

CITY OF SCOTTSBLUFF
City of Scottsbluff City Hall Council Chambers
2525 Circle Drive, Scottsbluf, NE 69361
LB 840 Application Review Committee

Regular Meeting
February 15, 2019
8:00 AM

1. Roll Call
2. **For public information, a copy of the Nebraska Open Meetings Act is posted in the back of the room on the north wall.**
3. Notice of changes in the agenda by the city manager (Additions may not be made to this agenda less than 24 hours before the beginning of the meeting unless added under Item 4 of this agenda.)
4. Citizens with business not scheduled on the agenda (As required by state law, no matter may be considered under this item unless the committee determines that the matter requires emergency action.)
5. Approval of Minutes
 - a) Approval of minutes for meeting of January 11, 2019
6. Consideration of Applications for Economic Development Assistance
 - a) Review and Consider EDA Agreement with Croell Inc.
7. Reports from Staff, Boards & Commissions
 - a) Economic Development Director's Report
8. Election
 - a) Elect new LB840 Chairman.
9. Closed Session
 - a) To consider any of the above matters, where an Executive Session is appropriate. Following passage of motion to enter into executive session, presiding officer must state purpose of executive session.
10. Adjournment.

City of Scottsbluff, Nebraska
Friday, February 15, 2019
Regular Meeting

Item 1

Approval of minutes for meeting of January 11, 2019

Staff Contact: Starr Lehl

City of Scottsbluff
Economic Development Application Review Committee
January 11, 2019

The meeting of the Economic Development Application Review Committee was held on January 11, 2019 at 8:00 a.m. at City Hall, 2525 Circle Drive, Scottsbluff, Nebraska.

Present were committee members Jim Trumbull, Lee Glenn, Dennis Hadden and Hod Kosman. In attendance on behalf of the City was City Manager, Nathan Johnson, City Economic Development Director, Starr Lehl, City Finance Director, Liz Hilyard, and Deputy City Attorney, Adam Hoelsing.

Chairman Trumbull called the meeting to order and stated that a copy of the Nebraska Open Meetings Act was located on the south wall of the Council Chamber. There were no changes to the agenda. One citizen, Nate Merrigan, attended the meeting but was not scheduled on the agenda.

It was moved by Vice Chair Hadden, and seconded by member Kosman that the minutes of the November 9, 2018 committee meeting be approved. Voting yes: Trumbull, Hadden and Kosman. Voting no: None.

Member Glenn then entered the meeting at 8:04 a.m.

An Application for assistance from Great Plains Distillery, LLC was presented. Starr Lehl introduced the applicant, and Philip Mitchell appeared on behalf of the applicant. Applicant had previously received assistance, but did not close on the assistance package. The applicant stated that the business was locating to a renovated building at 1716 Broadway, Scottsbluff, Nebraska. As part of that renovation, the applicant had expenses for building acquisition, improvements to the interior building, and distillery equipment. One unexpected expense of the applicant was a fire sprinkler system. The applicant stated that they were currently licensed to manufacture distilled spirits, and had been producing and distributing both vodka and whiskey during the 2018 calendar year. All products are currently being sold in Wyoming, in the local markets, and into the central Nebraska markets. The applicant stated that upon moving to 1716 Broadway, they intend to increase production of vodka and whiskey, and also intend to branch into the production and manufacture of rum. Applicant had not presented complete financials for the 2018 calendar year, and only presented financials up to July 10, 2018. A more updated personal financial statement was needed to complete the Application, and a more accurate picture of expected income and expenses was needed as well. The committee instructed Starr Lehl to contact Philip Mitchell in order to provide updated financials for the 2018 calendar year, and to discuss general industry outlook with other distillers.

An Application for assistance from Croell, Inc. was presented. Economic Development Director Starr Lehl introduced Brian Marchant on behalf of the applicant. The applicant is a regional concrete manufacturer, with locations in Iowa, Wisconsin, Minnesota, Nebraska, South Dakota, Wyoming, and Montana. The applicant has a current site located near Scottsbluff, Nebraska, which was purchased in the spring 2018 from the City of Scottsbluff. The applicant desires to construct and maintain a regional headquarters at that site, and has expenses related to the real estate acquisition,

land improvements, construction of buildings and equipment, and extension of utilities. For expansion, the regional headquarters would provide 11 full-time jobs above the current 6 full-time jobs of the applicant's concrete plant. Of those jobs created, one would be regional manager with a salary range of \$70,000-\$90,000, one would be a financial comptroller with a salary range of \$60,000-\$80,000, two would be mechanics serving all equipment of Croell, Inc. in the region, two would be equipment operators, two would be plant drivers, one would be a pump operator, and one would be an administrative clerk. For the Application, the lowest wage range would be \$19-\$20 an hour, and high salary range would be at or near \$90,000. Moved by member Kosman and seconded by member Glenn, that the following assistance be provided with details to be determined by City Staff and City Attorney: A \$750,000/grant, amortized over 10 years. Voting yes: Trumbull, Hadden, Kosman and Glenn. Voting no: None. The applicant would be able to earn job credits against the outstanding balance of the loan/grant, and the Committee instructed City Staff and City Attorney to highly emphasize the job credits available. Following the finalization of details of the loan/grant, the Committee instructed City Staff to inform them of the details and the Committee would individually respond with any questions or concerns they may have.

Discussion was then had regarding the location and development of a manufacturing plant for Prime Metals, Inc. There was some concern as to the location of the project as previously presented to the Committee. Committee members discussed the possibility of reaching out to local area land developers to see if communications could be made as to the acquisition and development of land for Prime Metals, Inc. There was an "opportunity zone" designated in an area east of Scottsbluff city limits along Highway 26. Committee members discussed the potential for that area for land acquisition and development by future applicants.

The meeting was then adjourned at 9:11 a.m.

Starr Lehl, Economic Director

City of Scottsbluff, Nebraska
Friday, February 15, 2019
Regular Meeting

Item 1

Review and Consider EDA Agreement with Croell Inc.

Staff Contact: Starr Lehl

Memo

TO: City of Scottsbluff ED Program Application Review Committee
FROM: Simmons Olsen Law Firm, P.C., L.L.O.
RE: Croell, Inc. Funding Assistance
Date: 2/13/18

The City of Scottsbluff ED Program Application Review Committee (“EDPARC”) recently approved an assistance package to Croell, Inc. (“Croell”) in the amount of \$750,000, with standard terms and conditions, and with direction to City staff to craft a funding package that awarded more than the typical \$2,000 per FTE per year. Croell’s assistance application related to the construction and operation of regional headquarters directly outside the city limits. The assistance application anticipated 11 new jobs to be created, and 5 additional jobs to be created after the completion of an asphalt plant on the real estate.

Through discussion, City staff and Croell were able to agree on the following funding package:

- \$3,000 credit per FTE per Year.
- Additional credits as follows:
 - \$500 per FTE for hourly wages equal to or over \$19.00 or annual salary over \$40,000;
 - \$1,000 per FTE for hourly wages equal to or over \$24.00 or annual salary over \$50,000;
 - \$1,500 per FTE for hourly wages equal to or over \$29.00 or annual salary over \$60,000;
 - \$2,000 per FTE for hourly wages equal to or over \$34.00 or annual salary over \$70,000
- The \$750,000 assistance is payable in 10 equal annual installments and one \$75,000 balloon payment, due on October 1, 2029. Credits for FTEs are applied each year before the annual installment is due for payment.
- Additional credits for the FTEs related to the asphalt plant are available, at \$3,000 per FTE per year. Additional credits awarded for the asphalt plant may be applied to the \$75,000 balloon payment before it comes due. Excess credits, if any, awarded for the asphalt plant may not be transferred to the remainder of the assistance package.
- Interest would accrue against the amount owed at the applicable federal mid-term rate on the date of closing.

City staff prepared the assistance agreement, which included the following: (1) deed of trust on Croell’s real estate at the regional headquarters; (2) security agreement for Croell’s equipment, inventory, accounts receivable, and personal property; and (3) a guaranty of the assistance agreement and note by Kurt Croell, William Croell, and Joseph Croell (the majority owners of Croell). A copy of the assistance agreement is attached for reference. These three

items (deed of trust, security agreement, and guaranty) are standard terms of every assistance package approved by the EDPARC, unless unique circumstances exist.

Croell responded to the assistance agreement with objections to the security agreement and the guaranty requirement. Regarding the security agreement, Croell's primary lender—Associated Bank—takes the position that the loan agreements between Croell and Associated Bank require Associated Bank's permission for another lender to file a blanket lien against personal property, and Associated Bank will not grant that permission. Therefore, Croell does not agree to the security agreement requirement. Regarding the guaranty, Croell takes the position that as a cooperate policy they do not execute guarantees, relying upon the strength of the company and the collateral to secure lending. Therefore, Croell does not agree to the guarantee requirement. Attached to this memo is the email exchange showing Associated Bank's position on the security agreement.

Since it is standard practice for the City to include both a security agreement and a guarantee on the assistance package, the issues must be addressed by the EDPARC again, to determine whether either requirement will or should be waived.

Croell has offered that the deed of trust on the real estate act as the first lien. Very seldomly is an economic development program loan secured by a first lien for the City, so that is a benefit to this additional request of the EDPARC. Croell estimates the real estate (land and building) is worth approximately \$2.8 million.

From a practical perspective, not requiring the security agreement is probably inconsequential. There are already a number of secured lenders with liens on the personal property of Croell (several of them being blanket liens). The City would stand behind those lenders in priority, so actual equity in personal property is unlikely. Attached is a print-out of current UCC liens filed against Croell in the Iowa Secretary of State's office, with the highlighted filings being blanket liens in one form or another and the crossed-out filing being terminated. The majority, and remainder, are equipment-specific, and many of the non-titled equipment assets of Croell appear to be encumbered.

For the guarantee, however, an adequate justification for its waiver does not appear to the City staff. The assistance provided to Croell is a substantial portion of the economic development program fund, and the decision is not taken lightly by the City. The City's position has routinely been to require personal guarantees, unless the financial statement shows reasons not to (such as a publicly traded company or an ESOP). The typical poor security position of the City in these packages makes the guarantees material, and City staff would not encourage the EDPARC to dismiss this requirement lightly. As always, we have an obligation to protect taxpayer dollars, and with the real estate literally intended to be gutted (through mining) there is some question as to future real estate value. This is not "free money," and the City should dictate terms to the extent reasonable.

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on February ___, 2019, between the City of Scottsbluff, Nebraska (the “City”) and Croell, 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 loan (the “Loan”) 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 Loan.

Agreement:

1. Purpose of Loan:

The Applicant is an Iowa corporation doing business in a multi-state area. The Applicant is in the business of manufacturing and selling ready mix concrete, and in manufacturing and selling concrete and asphalt for roadway paving. The Applicant owns real estate at or near 120549 CR 26, Scottsbluff, Nebraska 69361, and is in the process of developing that real estate for regional headquarters for its operations in Western Nebraska (the “Business”). The proceeds of the Loan will be used primarily for the development and operation of the real estate as a batch plant and regional headquarters for the Business.

2. Amount of Loan:

The Loan 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 Loan shall be represented by a promissory note (the “Note”) to be signed at the Loan Closing in the form of the attached Note. The Note shall carry interest from July 1, 2019 (the “Note Interest Date”) at the Applicable Federal Mid Term rate for the month of the Loan Closing. Repayment shall be as set out below.

3. **Loan Disbursement and Loan Closing:**

As soon as the Applicant has satisfied the conditions to the Loan Closing, the amount of the Loan shall be scheduled as a claim at the next Council meeting for which the matter may be reasonably scheduled. Disbursement of the Loan proceeds shall be made within 10 business after the Council has approved a claim for the Loan. The disbursement of the Loan proceeds shall constitute the "Loan Closing".

4. **Job Credits:**

a. 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 June 30, with the first Year beginning July 1, 2019. "Annual Job Credits" shall be calculated as follows:

(1) The Applicant is eligible to receive a "Base Annual Job Credit" during a Year equal to the FTE's for a Year multiplied by \$3,000.

(2) If at the end of a Year, (1) the Annual Report (as provided for below) indicates that the Applicant has any 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>
\$500	\$19.00 to \$23.99	\$40,000 to \$49,999
\$1,000	\$24.00 to \$28.99	\$50,000 to \$59,999
\$1,500	\$29.00 to \$33.99	\$60,000 to \$69,999
\$2,000	\$34.00 and above	\$70,000 and above

(3) 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: Applicant's 401k Plan contribution, pension or equivalent retirement benefits, health, dental, or vision insurance, disability insurance, and any bonuses or profit-sharing payments.

b. For purposes of this Agreement, Annual Job Credit shall mean the total of all Base Annual Job Credits and the Additional Annual Credits.

c. For each Year of the Loan, the amount of the Annual Job Credit may not exceed \$43,000 per Year (the "Maximum Annual Credit"). 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.

5. Asphalt Job Credits:

a. 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 "Balloon Payment" (as defined below) due under the Note for Asphalt Plant Job Credits earned during a Year. A "Year" shall mean the 12-month period ending on each June 30, with the first Year beginning July 1, 2019. "Annual Asphalt Plant Job Credits" shall be calculated as follows:

(1) The Applicant is eligible to receive an "Annual Asphalt Plant Job Credit" during a Year equal to the Asphalt FTE's (as defined below) for a Year multiplied by \$3,000. The "Annual Asphalt Plant Job Credit" shall mean the total of all Asphalt FTE's multiplied by \$3,000

(2) At the end of a Year, to earn an Asphalt FTE, then the following must occur: (1) the Annual Report (as provided for below) must indicate that the Asphalt FTE has an average earnings for the Year of at least (i) \$19.00 per hour in the case of hourly employees, or (ii) \$40,000 in the case of salaried employees, and (2) such employees must be eligible for the Applicant's fringe benefit plan.

(3) 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: Applicant's 401k Plan contribution, pension or equivalent retirement benefits, health, dental, or vision insurance, disability insurance, and any bonuses or profit-sharing payments.

b. For each Year of the Loan, the amount of the Annual Asphalt Plant Job Credit may not exceed \$15,000 per Year (the "Maximum Annual Asphalt Plant Credit"). If the Applicant earns credits in excess of the Maximum Annual Asphalt Plant Credit in any one Year, the excess credits may be carried back to one or more prior Years where the Maximum Annual Asphalt Plant Credit was not earned, as long as the Maximum Annual Asphalt Plant Credit is not exceeded for any one Year. Excess credits may not be carried forward.

6. Note Repayment:

The Note shall be repayable as follows:

a. The principal of the Loan shall begin to accrue interest on the Note Interest Date at the Applicable Federal Mid Term rate for the month of the Loan Closing, and shall be payable in 10 equal annual installments (the "Annual Installments") and one \$75,000 balloon payment (the "Balloon Payment") due on October 1, 2029. The first Annual Installment shall be due and payable on July 1, 2020, and each Annual Installment shall be due and payable on each July 1 thereafter.

b. Upon receipt of an Annual Report, the City will make a preliminary review based on the Annual Job Credits claimed. The amount of the Annual Job Credits, adjusted for any adjustments from the preliminary review, shall then be applied against the Annual Installment due at the end of the Year of the Annual Report. Once the Annual Job Credit is applied, the City shall then notify the Applicant of the remaining amount of the Annual Installment due, and the remaining amount shall be paid by the Applicant on or before the October 1 following the Year of the Annual Report.

c. Additionally, upon receipt of an Annual Report, the City will make a preliminary review based on the Annual Asphalt Plant Job Credits claimed. The amount of the Annual Asphalt Plant Job Credits, adjusted for any adjustments from the preliminary review, shall then be applied against the Balloon Payment amount after each Year for which an Annual Report is filed. Once all Annual Asphalt Plant Job Credits are applied, the City shall then notify the Applicant of the remaining amount of the Balloon Payment due, if any, and the remaining amount shall be paid by the Applicant on or before October 1, 2029.

7. Employee Definitions:

a. Determining "FTE's" shall be as follows:

(1) "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.

(2) "Eligible Full Time Employee" shall mean a Full Time Employee who: (1) works in Scotts Bluff County, Nebraska, 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.

(3) "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, rounded down to the nearest tenth, and then subtracting 6 FTE's per Year for the full-time employees of the Applicant already existing at the time of the Application. Salaried employees shall be presumed to have been paid on the basis of 2,080 hours per Year.

b. Determining "Asphalt FTE's" shall be as follows:

(1) "Full Time Asphalt Plant Employee" shall mean a bona fide employee of the Applicant who (1) works primarily at and for the purpose of an asphalt plant constructed by the Applicant at the site of the Business (2) is classified by the Applicant as full time; and (3) 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.

(2) "Eligible Full Time Employee" shall mean a Full Time Asphalt Plant Employee who: (1) works in Scotts Bluff County, Nebraska, 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 Asphalt Plant Time Employee if the Full Time Asphalt Plant Employee moves to a residence within the required geographic area within 6 months of the hiring of the Eligible Full Time Asphalt Plant Employee.

(3) "Asphalt Plant Full Time Equivalent" Employees (the "Asphalt FTE's") shall be the number arrived at by dividing the total hours paid by the Applicant to their Eligible Full Time Asphalt Plant Employees during a Year, divided by 2,080 hours, and then rounded down to the nearest tenth. Salaried employees shall be presumed to have been paid on the basis of 2,080 hours per Year.

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 Iowa. The Applicant is registered in Nebraska as a foreign corporation, and is authorized to transact 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.

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

9. Representations and Warranties of the City:

The City represents and warrants the following, all of which shall survive the Loan 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 Loan Closing:

The City's obligation to proceed with the Loan Closing is subject to the Applicant's fulfillment of each of the following conditions at or prior to the Loan Closing:

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

b. The Applicant shall have delivered to the City:

(1) Evidence of Good Standing of the Applicant from the Iowa Secretary of State and 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.

c. The Applicant shall have received a loan from Associated Bank as provided for in the Application.

d. In order to secure the Loan and the repayment, the Applicant shall have delivered to the City the following:

(1) a guaranty (the "Guaranty") of (i) Kurt Croell, (ii) William Croell, and (iii) Joseph Croell, and any other person or entity owning 25% or more of the stock of the Applicant. The form of the Guaranty is attached.

(2) a security agreement (the "Security Agreement") covering the Applicant's equipment, inventory, accounts receivable, and personal property, which shall be second in priority to the Applicant's primary lender. The form of the Security Agreement is attached.

(3) a deed of trust (the "Deed of Trust") covering the Applicant's real estate at the Business, which shall be second in priority to the Applicant's primary lender. The form of the Deed of Trust is attached.

e. 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 Loan Closing.

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

g. In requesting the disbursement of the Loan, the Applicant is considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

11. Annual Reports:

If the Applicant desires to claim Job Credits or Asphalt Plant 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 or Annual Asphalt Plant Job Credits 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 or Annual

Asphalt Plant Job Credits claimed on the Annual Report exceeds 10% of the Annual Job Credit or Annual Asphalt Plant Job Credits as determined by the Administrator, then the Administrator may require the Applicant to reimburse the Fund for the actual cost of the audit.

12 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. 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 of the Applicant, or insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or bankruptcy of the Applicant.
- d. The Applicant ceases to conduct its Business (as defined above) or moves its Business (as defined above) outside of the Scotts Bluff County, Nebraska.
- e. Upon default, the Note shall accrue interest at the default rate of 7% per annum.

13. 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 Kurt Croell, William Croell, and Joseph Croell collectively owning less than 51% of the ownership interests of the Applicant.

14. 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.

15. Notices:

- a. 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.

b. If to the City:
City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69361
Attention: City Manager

c. If to the Applicant:

Croell, Inc.
2010 Kenwood Ave.
PO Box 430
New Hampton, IA 50659
Attention: Kurt Croell

16. 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

Croell, Inc.

By: _____
Economic Development
Program Administrator

By: _____
Kurt Croell, President

Adam Hoelsing

From: Luann Woodward <Luann.Woodward@croell.com>
Sent: Thursday, January 31, 2019 9:51 AM
To: Adam Hoelsing
Cc: Starr Lehl; Nathan Johnson; Elizabeth Hilyard; Kurt Croell; Brian Marchant
Subject: FW: Scottsbluff/Croell LB 840 [IWOV-iManage.FID304772]

Importance: High

FilingDate: 2/1/2019 10:38:00 AM

Adam,
Please refer to the response below from our Banker regarding this matter.
Thanks!
Luann

From: Fink, James <James.Fink@associatedbank.com>
Sent: Thursday, January 31, 2019 10:38 AM
To: Luann Woodward <Luann.Woodward@croell.com>
Cc: Kurt Croell <Kurt.Croell@croell.com>
Subject: RE: Scottsbluff/Croell LB 840 [IWOV-iManage.FID304772]

The Bank's position is that the City of Scottsbluff request for a blanket lien on all assets on Croell, Inc. behind the Bank on a \$750K real estate loan is unacceptable. Your loan agreement between Associated Bank and Croell Inc. requires formal Bank approval for Croell to grant permission to another lender to file a blanket lien on all assets of Croell. **This is notice that we are not granting this request.**

Thanks

ASSOCIATED BANK EXTERNAL EMAIL ALERT: The sender of this email is from outside Associated Bank. Please ensure you trust the sender and legitimize the email before taking any action with links or attachments. If you suspect the validity of this email, please forward it immediately to the Cyber Defense Center.

From: Luann Woodward [<mailto:Luann.Woodward@croell.com>]
Sent: January 31, 2019 08:47 AM
To: Fink, James
Cc: Kurt Croell
Subject: FW: Scottsbluff/Croell LB 840 [IWOV-iManage.FID304772]

Jim,
FYI and thoughts on the City of Scottsbluff placing a blanket lien (secondary to Associate Bank's) on all of our non-real estate assets as collateral on their \$750K financial assistance package (Econ Dev funds)? We are requesting that the Scottsbluff Real Estate be the sole collateral, but their standard practice is to also have a Security Agr & personal guarantees from the shareholders.
Luann

From: Luann Woodward <Luann.Woodward@croell.com>
Sent: Thursday, January 31, 2019 8:35 AM
To: 'Adam Hoelsing' <AHOESING@SIMMONSOLSEN.COM>
Cc: Nathan Johnson <njohnson@scottsbluff.org>; Starr Lehl <slehl@scottsbluff.org>; Elizabeth Hilyard <ehilyard@scottsbluff.org>; Kurt Croell <Kurt.Croell@croell.com>; Brian Marchant <Brian.Marchant@croell.com>
Subject: RE: Scottsbluff/Croell LB 840 [IWOV-iManage.FID304772]

Adam,

Since our primary bank, Associated Bank, secures their interest with a blanket lien on everything but our real estate, the City of Scottsbluff would have the sole or primary lien on the Scottsbluff Real Estate. The Scottsbluff Real Estate (land & building only) will be a least \$2.8M. Also, as a matter of practice, our shareholders do not personally guarantee corporate debt. As such, we would request the Committee & the City to readdress their requirements and accept the Real Estate as the sole collateral on the \$750K loan. We are ok with not closing until March.

Your consideration of this request is greatly appreciated!

Luann

From: Adam Hoelsing <AHOESING@SIMMONSOLSEN.COM>
Sent: Wednesday, January 30, 2019 5:33 PM
To: Luann Woodward <Luann.Woodward@croell.com>
Cc: Nathan Johnson <njohnson@scottsbluff.org>; Starr Lehl <slehl@scottsbluff.org>; Elizabeth Hilyard <ehilyard@scottsbluff.org>; Kurt Croell <Kurt.Croell@croell.com>; Brian Marchant <Brian.Marchant@croell.com>; SCOTTSBLUFF_CITY OF _ CROELL _ INC __ EDAA _ 21141 _ 192019 _ E _ Mail _ 21141 _ 192019 <{F304772}.iManage@dms.simmonsolsen.com>
Subject: RE: Scottsbluff/Croell LB 840 [IWOV-iManage.FID304772]

Luann:

Thanks for noticing the rate difference. That was a mistake, and I'll get that changed.

We require a security agreement and a guaranty on all of our assistance packages, and that is what was approved by the LB 840 loan committee. Best-case scenario would be a request to the committee to reexamine that requirement or this assistance package, but that would mean closing in March sometime. Even then, City staff would not recommend dropping either requirement.

Adam A. Hoelsing
Simmons Olsen Law Firm, P.C., L.L.O.

From: Luann Woodward <Luann.Woodward@croell.com>
Sent: Wednesday, January 30, 2019 2:36 PM
To: Adam Hoelsing <AHOESING@SIMMONSOLSEN.COM>
Cc: Nathan Johnson <njohnson@scottsbluff.org>; Starr Lehl <slehl@scottsbluff.org>; Elizabeth Hilyard <ehilyard@scottsbluff.org>; Kurt Croell <Kurt.Croell@croell.com>; Brian Marchant <Brian.Marchant@croell.com>
Subject: FW: Scottsbluff/Croell LB 840 [IWOV-iManage.FID304772]
Importance: High

Adam,

The only 2 items of issue are:

- (1) Interest rate should be the Annual AFR Mid-Term Rate (as stated in your 1/18/19 email) not the Long-term rate.
- (2) Only collateral should be the Deed of Trust on the Scottsbluff Real Estate including all improvements which is valued at substantially more than the \$750K loan. You will have primary lien as Associated Bank will not

place a security lien on the Scottsbluff Real Estate. Therefore, no need for Security Agr or Personal Guaranty docs.

I attached my comments on the pdf doc.

Thanks!

Luann

From: Adam Hoelsing <AHOESING@SIMMONSOLSEN.COM>

Sent: Wednesday, January 30, 2019 9:20 AM

To: Luann Woodward <Luann.Woodward@croell.com>

Cc: Nathan Johnson <njohnson@scottsbluff.org>; Starr Lehl <slehl@scottsbluff.org>; Elizabeth Hilyard <ehilyard@scottsbluff.org>; SCOTTSBLUFF_CITY OF _ CROELL _ INC _ EDAA _ 21141 _ 192019 _ E _ Mail _ 21141 _ 192019 <F304772.iManage@dms.simmonsolsen.com>

Subject: Scottsbluff/Croell LB 840 [IWOV-iManage.FID304772]

Luann:

Attached are the first three documents for your review.

The EDA Agreement is the bulk of it, and it references the note, the security agreement, the deed of trust, and the guarantee.

I'm still working on the deed of trust and guarantee, but will get those to you today.

Let me know if you have any questions with these.

Council is looking to consider these on 2/4, so we'd like to have our review done by end of the day tomorrow.



Thanks.

Adam A. Hoelsing
Simmons Olsen Law Firm, P.C., L.L.O.
1502 2nd Avenue
Scottsbluff, NE 69361
(308) 632-3811
(308) 635-0907 (Fax)
Email: ahoelsing@simmonsolsen.com
Website: <http://www.simmonsolsen.com>

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UCC Certified Results

Searched: (B) CROELL, INC.

[View Report](#) Results 45

Name	Number	Address	City	ST
<u>CROELL, INC.</u>	E10019281-2	2010 KENWOOD AVENUE P O BOX 430	NEW HAMPTON	IA
CROELL, INC.	P10003293-4	2010 KENWOOD AVE	NEW HAMPTON	IA
CROELL, INC.	X11017092-8	2010 KENWOOD AVE.	NEW HAMPTON	IA
CROELL, INC.	X12008341-5	2010 KENWOOD AVE.	NEW HAMPTON	IA
CROELL, INC.	P12005635-2	2010 KENWOOD AVE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	P12010878-0	2010 KENWOOD AVE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X13004320-1	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X13005147-1	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	P13001768-2	2010 KENWOOD AVE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	P13001799-3	2010 KENWOOD AVE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	P13005637-3	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X14014261-9	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X14014526-0	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X14014527-7	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X14015428-5	2010 KENWOOD AVE.	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X14021370-3	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X14021375-8	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X14021374-1	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X14021963-2	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	E14061879-8	2010 KENWOOD AVE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X15006358-9	2010 KENWOOD AVE.	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X15009058-2	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X15010432-3	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X15010634-9	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X15010766-3	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X15014303-8	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X15015989-7	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X16002062-6	P.O. BOX 430	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X16006938-6	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X16010359-9	2010 KENWOOD AVE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X16037891-0	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X16037892-7	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X16037893-4	2010 KENWOOD AVENUE	NEW HAMPTON	IA
<u>CROELL, INC.</u>	X17005945-3	2010 KENWOOD AVENUE	NEW HAMPTON	IA

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<u>CROELL, INC.</u>	X17009456-6	2010 KENWOOD AVENUE	NEW HAMPTON IA
<u>CROELL, INC.</u>	X17009856-0	2010 KENWOOD AVENUE	NEW HAMPTON IA
<u>CROELL, INC.</u>	X17011555-7	2010 KENWOOD AVE	NEW HAMPTON IA
<u>CROELL, INC.</u>	X17012077-4	2010 KENWOOD AVENUE	NEW HAMPTON IA
<u>CROELL, INC.</u>	X17012377-2	2010 KENWOOD AVENUE	NEW HAMPTON IA
<u>CROELL, INC.</u>	X18007438-7	2010 KENWOOD AVENUE	NEW HAMPTON IA
<u>CROELL, INC.</u>	X18007541-2	2010 KENWOOD AVENUE	NEW HAMPTON IA
<u>CROELL, INC.</u>	P18001741-2	2010 KENWOOD AVE	NEW HAMPTON IA
<u>CROELL, INC.</u>	P18001742-9	2010 KENWOOD AVE	NEW HAMPTON IA
<u>CROELL, INC.</u>	X18015914-7	2010 KENWOOD AVE	NEW HAMPTON IA
<u>CROELL, INC.</u>	X18016732-4	2010 KENWOOD AVE	NEW HAMPTON IA

City of Scottsbluff, Nebraska
Friday, February 15, 2019
Regular Meeting

Item 1

Economic Development Director's Report

Staff Contact: Starr Lehl

City of Scottsbluff, Nebraska
Friday, February 15, 2019
Regular Meeting

Item Elect1

Elect new LB840 Chairman.

Staff Contact:

City of Scottsbluff, Nebraska
Friday, February 15, 2019
Regular Meeting

Item 1

To consider any of the above matters, where an Executive Session is appropriate. Following passage of motion to enter into executive session, presiding officer must state purpose of executive session.

Staff Contact: