a portion of the existing employees of the Applicant).

**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 Eligible FTE’s multiplied by \$2000.
- b. The amount of the Annual Job Credit may not exceed \$20,000 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. Grant Repayment:**

At the end of the Term, the total of the cumulative Annual Job Credits will be subtracted from the Grant Amount. Any balance shall be repaid to the Fund within 90 days of the end of the Term (the “Repayment”), and any amount not paid within this time period shall then carry interest at the rate of 7% per annum until paid. If there is no balance, then the Applicant shall be considered as having satisfied its obligations under the Grant and this Agreement and no repayment shall be due.

**8. 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 limited liability company organized and existing 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 they are bound.

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

**9. 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.

**10. Certification of the Applicant:**

The Applicant certifies to the City that it has not filed 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 unearned portion of the Grant is due and payable if the Applicant is awarded incentives under the Nebraska Advantage Act.

**11. 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) A Certificate or Letter of Good Standing from the Nebraska Secretary of State.

(2) A copy of the current and correct Articles of Organization and Operating Agreement of the Applicant certified by the secretary of the Applicant to be correct; and

(3) Certified resolution of the Members of the Applicant authorizing this Agreement and providing for signature authority.

d. In order to secure the Repayment, the Applicant shall have delivered to the City the following:

(1) A guaranty (the “Guaranty”) of Matthew M . Larsen which guaranties the Repayment.

(2) A Deed of Trust (the “Deed of Trust”) covering the real estate where the Business is located. The Deed of Trust shall be subordinate to prior deeds of trust being given to Platte Valley Bank, Scottsbluff, Nebraska, Panhandle Area Development District and the City of Gering.

e. The Applicant shall in all material respects have performed its obligations, agreements, and covenants contained in this Agreement to be performed by it, 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 of this Agreement shall constitute the Applicant’s representations that there has been no such material adverse change.

## **12. Annual Reports:**

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 (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 business 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.

## **13. Early Termination:**

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



b. The Administrator 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 Administrator.

c. In the event of a termination as described in this paragraph, the total of the Annual Job Credits as of the end of the Year immediately preceding the termination will be subtracted from the Grant Amount. This amount 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.

d. If the Annual Job Credit determined for any Year is less than 80% of the Maximum Annual Credit, then the Administrator may require repayment of the difference between that Year's Annual Job Credit and the Maximum Annual Credit. Any balance shall be repaid to the Fund within 30 days of written demand of the Administrator, and any amount not paid within this time period shall then carry interest at the rate of 7% per annum until paid. If the amount repaid pursuant to this subparagraph is later earned by the Applicant, then the City shall pay the amount so earned to the Applicant within 30 days of the determination by the Administrator that the amount previously repaid has been earned.

#### **14. Default:**

The Applicant shall be in default if any of the following happen:

a. Failure to comply with any of the terms of this 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 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 operate the Business within Scotts Bluff County, Nebraska.

e. The Applicant intentionally or materially misstates the Annual Job Credit on an Annual Report. A material misstatement shall be considered to have occurred if the Annual Job Credit claimed on the Annual Report exceeds 10% of Annual Job Credit as reasonably determined by the Administrator.

**15. 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 their interest in this Agreement without the consent of the Administrator. Assignment shall include a transfer of ownership which results in Matthew D. Larsen owning less than 51% of the stock in the Applicant.

**16. 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.

**17. 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, or by facsimile transmission combined with any of the above methods of notice, 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 Scottsbluff  
2525 Circle Drive  
Scottsbluff, NE 69361  
Fax: (308) 632-2916  
Attention: City Manager

b. If to the Applicant:

Inventive Wireless of Nebraska, L.L.C.  
1225 Sage Street  
Gering, NE 69341  
Attn: Matt Larsen

**18. 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.

City of Scottsbluff, Nebraska

Inventive Wireless of Nebraska, L.L.C.

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Matthew M. Larsen,  
Member & CEO