

City of Scottsbluff, Nebraska

Tuesday, May 3, 2022

Regular Meeting

Item 1

Review and Approve Recommendation to City Council Regarding Modification of Loan Terms with Western Farms, LLC Following Business Closure.

Staff Contact: Starr Lehl Economic Development Director

Western Farms, LLC Loan Modification

Western Farms, LLC was originally extended Program assistance of \$434,000.00, per the terms of an EDA Agreement with the City, repayable in three annual payments, the first being due June 1, 2021. Job credits were available and could be applied to the annual payment amounts. Following the application of job credits after the 2020 calendar year, the annual payment was made by Western Farms by June 1, 2021, leaving a balance of \$289,875.61 as of June 1, 2021.

The terms of the EDA Agreement require a 30-day notice of default and an opportunity to cure. In November of 2021, through discussions with various parties, the City believed that Western Farms was no longer operating a business (as is required under the EDA Agreement) and it notified Western Farms of the default, providing a 30-day notice to cure.

Western Farms then corresponded with City staff and the City attorney's office, disputing the default and suggesting that Western Farms continued its efforts to market seed and seedling inventory for the 2022 growing season.

In response, City staff and the City attorney's office reviewed and inspected the Western Farms facility in early February 2022. At that time, Western Farms was reporting 2 employees; one a business manager and another a front-desk staff position for CBD retail products. During the inspection, it appeared that all collateral of the City remained intact and that the Western Farms facility was generally operational.

As a follow-up, the City again requested an inspection of the Western Farms facility in April of 2022, to determine if seedling inventory was being grown for sale and transplanting in the 2022 growing season. Additionally, the City demanded Western Farms' jobs report for the Year 2021, which was due at the end of February 2022 but at that time the City had not received.

In response to this additional request, Western Farms has offered the following loan modification terms in order to settle any dispute or ongoing default of the EDA Agreement:

1. Payment of the June 2022 installment as scheduled (in the amount of \$145,916.87) after application of the 2021 job credits, which the City as determined to be \$5,400.
2. Payment of all remaining amounts owed under the EDA Agreement (approximately \$145,000.00) no later than December 15, 2022.
3. The current interest rate (0.45%) under the EDA Agreement will remain the same until December 15, 2022, and the City will not apply the 7.0% default rate.

City staff is agreeable to these terms, and is requesting that the Committee recommend the same to the City Council. The City attorney's office is preparing a loan modification agreement to be reviewed and approved by both parties and presented to City Council for the May 16, 2022 council meeting.

The City will continue to maintain its first-position lien on all personal property collateral of Western Farms, LLC and Western Farms Seed, LLC, and the City will continue to maintain its second-position deed of trust the real estate involved. The City will likewise continue to hold the guarantees of all five original members of Western Farms, LLC.