

City of Scottsbluff, Nebraska

Monday, April 18, 2022

Regular Meeting

Item Reports1

Council to discuss and consider action on the Economic Development Assistance Agreement with Prime Metal Products, Inc.

Staff Contact: Starr Lehl, Economic Development Director

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on April 18, 2022, 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 two previous applications for assistance from the Program, both of which have been funded pursuant to an Economic Development Assistance Agreement dated February 15, 2020 (the “Commercial and Industrial Business Agreement”) and an Economic Development Assistance Agreement dated June 7, 2021 (the “Scottsbluff Headquarters Agreement”). This Agreement is not intended to act as a novation or replacement of either the Commercial and Industrial Business Agreement or the Scottsbluff Headquarters Agreement, or both, and each agreement shall have its own full force and effect, except as stated herein.

c. The Applicant has made additional application for assistance from the Program pursuant to the Agreement (the “Application”);

d. 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;

e. 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 current principal source of income is the manufacture, distribution, and installation of HVAC duct systems and related sheet metal fabrication out of its Gering, Nebraska facility, for commercial and industrial construction. The Applicant has received assistance from the Program for that business under the Commercial and Industrial Business Agreement. The Applicant desires to expand into the HVAC manufacturing and production of building materials for residential construction (the “Residential Manufacture Business”). The Application requests a grant for the purchase and establishment of assets and working capital for expansion into the Residential Manufacture Business. The proceeds of the Grant (as defined

below) will be used primarily for the purchase and establishment of assets and working capital of the Residential Manufacture Business.

2. Amount of Grant:

The Grant shall be in the amount of \$1,000,000 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 a 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. Provided that the Applicant is not in default of this Agreement, the Commercial and Industrial Business Agreement, or the Scottsbluff Headquarters Agreement, the remaining \$500,000 of the Grant shall be scheduled as a claim at a Council meeting of the City before July 1, 2023, on a date at the discretion of the City. Following claim approval of \$500,000, if the Applicant has satisfied all conditions to Closing and is not in default of this Agreement, the Commercial and Industrial Business Agreement, or the Scottsbluff Headquarters Agreement or any document executed pursuant to this Agreement or the Commercial and Industrial Business Agreement and the Scottsbluff Headquarters Agreement, disbursement of \$500,000 shall be made within 10 business days of Council claim approval.

4. Job Credits:

As long as the Applicant is not in default of this Agreement, the Commercial and Industrial Business Agreement, or the Scottsbluff Headquarters Agreement or any document executed pursuant to this Agreement or the Commercial and Industrial Business Agreement and the Scottsbluff Headquarters 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 March 31, with the first Year beginning April 1, 2023. "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 ten (10) Years, beginning April 1, 2023. After the tenth (10th) 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) is classified as a full-time employee for the Applicant's Residential Manufacture Business and not as an employee under the Commercial and Industrial Business Agreement or the Scottsbluff Headquarters Agreement. 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. The Applicant understands that the Applicant is the recipient grants from the Program under the Commercial and Industrial Business Agreement (referred to previously as the “Gering Agreement”) or the Scottsbluff Headquarters Agreement, and that the Applicant has obligations under both the Commercial and Industrial Business Agreement or the Scottsbluff Headquarters Agreement for job creation of approximately 70 FTE’s under the Commercial and Industrial Business Agreement and 22 FTE’s under the Scottsbluff Headquarters Agreement. The Applicant further understands and acknowledges that the terms of this Agreement will not amend or modify the FTE obligations and credits for the Commercial and Industrial Business Agreement or the Scottsbluff Headquarters Agreement, and that the Applicant may not include FTE’s for this the Residential Manufacture Business towards FTE credits on the Commercial and Industrial Business Agreement or the Scottsbluff Headquarters Agreement, or vice versa.

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 Commercial and Industrial Business Agreement and the Scottsbluff Headquarters Agreement.

c. The Applicant shall have received new loan approval and a loan closing from Platte Valley Bank in the amount of at least \$1,000,000.00, as indicated in the Application.

d. The Applicant has executed a new lease or lease amendment at its Gering, Nebraska facility for the Residential Manufacture Business expansion, and such lease provides for a definite term of no less than 5 years.

e. The Applicant has received a funding commitment from the State of Nebraska, CDBG funds, approved by the City of Gering, Nebraska, in the amount of at least \$1,000,000, as indicated in the Application.

f. 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.

g. The Applicant shall in all material respects have performed its obligations, agreements, and covenants contained in this Agreement and the Commercial and Industrial Business Agreement or the Scottsbluff Headquarters Agreement, to be performed by it, on or before the Grant Closing.

h. 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.

i. 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 actual 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, or the Guaranty to include an assignment not permitted under this Agreement;
- b. Failure to comply with the terms of the Commercial and Industrial Business Agreement or the Scottsbluff Headquarters Agreement, and all agreements and documents executed pursuant thereto.
- c. 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.
- d. The Applicant (1) ceases to conduct its Business, (2) moves its Business outside of Scotts Bluff County, Nebraska, or (3) reports less than 5 FTEs for the Residential Manufacture Business pursuant to the terms of this Agreement in any one Year.
- e. 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.
- f. Upon default, the City may accelerate all amounts due under obligations incurred pursuant to this Agreement, the Commercial and Industrial Business Agreement or the Scottsbluff Headquarters Agreement, providing job credits as earned for any partial year in which such default occurs, may demand payment in full of all such obligations, and may enforce any rights it may have under any applicant guaranty, deed of trust, or security agreement executed by the Applicant or the guarantors, collateral pledgers, or owners 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

CITY OF SCOTTSBLUFF
ECONOMIC DEVELOPMENT APPLICATION REVIEW COMMITTEE
March 23, 2022

A meeting of the Economic Development Application Review Committee was held on March 23, 2022 at 10:00 a.m. at City Hall, 2525 Circle Drive, Scottsbluff, Nebraska.

Present were Committee members Dave Schaff, Marla Marx, and Nate Merrigan. Also present were Elizabeth Loutzenhiser, Interim co-City Manager and Finance Director and Adam A. Hoelsing, Deputy City Attorney.

The meeting was called to order by Chairman Merrigan at approximately 10:15 a.m.

Merrigan announced that a copy of the Nebraska Open Meetings Act is posted on the back wall of the meeting room.

It was moved by Member Marx and seconded Member Schaff to approve the Minutes of the March 11, 2022 Application Review Committee Meeting. Voting yes: Schaff, Marx and Merrigan. Voting no: None.

The next item on the agenda was the consideration of a modification or extension of the economic development assistance agreement with the Original Equipment Co. ("Aulick's") and the City dated September 21, 2020. The Applicant was represented at the meeting by Austin Aulick. Mr. Aulick stated that Aulick's was having difficulty hiring and retaining full-time employees. Labor force has been an issue, although the level of manufacturing and anticipated expansion pursuant to the September 21, 2020 agreement had met all targets. Under the September 21, 2020 agreement, Aulick's is required to pay a portion of each amortized annual amount due which is not earned through job credits, and originally Aulick's anticipated attaining enough job credits to earn the full amount due each year. That has not occurred. Aulick's requested a modification of the September 21, 2020 agreement so that annual payment are not due, annual job credits are applied to the balance owed each year for the remaining 9 years of the agreement, and any remaining unearned amount of the assistance is repaid at the end of the 9 year term. It was moved by Member Marx and seconded by Member Schaff to recommend an agreement modification as requested by Aulick's. Voting yes: Schaff, Marx and Merrigan. Voting no: None.

The next item on the agenda was the consideration of an Application for Economic Development Assistance submitted by Prime Metal Products, Inc. The President of Prime Metal Products, Herb Gibson, was in attendance. The committee had previously received personal financial information of Prime Metals Products, Inc. and the owners, including personal financial statements, tax returns, market share, and it was moved by member Schaff and seconded by Member Marx to enter closed session at approximately 10:40 to protect the public interest and the program's promise of applicant financial information confidentiality within economic development program, in order to discuss such financial information as it related to the application. Voting yes: Schaff, Marx and Merrigan. Voting no: None.

The committee existed close session at 11:00 AM. Thereafter, the committee members discussed the employment growth of the applicant, the foreseeable time-table of expansion for the applicant's residential HVAC sheet-metal component, the separation of employees within the application between commercial and industrial HVAC sheet-metal and residential HVAC sheet-metal. Also discusses was the status and amount of the current economic development fund, as well as other projects on the horizon presenting the same or similar job opportunities as Prime Metals Products, Inc. Following further discussion, it was moved by member Schaff and seconded by member Marx to recommend the following assistance be offered to Prime Metals Products, Inc. for expansion into residential HVAC sheet-metal: (1) \$1,000,000 in total assistance, payable in two halves; \$500,000 soon after closing and \$500,000 on or about July 1, 2023; (2) job credits of \$2,000 per FTE with enhanced credit opportunities as determined by the practice of the economic development program for higher earning jobs; (3) a job credit effective date of April 1, 2023, and a ten year term after April 1, 2023 in which to earn job credits against the \$1,000,000 assistance provided; (4) assistance would continue to be secured by a security agreement in favor of the City and guarantors of the owners of Prime Metals Products, Inc., and (5) job credits on all previous economic development agreements of the applicant would continue to be separate and the applicant was be expected to earn job credits or pay back amounts owed under such previous economic development agreements.

Voting yes: Schaff, Marx and Merrigan. Voting no: None.

The Meeting was thereafter adjourned at approximately 11:15 a.m.

Starr Lehl, Economic Development Director