

# **City of Scottsbluff, Nebraska**

**Monday, May 18, 2015**

**Regular Meeting**

## **Item Public Inp2**

**Council consideration of an Economic Development Assistance Agreement with Southwest Business Corporation (SWBC).**

**Staff Contact: Rick Kuckkahn, City Manager**

**City of Scottsbluff**  
**Economic Development Application Review Committee**  
**May 5, 2015**

A meeting of the Economic Development Application Review Committee was held on May 5, 2015 at 8:00 a.m. at City Hall, 2525 Circle Drive, Scottsbluff, NE.

The meeting was convened at 8:01 a.m. Roll call was taken. Present were Committee Members, Jim Trumbull, Dennis Hadden, Lee Glenn and Marla Marx. In attendance on behalf of the City were Program Administrator, Rick Kuckkahn, Deputy City Manager, Nathan Johnson and Deputy City Attorney, Rick Ediger. Also present was Rawnda Pierce of Twin Cities Development. Representatives of Southwest Business Corporation appeared later in the meeting.

Chairman Trumbull called the meeting to order and stated that a copy of the Nebraska Open Meetings Act is located on the West wall of the Conference Room. There were no changes in the Agenda, nor were there any citizens with business not scheduled on the agenda.

It was moved by Hadden and seconded by Glenn that the Minutes of the meetings of November 7, 2014 be approved. Voting yes: Trumbull, Hadden, Glenn and Marx. Voting no: None.

The next order of business was the consideration of Twin Cities Development's application for remodel costs for the Masterminds Group and eCenter. Rawnda Pierce made a presentation on behalf of Twin Cities Development. TCD indicated that it was spending \$140,000 on a project to remodel its building in its efforts to work on the creation of a one-stop economic development center. Ms. Pierce pointed out that other than the past application for assistance to Masterminds, this application was for the eCenter only. \$55,000 was requested to help offset the cost and to staff the eCenter for the first year. It was moved by Glenn and seconded by Hadden to award a grant of \$55,000 to Twin Cities Development for use in connection with its eCenter. Voting yes: Trumbull, Hadden, Glenn and Marx. Voting no: None.

The next order of business was consideration of a grant to Southwest Business Corporation in connection with its service center in Scottsbluff. In particular, SWBC is making an attempt to fill an additional 230 jobs in the next four months. Due to the lack of potential employees in this area, SWBC was requesting assistance in order to provide incentives for employees to come to the area and to work for SWBC. SWBC representatives explained their over-all business (headquarters in San Antonio), as well as the particular

activities conducted in Scottsbluff. It was moved by Marx and seconded by Hadden that the Committee recommend a grant of \$500,000 to SWBC, representing 100 additional employees (in addition to a base employee number of 100). The grant shall be payable \$250,000 up front, with an additional \$50,000 per year as long as the additional grant amounts are earned. Job credits shall be given based on \$1,000 per eligible FTE per year. Voting yes: Trumbull, Hadden, Glenn and Marx. Voting no: None.

The meeting was adjourned at 8:56 a.m.

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Rick Kuckkahn, Program Administrator

## ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on May \_\_\_\_, 2015, between the City of Scottsbluff, Nebraska (the “City”) and Southwest Business 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 (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 awarded 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 has established a service center in the City (the “Center”) which supports its financial services business. The Grant shall be used in connection with the promotion of the Center, to include the Applicant’s employee recruitment activities.

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

The amount of the Grant awarded to the Applicant is \$500,000. The Grant shall be payable from the Fund as follows:

a. \$250,000 shall be payable at the Closing (the “Closing Payment”).

b. If the Applicant has at least 100 Eligible FTE’s for the first Year, \$50,000 shall be payable on or before September 1, 2016 (the “First Additional Payment”). If the Applicant does not have at least 100 Eligible FTE’s for the first Year, then the First

Additional Payment (if any) shall be equal to: (i) \$100,000 multiplied by a percentage equal to the number of Eligible FTE's for the Year divided by 100; less (ii) \$50,000.

c. If the Applicant has at least 100 Eligible FTE's for the second Year, \$50,000 shall be payable on or before September 1, 2017 (the "Second Additional Payment"). If the Applicant does not have at least 100 Eligible FTE's for the second Year, then the Second Additional Payment (if any) shall be equal to: (i) \$100,000 multiplied by a percentage equal to the number of Eligible FTE's for the Year divided by 100; less (ii) \$50,000.

d. If the Applicant has at least 100 Eligible FTE's for the third Year, \$50,000 shall be payable on or before September 1, 2018 (the "Third Additional Payment"). If the Applicant does not have at least 100 Eligible FTE's for the third Year, then the Third Additional Payment (if any) shall be equal to: (i) \$100,000 multiplied by a percentage equal to the number of Eligible FTE's for the Year divided by 100; less (ii) \$50,000.

e. If the Applicant has at least 100 Eligible FTE's for the fourth Year, \$50,000 shall be payable on or before September 1, 2019 (the "Fourth Additional Payment"). If the Applicant does not have at least 100 Eligible FTE's for the fourth Year, then the Fourth Additional Payment (if any) shall be equal to: (i) \$100,000 multiplied by a percentage equal to the number of Eligible FTE's for the Year divided by 100; less (ii) \$50,000.

f. If the Applicant has at least 100 Eligible FTE's for the fifth Year, \$50,000 shall be payable on or before September 1, 2020 (the "Fifth Additional Payment"). If the Applicant does not have at least 100 Eligible FTE's for the fifth Year, then the Fifth Additional Payment (if any) shall be equal to: (i) \$100,000 multiplied by a percentage equal to the number of Eligible FTE's for the Year divided by 100; less (ii) \$50,000.

The First Additional Payment, the Second Additional Payment, the Third Additional Payment, the h Additional Payment and the Fifth Additional Payment are collectively referred to as the "Additional Payments".

### **3. Closing:**

As soon as the Applicant has satisfied the conditions to the Closing, the Closing Payment shall be scheduled as a claim at the next Council meeting for which the matter may be reasonably scheduled. The Closing, to include delivery of the Closing payment shall then occur within 10 business days after the Council has approved a claim for the Grant.

#### **4. Possible Grant Repayment:**

The Grant shall be subject to repayment to the City if the Applicant does not fully earn the Job Credits (as provided for below). In connection with the calculation of the Job Credits:

- a. The effective date for Job Credit calculation purposes shall be July 1, 2015 (the "Job Credit Effective Date")
- b. The term of this Agreement shall begin as of this date and shall continue until the end of 5 years from the Job Credit Effective Date (the "Term").
- c. A "Year" shall mean the 12-month period 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 employer's normal fringe benefit package. This normal fringe benefit package must, at the least, include a health insurance plan with coverage offered to each employee which is, if not declined, substantially paid for by the Applicant.

b. "Eligible Full Time Employee" shall mean a Full Time Employee who: (1) primarily works at the Facility, and (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 40 hours per week.

d. "Eligible FTE's" shall mean the FTE's calculated for a Year less 100.

**6. Job Credits:**

“Job Credits” shall be calculated as follows:

- a. The Applicant shall receive an “Annual Job Credit” during the Term equal to the Eligible FTE’s for a Year multiplied by \$1000.
- b. The amount of the Annual Job Credit for the FTE’s may not exceed \$100,000 per Year (the “Maximum Annual Credit”)
- c. If the Applicant earns credits in excess of the Maximum Annual Credit in any one Year, the excess credits may be carried back to one or more prior Years where the Maximum Annual Credit was not earned, as long as the Maximum Annual Credit is not exceeded for any one Year. Excess credits may not be carried forward.

**7. Grant Repayment/Additional Payment:**

At the end of the Term, the total of the cumulative Annual Job Credits will be subtracted from the total amount of the Grant paid to the Applicant.

- a. If this calculation indicates that there is no balance, and the Applicant has received the full amount of the Additional Grant, then the Applicant shall be considered as having satisfied its obligations under the Grant and this Agreement and no Repayment shall be due.
- b. If this calculation demonstrates that the City has paid to the Applicant more than the amount of cumulative Job Credits earned, then any balance shall be repaid to the Fund within 90 days of the end of the Term (the “Repayment”), and any amount not paid within this time period shall then carry interest at the rate of 7% per annum until paid.
- c. If the Applicant has not received the full amount of the Additional Grant and this calculation demonstrates that the cumulative Annual Job Credits exceed the total amount of the Grant previously paid to the Applicant, then any difference shall be paid to the Applicant within 90 days of the end of the Term; provided, however, this additional payment shall not exceed the amount of the Additional Grant less the portion of the Additional Grant previously paid.
- d. If the Annual Job Credit for Eligible FTE’s determined for any Year is less than \$40,000, then the Administrator may require repayment of the difference between that Year’s Annual Job Credit and the Maximum Annual Credit. Any balance shall be repaid to the Fund within 30 days of written demand of the Administrator, and any amount not paid within this time period shall then carry interest at the rate of 7% per

annum until paid. If the amount repaid pursuant to this subparagraph is later earned by the Applicant, then the City shall pay the amount so earned to the Applicant within 30 days of the determination by the Administrator that the amount previously repaid has been earned.

**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 Texas, and is qualified to do business in 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 Closing.

**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:**

The City's obligation to proceed with the Closing 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 have delivered to the City:

(1) Evidence of Good Standing of the Applicant from the Texas and Nebraska Secretaries of State.

(2) A copy of the current and correct Articles of Incorporation and Bylaws of the Applicant certified by its secretary to be correct;

(3) Certified resolutions authorizing this Agreement and providing for signature authority.

c. 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.

d. 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.

e. In accepting each Additional Payment under this Agreement, the Applicant is considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

**11. Annual Reports:**

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 3% 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.

## **12. Early Termination:**

a. The Applicant shall have the right at any time to terminate their 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 for FTE's for all Years, calculated as of the end of the Year immediately preceding the termination will be subtracted from the amount of the Grant paid out as of the date of termination. This amount shall then be immediately due and payable to the Fund, and 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 any 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 conduct business at the Center or moves the Center outside of the zoning jurisdiction of the City.

e. The Applicant intentionally or materially misstates the Annual Job Credit on an Annual Report. A material misstatement shall be considered to have occurred if the Annual Job Credit claimed on the Annual Report exceeds 10% of actual Annual 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 their 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 of the Applicant owning less than 51% of the 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 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.

**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  
Fax: (308) 632-2916  
Attention: City Manager

- b. If to the Applicant:

Southwest Business Corporation  
9311 San Pedro Avenue, Suite 600  
San Antonio, TX 78216  
Fax: (210) 525-9938  
Attention: David Horne

**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.

[Signatures on Following Page]

City of Scottsbluff, Nebraska

Southwest Business Corporation

By: \_\_\_\_\_  
Randy Meininger, Mayor

By: \_\_\_\_\_  
Gary L. Dudley, President