

# **City of Scottsbluff, Nebraska**

**Monday, June 7, 2021**

**Regular Meeting**

## **Item Reports2**

**Council to discuss and consider action on the Economic  
Development Assistance Agreement for Prime Metals, Inc.**

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

## **ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT**

This Agreement is made on June 7, 2021, 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 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 primary manufacturing plant is located in Gering, Nebraska. The Applicant is expanding its business for a headquarters, drafting, sales, and accounting facility in Scottsbluff, Nebraska (the “Business”). The Applicant’s principal source of income is the manufacture, distribution, and installation of HVAC duct systems and related sheet metal fabrication out of the Gering, Nebraska facility. The Applicant has applied to the Program for a grant for the purchase and establishment of the Business in Scottsbluff, Nebraska. The proceeds of the Grant (as defined below) will be used primarily for the construction and establishment of the Business in Scottsbluff, Nebraska.

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

The Grant shall be in the amount of \$750,000 and shall be disbursed from the City’s Economic Development Fund (the “Fund”) to the Applicant as provided for below. The Grant shall be represented by a promissory note (the “Note”) to be signed at the Grant Closing in the form of the attached Exhibit A. The Note shall not carry interest. Repayment and the application of job credits against the outstanding amount of the Grant shall be as set out below.

### **3. Grant Disbursement and Grant Closing:**

a. Following approval of this Agreement, \$500,000 will be scheduled as a claim at the next Council meeting for which the matter may be reasonably scheduled. Following claim approval of \$500,000 by Council, and if the Applicant has satisfied all conditions to Closing, disbursement of \$500,000 shall be made within 10 business days. The disbursement of the Grant proceeds shall constitute the “Grant Closing”.

b. After January 1, 2023, the Applicant may request, in writing, the remaining \$250,000 of the Grant for the purposes of expanding and outfitting the Business in Scottsbluff, Nebraska. Upon receipt of such request, \$250,000 shall be scheduled as a claim at the next Council meeting for which the matter may be reasonably scheduled. Following claim approval of \$250,000, and if the Applicant has satisfied all conditions to Closing and is not in default of this Agreement or any document executed pursuant to this Agreement, disbursement of \$250,000 shall be made within 10 business days.

### **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 December 31, with the first Year beginning January 1, 2022. “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 Eligible 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 Eligible 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:

<u>Additional Credit</u>	<u>Hourly Rate (Based on 2080 hours)</u>	<u>Annual Salary</u>
\$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 Grant shall earn Annual Job Credits for the ten (10) Years, beginning January 1, 2022. After the tenth (10<sup>th</sup>) Year of earning Annual Job Credits, the balance due on the Note, if any, shall be repaid by the Applicant to the Fund.

## **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 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 (1) who (a) primarily lives in the City, or (b) resides within 60 miles of the corporate limits of the City; and (2) works primarily at the Business headquarters and drafting facility in Scottsbluff, Nebraska. 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 2,080 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.

d. Eligible FTE's shall mean the FTE's calculated for a Year, less 2. The Applicant understands that the Applicant is the recipient of another grant from the Program for the Gering, Nebraska facility pursuant to a February 18, 2020 agreement (the "Gering Agreement"), and that the Applicant has obligations under that Gering Agreement for job creation of approximately 70 FTE's for the fabrication facility, . The Applicant anticipates that 2 employees from the fabrication facility will be relocated to the Business in Scottsbluff, Nebraska, and that as such the Applicant will not be provided Eligible FTE credit for 2 FTE's. Outside of the 2 FTE's moving

to the Business in Scottsbluff, Nebraska, the Applicant further understands and acknowledges that the terms of this Agreement will not amend or modify the FTE obligations and credits for the Gering Agreement or the fabrication facility, and that the Applicant may not include FTE's for this Business in Scottsbluff, Nebraska towards FTE credits on the Gering Agreement associated with the fabrication facility.

#### **6. 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.

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

#### **7. 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 have 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.

**8. 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 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.
  - (4) Updated and current personal financial statements of all shareholders of the Applicant, executed and verified by each shareholders of the Applicant, which personal financial statements are materially similar in terms of net worth to the personal financial statements upon which the City required personal guaranties for the Gering Agreement associated with the fabrication facility.
- c. The Applicant shall have received new loan approval and a loan closing from Platte Valley Bank in the amount of \$1,000,000.00, as indicated in the Application.
- d. The Applicant, or its affiliate, shall have closed on the real estate purchase for the Business in Scottsbluff, Nebraska, and shall have received seller-financing related to the real estate purchase.
- e. In order to secure the Grant, the Applicant shall have delivered to the City the following:
  - (1) a joint and several guaranty (the "Guaranty") of the all the owners of the Applicant, in a form agreeable to the City. The form of the Security Agreement is attached as Exhibit B.
  - (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, Platte Valley Bank. The form of the Security Agreement is attached as Exhibit C.

(3) a deed of trust (the “Deed of Trust”) on the real estate of the Applicant’s Business in Scottsbluff, Nebraska, which shall be junior in priority only to the deed of trust associated with the seller-financing of the real estate. The form of the Security Agreement is attached as Exhibit D.

f. 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.

g. 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.

h. 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.

## **9. Annual Reports:**

If the Applicant desires to claim Annual 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.

## **10. 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, the Deed of Trust, 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.

**11. 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 current shareholders owning less than 51% of the ownership interests of the Applicant.

**12. 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.

**13. 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.  
220757 NE Hwy. 92  
Gering, NE 69341  
Attention: Herb Gibson



**14. 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

Prime Metal Products, Inc..

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

By: \_\_\_\_\_  
Herb Gibson, President