City of Scottsbluff, Nebraska

Wednesday, February 12, 2020

Regular Meeting

Item 1

Receive Information and Consider Approval of Economic Development Agreement with Prime Metal Products.

Staff Contact: Starr Lehl

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on February _____, 2020, between the City of Scottsbluff, Nebraska (the "City") and Prime Metal Products, Inc. (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 loan (the "Loan") 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 Loan.

Agreement:

1. Purpose of Loan:

The Applicant is establishing a business at _____, Gering, which will be engaged in the manufacture, distribution and installation of HVAC duct systems and related sheet metal fabrication (the "Business"). The proceeds of the Loan will be used primarily for the construction of leasehold improvements for the relocated Business.

2. Amount of Loan:

The Loan shall be in the amount of $1,500,000 and shall be disbursed from the City's Economic Development Fund (the "Fund") to the Applicant 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 not carry interest until July 1, 2023 (the "Note Interest Date"), at which time the balance of the loan shall accrue interest at the Applicable Federal Mid-Term rate on the Note Interest Date. Repayment shall be as set out below.

3. Loan Disbursement and Loan Closing:

Following approval of this Agreement, the amount of the Loan shall be scheduled as a claim at the next Council meeting for which the matter may be reasonably scheduled. Following claim approval by the Council, once the Applicant has satisfied all conditions to Closing, disbursement of the Loan proceeds shall be made within 10 business. The disbursement of the Loan proceeds shall constitute the "Loan Closing".

4. Job Credits:

As long as the Applicant is not in default of the Note, this Agreement, or any other document entered into pursuant to this Agreement, the Applicant 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 June 30, with the first Year beginning July 1, 2020. Provided, however, job credits earned for the partial Year of April 1, 2020 to June 30, 2020 may be applied to this balance of the Note as well. "Annual Job Credits" shall be calculated as follows:

a. The Applicant is eligible to receive a "Base Annual Job Credit" during a Year equal to the FTE's for a Year multiplied by $2,000.

b. If at the end of a Year, (1) the Annual Report (as provided for below) indicates that the Applicant has any FTE's that have average earnings for the Year of at least (i) $14 per hour in the case of hourly employees, or (ii) $29,120 in the case of salaried employees, and (2) such employees are eligible for the Applicant's fringe benefit plan, then the Applicant may earn additional job credits (the "Additional Annual Credits") as calculated on a per employee basis based on the following table:

Additional Credit	Hourly Rate (Based on 2080 hours)	Annual Salary
$400	$14.00 to $17.99	$29,120 to $37,439
$800	$18.00 to $21.99	$37,440 to $45,759
$1,200	$22.00 to $25.99	$45,760 to $54,079
$1,600	$26.00 to $29.99	$54,080 to $62,399
$2,000	$30.00 and above	$62,400 and above

In calculating the hourly rate or salary rate for purposes of the above table, the Applicant is entitled to add the hourly equivalent or annual cost of the following fringe benefits provided to

the applicable employee by the Applicant: 401k Plan, profit sharing, pension or equivalent retirement benefits, health insurance, and life and disability insurance.

c. For purposes of this Agreement, Annual Job Credit shall mean the total of the Base Annual Job Credits and the Additional Annual Credit.

d. The cumulative Job Credits earned by the Applicant before the Note Interest Date shall be applied against the Loan on the Note Interest Date. Thereafter, the amount due on the Loan shall be repaid as provided for below.

5. Note Repayment:

The Note shall be repayable as follows:

a. Upon receipt of Annual Reports for all Years occurring before the Note Interest Date, the City will make a preliminary review based on the cumulative Job Credits claimed. The amount of the cumulative Annual Job Credits earned before the Note Interest Date, adjusted for any adjustments from the preliminary review, shall then be applied against the principal of the Note, effective on the Note Interest Date.

b. After applying the cumulative Annual Job Credits earned by the Applicant before the Note Interest Date, the City shall then amortize the amount due on the Note over 10 years, payable with annual payments on July 1 of each Year and accruing interest at the Applicable Federal Mid-Term rate on the Note Interest Date. The first payment shall be due and payable on July 1, 2024. Upon receipt of the Annual Report, all Annual Job Credits earned for the Year before the payment date shall first be applied to the annual amount owed, and the balance shall be paid to the City by the Applicant on or before the following October 1. After some time, it is anticipated that the Applicant may earn Annual Job Credits in excess of the annual payment amount, and any excess may be applied by the Applicant to the principal of the Note; there is not penalty for prepayment. All credits awarded and all amount received shall first be applied to accrued interest, and then to principal of the Note.

6. 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 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 a significant contribution made by the Applicant.

b. "Eligible Full Time Employee" shall mean a Full Time Employee who: (1) primarily works within the City, or (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 Applicant 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.

7. 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 corporation 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. 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 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 Applicant's fulfillment of each of the following conditions at or prior to the Loan Closing:

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

b. 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 Articles of Incorporation and Bylaws of the Applicant certified by the Secretary of the Applicant to be correct;

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

c. The Applicant shall have received loans from Western States Bank as indicated in the Application.

d. The Applicant shall have received funds from the City of Gering CDBG reuse funds as indicated in the Application.

e. The Applicant shall have executed a lease agreement for a facility in Gering, Nebraska, of a term no less than 5 years.

f. In order to secure the Loan and the Repayment, the Applicant shall have delivered to the City the following:

(1) a joint and several guaranty (the "Guaranty") of the following owners of the Applicant: Herb Gibson, Jill Gibson, Joe Bergman, and Mike Myers, ~~and ECB Corp. d/b/a Omni Duct Systems~~.

(2) a security agreement (the "Security Agreement") covering the Applicant's equipment, inventory, accounts, and other personal property which shall be second in

priority to the Applicant's primary lender, Western States Bank. The form of the Security Agreement is attached.

g. 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 Loan Closing.

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

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

10. **Annual Reports:**

If the Applicant desires to claim Job Credits, 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 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 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.

11. Default:

The Applicant 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 Applicant proves to have been false in any material respect when made or given.

c. The Applicant ceases to conduct its Business or moves its Business outside of Scotts Bluff County, Nebraska.

d. 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.

12. 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 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 Partners owning less than 51% of the ownership interests of the Applicant.

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 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.

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 Applicant:

Prime Metal Products, Inc.
54 Berwick Place
Mahtomedi, MN 55115
Attention: Herb Gibson

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 Prime Metal Products, Inc.

City of Scottsbluff, Nebraska

By: _____
Economic Development
Program Administrator

Prime Metal Products, Inc.

By: _____
Herb Gibson, President