

City of Scottsbluff, Nebraska

Monday, November 19, 2018

Regular Meeting

Item Reports2

**Council to consider an Economic Development Agreement for
Bsquared Farming and Trucking, LLC.**

Staff Contact: Starr Lehl, Economic Development Director

City of Scottsbluff
Economic Development Application Review Committee
November 9, 2018

A meeting of the Economic Development Application Review Committee was held on November 9, 2018, at 8:00 a.m. at City Hall, 2525 Circle Drive, Scottsbluff, NE.

Present were Committee Members, Jim Trumbull, Dennis Hadden, Marla Marx, and Hod Kosman. Also attending was alternate Dave Schaff. Since there were four Committee Members present, alternate Schaff was designated to participate in all matters. In attendance on behalf of the City were City Economic Development Director, Starr Lehl, City Finance Director, Liz Hilyard, and Deputy City Attorney, Rick Ediger.

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.

It was moved by Marx and seconded by Hadden that the minutes of October 4, 2018 Committee Meeting be approved. Voting yes: Trumbull, Hadden, Marx, Kosman, and Schaff. Voting no: None.

An additional presentation, with information as requested, was made by Bsquared Farming and Trucking, LLC and SC Blanton Enterprises, Inc. Present on behalf of Bsquared and Blanton were Valerie Baker, Clifford Brabson, and Scott Blanton. Margaret Akin of the Nebraska Business Development Center also appeared on behalf of the Applicant. Since the October 4 meeting, the City had received information as to the 5 trucks that did not have liens on them that could be used for collateral. Bsquared valued those trucks at \$395,000 and Director Lehl consulted an outside source who valued them at \$370,000. However, there were some assumptions made by the outside source that would give indication that the Bsquared value was likely close. Questions were also asked as to the base employees to be used. Bsquared indicated that their base number of employees was 8 employees. Director Lehl was instructed to verify the number of employees of June 30, 2018, by obtaining appropriate tax returns to verify the base numbers.

After further discussion by the Committee, it was moved by Schaff and seconded by Marx that the Committee recommend approval of \$150,000 forgivable low-interest loan. The loan will be amortized over 4 equal annual payments with interest at the applicable Midterm Federal Rate in effect at the time the loan is closed. Annual Job Credits may be earned at the rate of \$2,000 per employee per year. Any difference between the credit earned and the annual payment will then be paid by the Applicant to the City. Job Credits will be given for the number of jobs created over the base number. The Job Credits may be earned effective January 1, 2019. The City shall have a first lien on all 5 trucks listed. In addition, the Guarantees shall be obtained from Valerie Baker, Clifford Brabson, and Scott Blanton. Voting yes: Trumbull, Hadden, Marx, Kosman, and Schaff. Voting no: None

Director Lehl indicated that City Manager Nathan Johnson, Ediger and she met with Herb Gibson, one of his partners, and his banker the day before in order to get clarification on building ownership and financing.

The meeting was then adjourned at 9:00 a.m.

Starr Lehl, Economic Development Director

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on November ___, 2018, between the City of Scottsbluff, Nebraska (the “City”) and Bsquared Farming and Trucking LLC (“Bsquared”) and S C Blanton Express, LLC (“Blanton”). Bsquared and Blanton are collectively referred to as the “Applicants”.

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 Applicants have 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 loan (the “Loan”) be made to the Applicants 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 Loan.

Agreement:

1. Purpose of Loan:

Bsquared is engaged in interstate over-the-road, long-haul flatbed trucking and fuel/propane distribution (the “Business”). Blanton owns most of the trucks and trailers that Bsquared uses in the Business (the “Equipment”) and leases the Equipment to Bsquared. The Applicants are headquartered at 220594 East Hwy 92, Gering, utilizing land and a building owned by Blanton. Bsquared’s business is growing, in particular with respect to shipping incoming components and/or ingredients and for outgoing products. It is incurring expenses for office equipment, shop equipment, expansion costs and working capital.

2. Amount of Loan:

The Loan shall be in the amount of \$150,000 and shall be disbursed from the City’s Economic Development Fund (the “Fund”) to the Applicants as provided for below. The Loan shall be represented by a promissory note (the “Note”) to be signed at the Loan Closing in the form of the attached Note. The Note shall carry interest from January 1, 2019 (the “Note Interest Date”) at the Applicable Federal Long Term rate for the month of the Loan Closing. Repayment shall be as set out below.

3. Loan Disbursement and Loan Closing:

As soon as the Applicants have satisfied the conditions to the Loan Closing, the amount of the Loan shall be scheduled as a claim at the next Council meeting for which the matter may be reasonably scheduled. Disbursement of the Loan proceeds shall be made within 10 business days after the Council has approved a claim for the Loan. The disbursement of the Loan proceeds shall constitute the "Loan Closing".

4. Job Credits:

As long as the Applicants are not in default of the Note, this Agreement, or any other document entered into pursuant to this Agreement, the Applicants shall be eligible for credit against the balance due under the Note for Job Credits earned during a Year. A "Year" shall mean the 12-month period ending on each December 31, with the first Year beginning January 1, 2019. "Annual Job Credits" shall be calculated as follows:

a. The Applicants are eligible to receive an Annual Job Credit during a Year equal to the Eligible FTE's for a Year multiplied by \$2000.

b. The amount of the Annual Job Credit may not exceed \$37,500 per Year (the "Maximum Annual Credit"). If the Applicants earn 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.

5. Note Repayment:

The Note shall be repayable as follows:

a. Upon receipt of an Annual Report, the City will make a preliminary review based on the Annual Job Credits claimed. The amount of the Annual Job Credits, adjusted for any adjustments from the preliminary review, shall then be applied against the principal of the Note.

b. The difference in the amount applied to the principal plus the interest due on the Note shall be paid to the City on or before April 1.

6. Employee Definitions:

a. "Full Time Employee" shall mean a bona fide employee of either of the Applicants who (1) are classified by the Applicants as full time; and (2) subject to normal and reasonable waiting periods, is eligible for the employer's normal fringe benefit package. The normal fringe benefit package must, at the least, include a health insurance plan which provides for employee coverage with 50% paid by either of the Applicants.

b. "Eligible Full Time Employee" shall mean a Full Time Employee who:
(1) primarily works within the City, 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, 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 number arrived at by dividing the total hours paid by the Applicants to their 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 Eligible Full Time Employee shall not exceed 40 hours per week. Salaried employees shall be presumed to have been paid on the basis of 40 hours per week.

a. “Eligible FTE’s” shall mean the FTE’s calculated for a year less 8.

7. Representations and Warranties of the Applicants:

The Applicants represent and warrant the following, all of which shall survive the Closing:

a. Bsquared is a limited liability company organized, existing, and in good standing under the laws of Texas, and is qualified to do business in Nebraska. Bsquared has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. Bsquared’s execution, delivery and performance of this Agreement have been authorized by all necessary action on the part of Bsquared. This Agreement, and each agreement and instrument delivered by Bsquared pursuant to it, is the legal and binding obligation of Bsquared, enforceable against Bsquared in accordance with its terms.

b. Blanton is a limited liability company organized, existing, and in good standing under the laws of Nebraska. Blanton has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. Blanton’s execution, delivery and performance of this Agreement have been authorized by all necessary action on the part of Blanton. This Agreement, and each agreement and instrument delivered by Blanton pursuant to it, is the legal and binding obligation of Blanton, enforceable against Blanton in accordance with its terms.

c. No representation or warranty made by the Applicants 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 Applicants 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 Applicants are a party or by which they are bound.

All representations and warranties made by the Applicants shall survive the Loan Closing.

8. Representations and Warranties of the City:

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

9. Conditions to Loan Closing:

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

a. All representations and warranties of the Applicants shall be true as of the Loan Closing.

b. Bsquared shall have delivered to the City:

(1) Evidence of Good Standing of Bsquared from the Nebraska Secretary of State.

(2) A copy of the current and correct Articles of Organization and Operating Agreement of Bsquared certified by a Member of Bsquared to be correct;

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

c. Blanton shall have delivered to the City:

(1) Evidence of Good Standing of Blanton from the Nebraska Secretary of State.

(2) A copy of the current and correct Articles of Organization and Operating Agreement of Blanton certified by a Member of Blanton to be correct;

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

d. In order to secure the Loan, the Applicants shall have delivered to the City the following:

(1) a guaranty (the “Guaranty”) of Scott C. Blanton, Clifford Brabson, and Valerie Baker. The form of the Guaranty is attached.

(2) a security agreement (the “Security Agreement”) covering a portion of the Applicants’ Equipment. The form of the Security Agreement is attached.

e. The Applicants shall in all material respects have performed their obligations, agreements, and covenants contained in this Agreement to be performed by them, on, or before the Loan Closing.

f. There shall have been no material adverse change in the operation or financial status of the Applicants and the Loan Closing shall constitute the Applicants’ representations that there has been no such material adverse change.

g. In requesting the disbursement of the Loan, the Applicants are considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

10. Annual Reports:

If the Applicants desire to claim Job Credits, the Applicants 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 for the Year (the “Annual Report”). The Administrator shall have the right at any time to (i) require that the Annual Reports be reviewed at the Applicants’ 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 Applicants 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 Applicants’ 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 Applicants to reimburse the Fund for the actual cost of the audit.

11. Default:

The Applicants shall be in default in this Agreement and the Note if any of the following happen:

a. Failure to comply with any of the terms of this Agreement, the Note, the Security Agreement or the Guaranty to include an assignment not permitted under this Agreement.

b. Any warranty, representation or statement made or given to the City by the Applicants proves to have been false in any material respect when made or given.

c. Dissolution or liquidation of any of the Applicants, the termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or bankruptcy of the Applicants.

d. Either of the Applicants cease to conduct their Business or moves their Business outside of the City.

12. Assignability:

The Administrator may assign his interest in this Agreement to any successor administrator designated by the City Council. The Applicants may not assign or transfer its interest in this Agreement without the consent of the Administrator. Assignment shall include a transfer of ownership of the Applicants which results in the Members owning less than 51% of the LLC interests of the Applicants.

13. 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 Applicants 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.

14. 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 Applicants:

Bsquared Farming and Trucking LLC
220594 East Hwy 92
Gering, NE 69341
Attention: Valerie Baker

S C Blanton Express, LLC
220594 East Hwy 92
Gering, NE 69341
Attention: Valerie Baker

15. 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 Bsquared Farming and Trucking LLC, and
S C Blanton Express, LLC.**

City of Scottsbluff, Nebraska

Bsquared Farming and Trucking LLC

By: _____
Economic Development
Program Administrator

By: _____
Valerie Baker, Member

By: _____
Scott Blanton, Member

S C Blanton Express, LLC

By: _____
Scott Blanton, Member