

# **City of Scottsbluff, Nebraska**

**Monday, March 4, 2019**

**Regular Meeting**

## **Item Reports1**

**Council to consider an Economic Development Agreement for Croell, Inc.**

**Staff Contact: Starr Lehl, Economic Development Director**

**CITY OF SCOTTSBLUFF**  
**ECONOMIC DEVELOPMENT APPLICATION REVIEW COMMITTEE**  
**February 15, 2019**

The meeting of the Economic Development Application Review Committee was held on February 15, 2019 at 8:00 a.m. at City Hall, 2525 Circle Drive, Scottsbluff, Nebraska.

Present were committee members Jim Trumbull, Hod Kosman, Dave Schaff, Marla Marx, and Nate Merrigan. Also in attendance on behalf of the City was Starr Lehl, City Economic Director, Liz Hilyard, City Finance Director, and Adam Hoelsing, Deputy City Attorney.

Chairman Trumbull called the meeting to order at 8:01 a.m. 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.

It was moved by member Marx, and seconded by member Kosman that the minutes of the January 11, 2019 committee meeting be approved. Voting yes: Trumbull, Schaff, Marx, Merrigan and Kosman. Voting no: None.

First item on the agenda was an approval of a waiver request from Croell, Inc. An economic development package was offered to Croell, Inc. following the January 11, 2019 Committee meeting. City Staff and Croell, Inc. were able to agree to the terms of the assistance package, which involved a loan/grant of \$750,000 repayable generally over 10 years. As part of the assistance package, however, City Staff requested a blanket security agreement on personal property assets of Croell, Inc., and a guarantee of the assistance agreement from Kurt Croell, William Croell, and Joseph Croell (the majority shareholders of Croell, Inc.). Croell, Inc. declined the blanket security agreement and guarantee and requested the Committee waive those requirements as part of the economic development assistance agreement.

Generally, a blanket security agreement and a guarantee of shareholders or owners is a requirement of all applicants of the City's economic development program. Croell, Inc., however, was unable to provide a blanket security agreement due to the policies of its primary lender, Associated Bank. Associated Bank does not allow a blanket security agreement to act as a second lien on the personal property assets of Croell, Inc. Croell, Inc. also declined to provide the guarantee due to its corporate policies of avoiding personal guarantees where possible. Croell, Inc. did offer the City a first priority lien on the real estate for which the economic development assistance is being provided. Croell, Inc. estimated the real estate to be worth approximately \$2.8 million in acquisition and development value, and therefore felt that a first priority lien on the real estate was sufficient collateral for the assistance package.

The Committee felt that a first lien priority on the real estate was sufficient collateral for the assistance agreement with Croell, Inc. Additionally, the Committee noted that Croell, Inc. is a stronger applicant (at least financially) than is typically seen by the Committee. Croell, Inc. is an ongoing operating business with a strong financial picture and a regional scope. The

Committee felt this application was different, at least from a financial strength perspective, than other start-up or fledgling businesses that may apply to the City's economic development program. For these reasons, it was moved by member Kosman, and seconded by member Merrigan to waive the blanket security agreement and guarantee requirements of the City's economic development assistance agreement with Croell, Inc. Voting yes: Trumbull, Schaff, Merrigan, Marx, and Kosman. Voting no: None.

Discussion was then had among the Committee members and City Staff as to modifying the economic development program application to clarify general collateral requirements of the City before the application is submitted. At the very least, this change would allow the applicant to understand the collateral requirements before the first meeting with the Committee and to be prepared to request any waiver or differentiation in those requirements during its first meeting with the Committee. The Committee also suggested strengthening portions of the standard economic development assistance agreement to clarify the definition of "default" when a business may change sites in the community or otherwise operate remotely.

City Economic Development Director Starr Lehl provided an update on Prime Metals Inc. Prime Metals is a previous applicant of the economic development program, and assistance from the program has been approved from the Committee, but not closed by the City due to a delay on Prime Metals' part. Starr Lehl was able to provide that Prime Metals still intends to develop an area in Gering, Nebraska for manufacturing, but is waiting on financing from a new investor.

City Finance Director Liz Hilyard provided an update as to the size of the economic development fund, and member Schaff provided an update as to possible expansion and development of an area near the West Nebraska Regional Airport for a new or improved Fed Ex facility.

The final item for discussion by the Committee was the possible new committee chair. Chairman Trumbull provided his history and background with the Committee, having served on the Committee since its inception. Chairman Trumbull felt that it may be time or getting near the time for a new chairman to serve on the Committee, and discussed several members of the Committee that may be willing or available to do so. Other Committee members replied as to their willingness or concerns as serving as Chairman, and the Committee decided to delay discussion for a new Chairman until a later date.

The meeting was then adjourned at 8:28 a.m.

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Starr Lehl, Economic Director

**City of Scottsbluff  
Economic Development Grant Application**

**1. Applicant Information:**

**Business Name:** Croell, Inc.

**Address:** Corporate HQ: 2010 Kenwood Ave., PO Box 430, New Hampton, IA 50659

**Applicant Contact:** Brian Marchant & Luann Woodward

**Business Phone:** Brian 307-290-0407; Luann 641-394-6789

**E-mail address:** [Brian.Marchant@croell.com](mailto:Brian.Marchant@croell.com) ; [Luann.Woodward@croell.com](mailto:Luann.Woodward@croell.com)

**2. Business Information:**

**Structure of Business (proprietorship, partnership, LLC, corporation, etc):** Corporation

**Ownership breakdown (include percentages for each Owner):**

Kurt Croell	32.0154%
Bill Croell	31.9843%
Joe Croell	31.9843%
Lance Croell	2.0080%
Lacy Lampe	2.0080%

**General Description of Business:**

Croell, Inc. is a growing, fiscally stable, and successful, family-owned business founded in 1968 and incorporated in 1974. Croell's primary business line is the manufacture and supply of ready mix concrete. Its secondary line of business is concrete and asphalt paving (& sealcoating) of streets/highways. Croell also mines and produces rock and sand aggregates primarily for use in its concrete and asphalt, but also sells aggregate to 3rd parties. Croell has physical operations in Iowa, Wisconsin, Minnesota, Nebraska, South Dakota, Wyoming, and Hardin, MT. Croell also has sales in the border state of Colorado. Croell's corporate headquarters is located in New Hampton, IA. Croell has regional facilities in Cedar Rapids, IA, La Crosse, WI, Sundance, WY, Cheyenne, WY, and Rapid City, SD along with the new regional site in Scottsbluff, NE that is currently under development "The Project". Croell, Inc. also operates a Carquest store in New Hampton, IA and a small, gas/convenience store in Lawler, IA.

**Products/Services:**

Ready mix concrete manufacturer/supplier, asphalt & concrete paving & sealcoating contractor (highway/streets), and producer of sand & gravel aggregates

**Number of years in Business (or if a new Business, describe Owners experience in this type of business):** founded in 1968--- 50 years! Incorporated in 1974

**Proposed “Project” Location Address:** 12059 County Rd 26, Scottsbluff, NE 69363  
Current Zoning Classification: Proper industrial zoning already taken care of—previously agricultural

### **3. Employment:**

**Base number of 6 full-time positions at existing Ready Mix (RM) site in Scottsbluff:**

RM Plant: 1 RM Plant Manager & 5 RM Drivers

Annual Wage & Benefit Cost \$420,000

**11 Full-time positions to be added with the Scottsbluff Regional Site:**

1 Regional Manager

1 Financial Accountant

1 Office Admin/Clerk

RM Plant: 2 RM Drivers; 1 Pump Operator

Shop: 2 Mechanics

Pit/Aggregate: 2 Equip Operators

Trucking – 1 Semi Driver

Asphalt Plant: unsure when or if Asphalt Plant & Ops will be added in the future

Estimated Annual Wage & Benefit Cost \$820,000

**Salary/Wage Range:** \$19-20/hour; mid \$60s to mid \$90s for salaried positions

**Benefits provided to employees (include any contribution required by Employees):**

All Benefits are effective the first of the month after 60 days employment except 401K (unless otherwise determined)

Medical, Dental and Vision coverage – Annual **Employee** Premiums

<b>Coverage Type</b>	<b>Medical</b>	<b>Dental</b>	<b>Vision</b>
<b>Employee Only</b>	\$1,350.00	\$256.56	\$102.36
<b>Employee + Spouse</b>	\$4,770.00	\$485.88	\$172.32
<b>Employee + Child(ren)</b>	\$3,900.00	\$452.04	\$175.56
<b>Employee + Family</b>	\$6,924.00	\$671.52	\$277.92

Short Term Disability; \$20k Life Insurance – No contribution by Employee

Long Term Disability; Voluntary Life Insurance \$50k increments up to \$200k – 100% Employee Paid – Cost based on Age, Salary and Coverage Level

401K Plan – Employer matches 25% of Employee Contribution up to a maximum match of 2%

#### 4. Financial Need:

**Total project cost estimate:** \$4,774,000

**Breakdown of use of funds:**

Real Estate Purchase (354 acres)	\$550,000
Land Improvements- earthen berm, septic system, pit scale, parking lot, landscaping	\$300,000
Construction of Concrete Batch Plant	\$500,000
Construction of 11,000 sq. ft. building, including equipment & furnishings	\$2.3 million
Electrical Transformer/ Line extension to site (~44% or \$29K cost to Croell)	
Natural gas extension to site covered 100% by Blackhills Corp	
<b>Total infrastructure cost estimate</b>	<b>\$3,650,000</b>

<b>Annual Wage &amp; benefit cost estimate for 11 additional positions</b>	<b>\$820,000</b>
<b>Annual Operations/Subsistence</b>	<b>\$304,000</b>
<b>Total Project Cost Estimate</b>	<b>\$4,774,000</b>

**Date funds are needed:** 2-28-19

**Investment to be made by Applicant (Amount & Source):** Total project cost less grant funding received from Scottsbluff Economic Development Grant

**Loan(s) to be obtained (Amount & Bank Name):** Croell will request CapEx loan financing from Associated Bank, our primary bank, for the unfunded portion of the Project (limited to 80% of eligible, unfunded costs).

**LB840 financial assistance amount requested for the Project:** \$750,000

**\*\*The committee reserves the right to make part of the funds Grant (forgivable loan) and part of the funds Loan, which in non-forgivable and has repayment terms.**

**Other Loans/Grants (CDBG, TIF, Re-Use, etc.):** None

#### 5. Security Available:

**Guarantor(s):** None

**Real Estate:** Scottsbluff Regional Site land (354 acres) and Buildings which are currently under development

**Existing Liens:** There are no liens on the Scottsbluff Regional Site real property; Farm Credit Services has a lien on many of the pit/quarry land sites owned by Croell; Bank Iowa has a lien on our Sundance WY regional site real property as well as a residential property in Douglas WY

## **Personal Property:**

**Existing Liens:** Associated Bank has blanket lien on all personal property including RM Batch Plants, other than 1<sup>st</sup> lien by other Financial Institutions on specified equipment

**Other:** Associated Bank has blanket lien on all accounts receivable, inventory, etc. excluding real property of Croell

## **6. Eligibility:**

### **Principal Source of Income from (circle one):**

- a. Manufacturing
- b. Research & development
- c. Processing, storage, transport or sale of goods or commodities in interstate Commerce
- d. Sale of Services in interstate commerce
- e. Headquarters facilities relating to eligible activities
- f. Telecommunications activities
- g. Tourism-related activities
- h. Retail sales of ready mix concrete

### **Statement of how project is consistent with the goals of the Scottsbluff Economic**

**Development Program:** This project will enhance the basic economy of Scottsbluff and represents a good leverage of EDP funding. Croell, Inc. is expanding its local presence in the community to provide corporate support as well as supply ready mix concrete, mine and produce aggregate products, provide equipment repair and service support for the Scottsbluff region of its multi-state business operations. Job creation is projected to be minimum of 11 new positions over the existing 6 positions. While the number of high-quality local jobs to be created is not huge, the wage levels, benefits and stability of the company will have a significant positive impact on the local economy. The wage rates for job creation are competitive and therefore represent a solid contribution to local wealth.

The infrastructure proposed will not only leverage the private investment by the company but will also extend infrastructure (natural gas & electrical) into an area where additional industrial or commercial development can occur. Croell, Inc. is well positioned financially and from a management perspective to make this expansion a success which will add value to the local community.

**Describe any pending legal action(s), to include the amount at risk and a summary of how ownership is reacting to the action(s):** Disgruntled former contractor in east-central Iowa has filed suit against Croell, Inc. for which Croell denies allegations. Trial is scheduled for spring 2019. Potential \$ risk is \$325,000.

**7. Additional Information to be submitted:**

- a. **Resumes of Owners, Management & Key Employees (include experience, training, credentials & work history).**
  - i. Kurt Croell, President, 35 years' experience in Concrete
  - ii. Bill Croell, Secretary, 37 years' experience in Concrete
  - iii. Joe Croell, Treasurer, 40 years' experience in Concrete
  - iv. Harlan Taylor, Vice Pres., 45 years' experience in Concrete
  - v. Harry Busta, GM-Eastern Ops, 35 years' experience in Concrete
  - vi. Brian Marchant, GM-Western Ops, 22 years' experience in Concrete
  - vii. Tom Schmitt, Paving Mngr- Eastern Ops 32 years' experience in Concrete
  - viii. Bryson Gambrel, Paving Mngr-Western Ops, 12 years' experience in Asphalt
  - ix. Jon Anderson, SBNE Regional RM Mngr, 24 years' experience in Concrete
  - x. Reed Palser, Scottsbluff RM Plant Mngr. 24 years' experience in Concrete
- b. **Brief history of your business and where you see your business going in the next 5 years, with emphasis on the impact to the City of Scottsbluff.**

See attached history.
- c. **Personal Financial Statement of Guarantors and anyone owning 25% or more of the business. Note: documentation verifying assets and liabilities shall be made available upon request.** See Personal Financials of the 3 majority shareholders.
- d. **Income statement covering the past 2 years of business operations, if in business for that long. Copies of filed tax returns are acceptable and the most recent year's return must be included.** See 2016 & 2017 financials and 2017 Corporate Tax return.
- e. **Business Plan, to include:**
  - **Total project costs to include itemized use of funds** Refer to response #4 above
  - **Lender Commitments:** Croell will request CapEx funding from Associated Bank for the unfunded portion of the Project (limited to 80% of eligible, unfunded costs).
  - **Investor Commitments:** None
  - **Financial projections.** See Croell's 5 Year 2018-2023 Projection
  - **Employment projections for the next 3 years.** Addition of 11 new positions over the existing 6 positions
  - **Identification of jobs to be created by description, number, average wage, benefits, etc.** Refer to response #3 above
  - **Information as to suppliers, and in particular, those in the Scottsbluff area**  
**Ones highlighted in red are local to the Scottsbluff/Gering area**



## Construction related Services

- **Paul Reed Construction**

### Utilities

- **A & A Porta Potties**
- **Action Communications**
- **City of Scottsbluff**
- **Nebraska Public Power District**
- **Chimney Rock Public Power**
- **Panhandle Coop Association**
- **Source Gas**
- Verizon Wireless
- Century Link

### Incoming Material

- Martin Marietta – Guernsey
- Mountain Cement – Laramie

### Material Haulers

- **Aulick Leasing Corp**
- Jeffres Trucking LLC
- **K4 Trucking**
- Transpro Inc

### Equipment, Parts, supplies

- ATS
- Chem Tech
- **Contractors Materials Inc**
- **Dale's Tire & Retread**
- **Dooley Oil Inc**
- **Floyd's Truck Center Inc**
- **Inland Truck Parts Company**
- MHC Kenworth
- **NAPA Scottsbluff**
- NMC Exchange LLC
- **Panhandle Coop Association**
- **Slafter Oil Co**
- Wright Express Fleet Services

f. **References, to include name, position, address and phone number:**

1. Jim Fink, Sr. V.P. Associated Bank 651-523-6303 [james.fink@associatedbank.com](mailto:james.fink@associatedbank.com)
2. Chris Honkomp, Consultant, Grit Capital 319-329-1828 [chonkomp@grit-capital.com](mailto:chonkomp@grit-capital.com)
3. Paul Brooks, Mayor of Sundance, 307-283-3451 [sundancewy@rangeweb.net](mailto:sundancewy@rangeweb.net)

g. **Any other information that you feel will assist the City in evaluating your Application. Please include any marketing or sales brochures.**

- h. **With respect to the Business, or any persons owning 25% or more of the business and any officers, indicate if there is any past or pending litigation which either has resulted in or could result in a judgment against the Business or any such person. List the nature of the judgment or pending action, and whether any portion remains unpaid as of this date.**

Disgruntled former contractor in east-central Iowa has filed suit against Croell, Inc. for which Croell denies allegations. Trial scheduled for the spring of 2019. Potential \$ risk is \$325,000.

- i. **With respect to any persons owning 25% or more of the business and any officers, indicate any who have been convicted of or plead guilty to any criminal charge or violation of law, excepting minor traffic offenses. List the nature of the charge, where the charge occurred and the year and month of the conviction or plea. None**
- j. **Applicant agrees to sign waiver form provided by the City of Scottsbluff for Background and Credit Check. Yes**

**8. Nebraska Advantage Act:**


The Applicant certifies to the city as follows (select one):

  X   The Applicant has not filed nor does it intend to file an application with the Nebraska Department of Revenue to receive tax incentives under the Nebraska Advantage Act with respect to this project.

       The Applicant has filed or intends to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for this project. If so, indicate if such application includes or will include, as one of the tax incentives, a refund of the City's local option sales tax revenue:       ; and whether such application has been approved under the Nebraska Advantage Act:       .

I certify that the information presented in connection with this Application for Economic Development Assistance is true and correct. Consent is given to the City of Scottsbluff to contact references, conduct one or more credit checks, criminal background checks, and to verify the information contained in this Application.

Dated: December 18, 2018

Signed:   
Title: Kurt Croell, President of Croell, Inc.

## **ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT**

This Agreement is made on March 4, 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 Annual 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 Annual 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 a deed of trust (the "Deed of Trust") covering the Applicant's real estate at the Business. 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, or the Deed of Trust.

- 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, or their lineal issue, 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