

City of Scottsbluff, Nebraska

Monday, December 5, 2022

Regular Meeting

Item Reports1

Council to discuss and consider action on the Economic Development Assistance Agreement with Anderson-Shaw Construction, Inc. and authorize the Economic Development Program Administrator to sign the Agreement.

Staff Contact: Starr Lehl, Economic Development Director

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on November 30, 2022, between the City of Scottsbluff, Nebraska (the “City”) and Anderson-Shaw Construction, Inc., a Nebraska corporation (the “Applicant”).

Recitals:

a. The City has adopted an Economic Development Program (the “Program”) pursuant to the Nebraska Local Option Municipal Economic Development Act;

b. The Applicant has made application for assistance from the Program, as amended (the “Application”);

c. The Administrator of the Program (the “Administrator”) and the City Economic Development Program Application Review Committee (the “Committee”) have reviewed the Application and recommended to the City Council (the “Council”) that assistance totaling \$257,000 (the “Loan”) be made to the Applicant from the City’s Economic Development Fund (the “Fund”), as provided for in this Agreement. The City Council has accepted the recommendations.

d. The parties now desire to enter into this Agreement for the purpose of setting out the terms and conditions of the Loans.

Agreement:

1. Purpose of the Loans:

The Applicant is an existing business located in Scotts Bluff County, Nebraska, engaging in the sale of services in interstate commerce, particularly the construction and contractor trade in Nebraska and Wyoming (the “Business”). The proceeds of the Loan will be used for working capital of the business following a recent change of ownership the Business, which capital is necessary to bond for projects and continuing as a going concern following the business acquisition by the current owner of the Applicant.

2. Description of the Loan and Repayment:

The Loan shall be in the amount of \$257,000 and shall be disbursed from 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 Closing. With respect to the Note:

a. The Note shall carry interest from January 1, 2023 (the “Note Interest Date”) at the federal applicable mid-term rate for January 2023.

b. The Note shall be repaid over five (5) equal annual amortized payments of principal and interest. The first payment shall be due 60 days after the first anniversary of the Job Credit Effective Date (defined below), with each additional payment due on the same day of each subsequent Year until the Note is paid in full. If not sooner paid, the balance of the Note shall be payable on the 5th anniversary of the Job Credit Effective Date.

c. Upon Receipt of each Annual Report (as provided for below), the City will make a preliminary review based on the Job Credits claimed. The amount of the Job Credits, adjusted for any adjustments from the preliminary review, shall then be applied against the payment due on the Note. The difference in the amount applied to the principal, plus the interest then accrued on the Note, shall be paid to the City on the payment date as provided for above.

3. Closing and Disbursement:

The Loan shall be scheduled as a claim at a Council determined in the discretion of the City following the approval of this Agreement. The “Closing” shall occur at a reasonable time, after claim approval and following the satisfaction of all conditions to Closing as provided for below.

4. Job Credit Effective Date and Term:

The Applicant may earn “Job Credits” to be applied against the balance of the Loan (and each annual payment) during the five Years following the Job Credit Effective Date. In connection with the calculation of the Job Credits:

a. The effective beginning date for Job Credit calculation purposes shall be the Job Credit Effective Date. The Job Credit Effective Date shall be October 1, 2022.

b. The term for earning Job Credits shall begin as of the Job Credit Effective Date and shall expire five (5) Years after the Job Credit Effective Date (the “Job Credit Term”), ending September 30, 2027.

c. A “Year” shall mean a 12-month period beginning October 1, 2022 and ending as of the day prior to each annual anniversary of the Job Credit Effective Date.

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 Applicant's normal fringe benefit package.

b. “Eligible Full Time Employee” shall mean a Full Time Employee who: (1) primarily works at the Business, and (2) resides within 60 miles of the corporate limits of the Business; provided, however any Full Time Employee who does not reside within 60 miles of the corporate limits of the Business at the time that the Full Time Employee is hired by the Applicant, 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 total of (i) the number of Eligible Full Time Employees which are paid based on a salary, plus (ii) with respect

to hourly Eligible Full Time Employees, the number arrived at by dividing the total hours paid by the Applicant to its hourly 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 hourly Eligible Full Time Employee shall not exceed 2,080 hours.

d. “Eligible FTE's” shall mean the FTE’s calculated for a Year, less 11. It is anticipated that five (5) Eligible FTE’s may be created, over the current 11 FTE’s

6. Job Credits:

Job Credits shall be calculated as follows:

a. The Applicant shall receive an “Annual Job Credit” for the previous Year of the Job Credit Term as follows equal to the Eligible FTE’s of the Applicant during that previous Year, multiplied by \$2,000. If the Applicant fails to provide an Annual Report when required by this Agreement, the full amortized payment of the Loan shall be due for that Year without application of the Job Credits.

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
\$1200	\$22.00 to \$25.99	\$45,760 to \$54,079
\$1600	\$26.00 to \$29.99	\$54,080 to \$62,399
\$2000	\$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 or equivalent retirement benefits, health insurance, and life and disability insurance. Further, in determining eligibility for Additional Annual Credits, the Applicant shall, in good faith, identify which Eligible FTE’s are those created following the purchase of the Business by the owner of the Applicant.

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

d. To receive Job Credits, the Applicant must file an Annual Report as provided for below. Job Credits shall be applied against the annual payment due on the Note. At no time shall any excess Job Credits, above the balance due on the Note, entitle the Applicant to a return of any payment provided or an excess payment for Job Credits earned.

7. Ownership of Property, Financing Arrangements and Collateral:

a. In order to secure the obligations of the Applicant under this Agreement, the City is requiring the following security:

(1) A Security Agreement (the “Security Agreement”) to be given by the Applicant and Anderson-Shaw Investments, LLC (“ASI”) covering all personal property assets of the Applicant. The Security Agreement shall provide lien priority behind Platte Valley Bank and any previous owners of the Applicant.

(2) A deed of trust (the “Deed of Trust”) to be given by ASI covering the real estate on which the Business is located, and any interest in the improvements to the land. The Deed of Trust shall provide lien priority behind Platte Valley Bank and any previous owners of the Applicant.

(3) A guaranty of Brandon Rajewich (the “Guaranty”), guaranteeing the obligations of this Agreement, the Note, the Security Agreement, and the Deed of Trust.

8. 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 Applicants a party or by which they are bound.

9. Representations and Warranties of the City:

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

10. Conditions to Closing:

In addition to condition set forth above, the City's obligation to close the Loan is subject to the Applicant's fulfillment of each of the following conditions at or prior to the Closing:

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

b. The Applicant shall each 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 Organization and Bylaws of the Applicant, certified by an officer of the Applicant to be correct;

(3) Certified corporate action of the Applicant authorizing this Agreement and providing for signature authority for all accompanying documents.

c. In order to secure the Loan and perform the warranties of this Agreement, the Applicant and its shareholders shall have delivered to the City the Security Agreement, the Deed of Trust, and the Guaranty.

d. 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 Closing.

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

f. In accepting the disbursement of each of the Loans, the Applicant is considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

11. Annual Reports

For the first five (5) Years following the Job Credit Effective Date, the Applicant shall annually, within 30 days after the end of each Year, provide to the Administrator a report in form and substance acceptable to the Administrator which calculates the Job Credits for that previous 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.

12. Early Termination:

a. The Applicant shall have the right at any time to terminate its participation in the Program by notifying the Administrator in writing of its desire to do so.

b. The Administrator shall have the right to terminate the Applicant's participation in the Program if the Applicant is in default of any of the terms and conditions of this Agreement, which default is not cured within 30 days of written notice by the Administrator.

c. In the event of a termination as described in this paragraph, the total of the Annual Job Credits as of the end of the Year immediately preceding the termination will be subtracted from the Grant Amount. This amount shall then be immediately due and payable to the Fund. Interest shall accrue at the rate of 7% per annum on any amounts not immediately paid.

13. Default:

The Applicant shall be in default if any of the following happen:

a. Failure to comply with any of the terms of this Agreement 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. Dissolution or liquidation 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.

d. The Applicant ceases to operate the Business, or the Applicant employs less than 5 full-time employees at any one time at the Business location in Scotts Bluff County, Nebraska.

e. The Applicant intentionally or materially misstates the Job Credits on an Annual Report. A material misstatement shall be considered to have occurred if the Job Credit claimed on the Annual Report exceeds 10% of Job Credit as reasonably determined by the Administrator.

14. 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 or conveyance of a majority of the Applicant's assets, including real estate and personal property, or an assignment by the owner of the Applicant of at least 50% of the owner's stock in the Applicant,.

15. 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 ensure 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.

16. 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, or by facsimile transmission combined with any of the above methods of notice, 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:

Anderson-Shaw Construction, Inc.
710 Ave I
Scottsbluff, NE 69361
Attention: Brandon Rajewich

17. 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 FOLLOWS]

City of Scottsbluff, Nebraska

Anderson-Shaw Construction, Inc.

By: _____
Economic Development
Program Administrator

By: 
Brandon Rajewich, President