

# **City of Scottsbluff, Nebraska**

**Monday, April 16, 2018**

**Regular Meeting**

## **Item Reports6**

**Council to approve the Economic Assistance Agreement for American Doorstop Project Productions, LLC.**

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

## **ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT**

This Agreement is made on April \_\_\_, 2018, between the City of Scottsbluff, Nebraska (the “City”) and American Doorstop Project Productions, LLC (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 is producing a documentary film that honors and commemorates the lives of Nebraska’s most impactful national hall of fame thoroughbred horse trainers and breeders including the life of John A. Nerud, who was born and raised in Scotts Bluff County, Nebraska and whose story has not been told locally or regionally (the “Project”). The proceeds of the Grant will be used permitted expenses as outlined in the Application, to include the Nebraska Film Office Activity Registration Form.

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

The Grant shall be in the maximum amount of \$25,000 and shall be disbursed from the City’s Economic Development Fund (the “Fund”) to the Applicant as provided for below.

#### **3. Grant Disbursement:**

As soon as the Applicant has satisfied the conditions to the Grant Closing (as provided for below), the Applicant shall be eligible for reimbursement of expenses as permitted under the City’s Film Incentive Program Guidelines (the “Guidelines”). Reimbursement shall be subject to the following:

a. The Applicant shall submit a list of “Qualified Local Expenditures” that have been incurred by the Applicant with documentation and certification as required by the Guidelines.

b. For each list received, the City Finance Director shall make a preliminary determination as to whether the requested reimbursement is in compliance with the Guidelines.

c. When a reimbursement is requested, the amount shall be scheduled as a claim at the next Council meeting for which the request may be reasonably scheduled. Disbursement of the approved amount shall be made within 10 business days after the Council has approved a claim.

#### **4. 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, 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. The Applicant’s principal source of income is from the production of films, including feature, independent, and documentary films, commercials, and television programs.

c. 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.

d. 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 Grant Closing.

#### **5. Representations and Warranties of the City:**

The City represents and warrants the following, all of which shall survive the Grant 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.

#### **6. 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 Project. 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 balance of the Grant is due and payable if the Applicant is awarded incentives under the Nebraska Advantage Act.

#### **7. Conditions to Grant Closing:**

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

a. All representations and warranties of the Applicant shall be true as of the Grant Closing.

b. The final budget for the Project shall have been submitted as required by the Guidelines.

c. 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 Certificate of Organization and Operating Agreement of the Applicant certified by the members (the "Members") to be correct;

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

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 Grant Closing.

e. There shall have been no material adverse change in the operation or financial status of the Applicant and the Grant Closing shall constitute the Applicant's representations that there has been no such material adverse change.

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

#### **8. Review of Amounts Disbursed:**

The Administrator shall have the right at any time to obtain confirmation that all requested or reimbursed expenditures are Qualified Local Expenditures. In doing so, the Administrator may (i) require that the reimbursement requests 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 appropriate financial expert, to review the books and records of the Applicant pertaining to the reimbursements. If after a review or audit of the Applicant's records it is discovered that improper reimbursement requests exceed 10% of the reimbursed amount, then the Administrator may require the Applicant to reimburse the Fund for the actual cost of any audit conducted.

#### **9. Default:**

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

- a. Failure to comply with any of the terms of this Agreement, or the Guidelines 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 decides not to complete the Project.

In the event of a default by the Applicant, the City may terminate this Agreement, in which case no further reimbursements shall be made to the Applicant. In addition, any reimbursements made at the time of the default shall immediately be repaid to the City, together with interest at the rate of 7% per annum from the date that the Applicant is notified of the default.

e. The Applicant assigns or transfers 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 Members owning less than 51% of the ownership interests of the Applicant.

#### **10. 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.

## **11. 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 Scottsbluff  
2525 Circle Drive  
Scottsbluff, NE 69361  
Attention: City Manager

- b. If to the Applicant:

American Doorstop Project Productions, LLC  
PO Box 1681  
Scottsbluff, NE 69361  
Att: Jody L. Lamp

## **12. 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]*

**Signature Page to Economic Development Assistance Agreement between  
the City of Scottsbluff, Nebraska and American Doorstop Project Productions, LLC**

City of Scottsbluff, Nebraska

American Doorstop Project Productions,  
LLC

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

By: \_\_\_\_\_  
Jody L. Lamp, Member

By: \_\_\_\_\_  
Melody Dobson, Member



*Developing Solutions, Delivering Success*



**JOHN DEERE**

April 10, 2018

Mayor Randy Meininger and the Scottsbluff City Council  
City Hall  
2525 Circle Drive  
Scottsbluff, NE 69631

RE: LB840 Support – Documentary Film Production; Born to Rein

Dear Mayor and Scottsbluff City Council,

I am writing this letter of support in favor of utilizing LB840 monies for the documentary project identified by Jody Lamp and Melody Dobson of the American Doorstop Project. This documentary will share the accomplishments of local citizen, John Nerud.

I have lived in the area for over 30 years, been deeply involved in agriculture and was not aware of Mr. Nerud's success. His story has not been interpreted in our local museum exhibits or reflected in the "notable Nebraskans" from the Panhandle.

After learning about his acclaim, I am eager to hear more and am excited for the premiere of the documentary. American Doorstop Project is currently working and is in full production. They anticipate a spring 2019 launch.

Events for the premiere of the film will take place during the centennial celebration of the first Triple Crown winner who was Sir Barton, who later was a stallion at Fort Robinson's remount program. I was unaware of Nebraska's connection to this Triple Crown winner.

I am also glad to hear that the research being discovered will possibly become part of an exhibit at the Legacy of the Plains Museum for others to see and learn more of this "untold story."

Sincerely,

Owen Palm  
CEO, 21<sup>st</sup> Century Equipment  
Email: [opalm@21stCenturyEquip.com](mailto:opalm@21stCenturyEquip.com)  
Phone: 308-203-1322

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Alliance, NE • Bridgeport, NE • Burlington, CO • Cheyenne Wells, CO • Flagler, CO  
Ft Morgan, CO • Gordon, NE • Holyoke, CO • Imperial, NE • Ogallala, NE • Scottsbluff, NE  
Sidney, NE • Sterling, CO • Torrington, WY • Yuma, CO • Wray, CO



# KELLEYBEAN C O M P A N Y

April 10, 2018

Mayor; Randy Meininger and the Scottsbluff City Council  
City Hall  
2525 Circle Drive  
Scottsbluff, NE 69631

Kevin Kelley  
CEO, Kelley Bean  
Kelley Bean Corporate Office  
2401 Circle Drive  
Scottsbluff, NE 69631

RE: LB840 for support of documentary film; Born to Rein

Dear Mayor Meininger and the Scottsbluff City Council,

For over the past year, I have given my full support to the American Doorstop Project for the research and development of the "untold story" of John Nerud, who was born in this area in 1913, grew-up and graduated from Minatare High School.

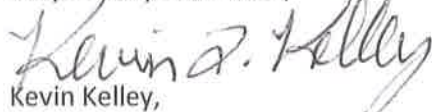
I was not aware of his life-time achievements until Jody Lamp and Melody Dobson, of the American Doorstop Project, gave me a presentation about the national and international impacts this gentleman had which stand today in the thoroughbred industry.

Also, I did not realize his success has gone unrecognized in our local historical and interpretive centers. I have met and introduced, Lamp and Dobson, to members of John's family, still living in the western panhandle. They have provided their blessing in commemorating John's accomplishments through the following; a documentary film, events during premiere showings in 2019, interpretive exhibits.

This documentary film titled "Born to Rein" is in the production and will provide our communities with timely narrative for today and help us pay tribute to one its great citizen sons.

I support the use of LB840 monies to assist in the production and development of this documentary which will add this "untold story" to our historical record.

Respectfully submitted,



Kevin Kelley,  
CEO, The Kelley Bean Company  
Email: [kkelley@kelleybean.com](mailto:kkelley@kelleybean.com)  
Phone: 308-635-6438