

# **City of Scottsbluff, Nebraska**

**Monday, September 21, 2020**

**Regular Meeting**

## **Item Consent3**

**Approve amendments to Economic Development Agreements for COVID accommodations.**

**Staff Contact: City Council**

**Amendment to  
Economic Development Assistance Agreement**

This “Amendment” is made on September 22, 2020 and is to the “Economic Development Assistance Agreement” dated October 1, 2013 (the “EDA Agreement”), is effective October 1, 2018, and is by and between the City of Scottsbluff, Nebraska (the “City”) and Skiles Industries, Inc. (the “Applicant”).

RECITALS:

a. The City and the Applicant are parties to the EDA Agreement. The EDA Agreement was made under the Economic Development Program of the City (the “Program”), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the EDA Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the EDA Agreement.

c. The City provided a Grant to the Applicant under the EDA Agreement in the amount of \$60,000 (the “Grant”), earnable through job credits under the EDA Agreement.

d. The “Term” to earn the Grant for the majority of the job credits (42 FTEs) expired on September 30, 2018.

e. As of October 1, 2018 (the “Amended Job Credit Effective Date”), the unearned, outstanding amount of the Grant is \$34,520 (the “Unearned Amount”). From the Year October 1, 2018 to September 30, 2019, the Applicant is eligible to receive an additional job credit (if approved by the Amendment) in the amount of \$10,200, resulting in an unearned balance of \$24,320 as of the September 22, 2020.

f. The City desires to extend COVID-19 Accommodations under this Amendment to address the continued performance of the Grant. Additionally, at this time, the parties desire to extend the “Term” in which to earn job credits against the balance of the Unearned Amount.

AMENDMENT:

1. Grant.

a. The Applicant shall continue to earn an “Annual Job Credit” equal to the Eligible FTE’s multiplied by \$1,000, as provided in the EDA Agreement, to be applied against the Unearned Amount under this Amendment.

b. The “Term” in which to earn Annual Job Credits is extended and amended to five Years from the Amended Job Credit Effective Date for all Eligible FTE’s of the Applicant existing on the Amended Job Credit Effective Date, and continuing thereafter. It is agreed that

the Applicant earned \$10,200 in an Annual Job Credit against the Unearned Amount during the Year beginning October 1, 2018 and ending September 30, 2019.

c. A “Year” shall continue to mean a 12-month period ending on the day prior to each annual anniversary of the Amended Job Credit Effective Date.

d. “Full Time Equivalent” Employees (the “FTE’s”) as defined in paragraph 5.c of the EDA Agreement shall continue to be the number arrived at by dividing the total hours paid by the Applicant to their Eligible Full Time Employees during a given Year, divided by 2,080 hours, and then rounded down the nearest tenth. Salaried employees shall continue to be presumed to have been paid for 2,080 hours. However, for the “Year” ending September 30, 2020, the term “FTE’s” shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full-Time Employees during that Year divided by 1,560 hours and then rounded down to the nearest tenth. For such Year ending September 30, 2020, the maximum hours paid that can be counted for any FTE shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of an FTE during the Year ending September 30, 2020 shall be presumed to have been paid 1,560 hours. This 1,560 hour modification of hours for FTE credits shall only apply to the Year beginning October 1, 2019 and ending September 30, 2020.

2. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator’s responsibilities and authorities under of the Program. The Amendment, and those adjustments made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic and the unearned credits of the Grant at the end of the Term under the ED Agreement.

3. All other terms and conditions of the EDA Agreement and the Amended and Restated Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.

4. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Skiles Industries, Inc.

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Jerry Skiles, President

## Amendment to Economic Development Assistance Agreement

This Amendment to the Economic Development Assistance Agreement (the “Amendment”) is made Effective April 1, 2020, and is by and between the City of Scottsbluff, Nebraska (the “City”) and Regional West Medical Center (the “Applicant”).

### RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated February 21, 2017 (the “Agreement”). The Agreement was made under the Economic Development Program of the City (the “Program”), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the Agreement as set forth below.

### AMENDMENT:

1. Grant Modification. The “Grant” awarded under the EDA Agreement is payable each Year (as that term is defined by the EDA Agreement) retroactively after job creation is determined following the Years of 2018, 2019, 2020, and 2021 For the Year of 2020, the following Amendment is made to paragraph 4.c of the EDA Agreement:

“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 2,080 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. Provided, if the maximum number of hours permitted for helicopter pilots during a Year is less than 2,080 hours, then the maximum number of hours shall be substituted for 2,080 in the case of pilots For the 2020 “Year” the term “FTE’s” shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full-Time Employees during that 2020 Year divided by 1,560 hours and then round it down to the nearest tenth. For such 2020 Year, the maximum hours paid that can be counted for any Eligible FTE shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of an FTE during the 2020 Year shall be presumed to have been paid 1,560 hours. The maximum hours permitted for helicopter pilots during the 2020 Year shall be substituted for 1,560 hours, if less than 1,5650 hours during the 2020 Year. The modification of hours for FTE credits shall only apply to the 2020 Year”

2. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator’s responsibilities and authorities under of the Program. The Amendment, and those adjustments made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic.

3. All other terms and conditions of the Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.

4. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Regional West Medical Center

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Chief Executive Officer

## **Amendment to Economic Development Assistance Agreement**

This Amendment to the Economic Development Assistance Agreement (the “Amendment”) is made Effective September 30, 2020, and is by and between the City of Scottsbluff, Nebraska (the “City”) and Walther Investment, LLC (the “Applicant”).

### RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated June 9, 2017 (the “Agreement”). The Agreement was made under the Economic Development Program of the City (the “Program”), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the Agreement as set forth below.

### AMENDMENT:

1. Loan Modification. The “Loan” provided under the EDA Agreement is “repaid” each Year (as that term is defined in the EDA Agreement) through credits from job creation. For the Year beginning October 1, 2019 and ending September 30, 2020, the following Amendment is made to paragraph 5.c of the EDA Agreement:

“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 2,080 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 on the basis of 40 hours per week. For the Year beginning October 1, 2019 and ending September 30, 2020, the term “FTE’s” shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full-Time Employees divided by 1,560 hours and then round it down to the nearest tenth. For such Year, the maximum hours paid that can be counted for any Eligible FTE shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of an FTE during the such Year shall be presumed to have been paid 1,560 hours. The modification of hours for FTE credits shall only apply to the Year beginning October 1, 2019 and ending September 30, 2020”

2. The interest-only payment due October 1, 2020 under the EDA Agreement is hereby waived. The Applicant has made the interest-only payment due July 1, 2020, and the waiver of interest for the quarter ending September 30, 2020 is made in lieu of the COVID-19 accommodation that would otherwise have been provided to the Applicant for the previous quarter.

3. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator's responsibilities and authorities under of the Program. The Amendment, and those adjustments made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic.

4. All other terms and conditions of the Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.

5. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Walther Investment, LLC

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_

Title: \_\_\_\_\_

## **Amendment to Economic Development Assistance Agreement**

This Amendment to the Economic Development Assistance Agreement (the "Amendment") is made Effective September 30, 2020, and is by and between the City of Scottsbluff, Nebraska (the "City") and Treaty Site Farms, Inc. (the "Applicant").

### RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated February 26, 2018 (the "Agreement"). The Agreement was made under the Economic Development Program of the City (the "Program"), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the Agreement as set forth below.

### AMENDMENT:

1. Loan Modification. The "Loan" provided under the EDA Agreement is "repaid" each Year (as that term is defined in the EDA Agreement) partially through credits from job creation. For the Year beginning April 1, 2020 and ending March 31, 2021, the following Amendment is made to paragraph 7.a(3) of the EDA Agreement:

“(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, 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 on the basis of 40 hours per week. For the Year April 1, 2020 and ending March 31, 2021 the term “FTE’s” shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full Time Employees divided by 1,560 hours and then round it down to the nearest tenth. For such Year, the maximum hours paid that can be counted for any Eligible Full Time Employee shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of an Eligible Full time Employee during the such Year shall be presumed to have been paid 1,560 hours. The modification of hours for FTE credits shall only apply to the Year beginning April 1, 2020 and ending March 31, 2021.”

2. Interest accruing on the principal sum under the Note shall be waived from April 1, 2020 through June 30, 2020, and an updated amortization schedule is attached. All other terms and conditions of the Note shall remain in full force and effect.

3. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator's responsibilities and authorities under of the Program. The Amendment, and those adjustments



made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic.

4. All other terms and conditions of the Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.

5. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Treaty Site Farms, Inc.

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Samuel G. Adams, President

## Amendment to Economic Development Assistance Agreement

This Amendment to the Economic Development Assistance Agreement (the “Amendment”) is made Effective September 30, 2020, and is by and between the City of Scottsbluff, Nebraska (the “City”) and Complete Care Family Practice, LLC (the “Applicant”).

### RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated May 23, 2018 (the “Agreement”). The Agreement was made under the Economic Development Program of the City (the “Program”), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the Agreement as set forth below.

### AMENDMENT:

1. Loan Modification. The “Loan” provided under the EDA Agreement is “repaid” partially each Year (as that term is defined in the EDA Agreement) through credits from job creation. The following changes are made:

a. Paragraph 4.b is amended as follows:

“b. In order to receive Annual Job Credits, the Applicant must file an Annual Report as provided for below. Upon receipt of an Annual Report, the City will make a preliminary review based on the Annual Job Credits claimed. The City shall notify the Applicant as to the difference between the Annual Payment and the Annual Job Credit. The difference shall be paid to the City on or before the following September 1. The Annual Job Credit may not in any event exceed the Annual Payment; provided, however, if the Annual Job Credit meets or exceeds the Maximum Annual Credit (as defined below), the Applicant shall be entitled to the higher of the Annual Job Credit or the Maximum Annual Credit, and if the Annual Job Credit meets or exceeds the principal owed on the Annual Payment, the interest due on that Annual Payment shall be waived by the City and that Annual Payment shall be treated as being paid.”

b. For the Year beginning July 1, 2019 and ending June 30, 2020, the following amendment is made to paragraph 5.d of the EDA Agreement:

“c. “Full Time Equivalent” Employees (the “FTE’s”) shall be the total of (i) the number of Eligible Full Time Employees which are paid based on a salary, plus (ii) with respect to hourly Eligible Full Time Employees, the number arrived at by dividing the total hours paid by the Applicant to its hourly Eligible Full Time Employees during a Year divided by 2,080 hours, and then rounded down to the

nearest tenth; provided, however, the maximum hours paid that can be counted for any one hourly Eligible Full Time Employee shall not exceed 2,080 hours. For the Year beginning July 1, 2019 and ending June 30, 2020, the term “FTE’s” shall be the number arrived at by dividing the total hours paid by the Applicant to its hourly Eligible Full-Time Employees divided by 1,560 hours and then round it down to the nearest tenth. For such Year, the maximum hours paid that can be counted for any Eligible Full-Time Employees shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of an Eligible Employee during the such Year shall be presumed to have been paid 1,560 hours. The modification of hours for FTE credits shall only apply to the Year beginning July 1, 2019 and ending June 30, 2020.”

2. Interest accruing on the principal sum under the Note shall be waived from April 1, 2020 through June 30, 2020, and an updated amortization schedule is attached. All other terms and conditions of the Note shall remain in full force and effect.

3. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator’s responsibilities and authorities under of the Program. The Amendment, and those adjustments made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic.

4. All other terms and conditions of the Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.

5. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Complete Care Family Practice, LLC

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Jodene Burkhart, Sole Member

## Amendment to Economic Development Assistance Agreement

This Amendment to the Economic Development Assistance Agreement (the "Amendment") is made Effective January 1, 2020, and is by and between the City of Scottsbluff, Nebraska (the "City") and Bytes Computer and Network Solutions, Inc. (the "Applicant").

### RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated November 9, 2018 (the "Agreement"). The Agreement was made under the Economic Development Program of the City (the "Program"), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the Agreement as set forth below.

### AMENDMENT:

1. Loan Modification. The "Loan" provided under the EDA Agreement is being converted to a "Grant" under the Program. Accordingly, the following changes are made:

a. The "Grant" shall be in the amount of \$80,000, reflecting the principal owed on the assistance under the Agreement as of January 1, 2020. Accordingly, paragraph 2 of the Agreement is amended and replaced in total as follows:

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

The Grant shall be in the amount of \$80,000 (the "Grant Amount") which assumes that the Applicant will maintain at least \$20,000 in Maximum Annual Credit (as defined below) over an four Year period.

b. Paragraphs 4, 5, and 6 of the Agreement are amended and replaced in total as follows:

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

The Grant Amount 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" of this Agreement for Job Credit calculation purposes shall be January 1, 2020 (the "Effective Date").

b. The term of this Agreement shall begin on the Effective Date and shall continue for 4 years from the 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 Effective Date.

## **5. Employee Definitions:**

a. "Full Time Employee" shall mean a bona fide employee of the Applicant who (1) is classified by the Applicant as full time; and (2) subject to normal and reasonable waiting periods, is eligible for the Applicant's normal fringe benefit package.

b. "Eligible Full Time Employee" shall mean a Full Time Employee who: (1) primarily works in the City, 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 by the Applicant, shall nevertheless be considered an Eligible Full Time Employee if the Full Time Employee moves to a residence within the required geographic area within 6 months of the hiring of the Eligible Full Time Employee.

c. "Full Time Equivalent" Employees (the "FTE's") shall be the 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, 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 on the basis of 40 hours per week; provided, however, that during the Year beginning January 1, 2020 and ending December 31, 2020, 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 1,560 hours; and then rounded down to the nearest tenth, and salaried employee shall be presumed to have been paid on the basis of 1,560 hours during that Year.

d. "Eligible FTE's" shall mean the FTE's calculated for a year less 11; provided, however, in determining which Eligible Full Time Employees are eligible for the Additional Annual Credits (as defined below), the amounts paid for those positions described in the Application shall be used (COO, Service Engineer II, Service Engineer I and Senior Systems Engineer). If the Applicant has more than 15 Eligible Full Time Employees, then the most recently hired Eligible Full Time Employee(s) over 15 shall be used."

## 6. Job Credits:

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 Grant Amount for Job Credits earned during a Year. A “Year” shall mean the 12-month period ending on each December 31, with the first Year beginning January 1, 2020. “Annual Job Credits” shall be calculated as follows:

a. The Applicant is eligible to receive a “Base Annual Job Credit” during a Year equal to the Eligible FTE’s for a Year multiplied by \$2,000.

b. If at the end of a Year, (1) the Annual Report (as provided for below) indicates that the Applicant has any Eligible FTE’s that have average earnings for the Year of at least (i) \$14 per hour in the case of hourly employees, or (ii) \$29,120 in the case of salaried employees, and (2) such employees are eligible for the Applicant’s fringe benefit plan, then the Applicant may earn additional job credits (the “Additional Annual Credits”) as calculated on a per employee basis based on the following table:

| <u>Additional Credit</u> | <u>Hourly Rate (Based on 2080 hours)</u> | <u>Annual Salary</u> |
|--------------------------|--|----------------------|
| \$400                    | \$14.00 to \$17.99                       | \$29,120 to \$37,439 |
| \$800                    | \$18.00 to \$21.99                       | \$37,440 to \$45,759 |
| \$1,200                  | \$22.00 to \$25.99                       | \$45,760 to \$54,079 |
| \$1,600                  | \$26.00 to \$29.99                       | \$54,080 to \$62,399 |
| \$2,000                  | \$30.00 and above                        | \$62,400 and above   |

c. In calculating the hourly rate or salary rate for purposes of the above table, the Applicant is entitled to add the hourly equivalent or annual cost of the following fringe benefits provided to the applicable employee by the Applicant: 401k Plan, profit sharing, pension or equivalent retirement benefits, health insurance, and life and disability insurance.

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

e. The amount of the Annual Job Credit may not exceed \$25,000 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.”

2. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator's responsibilities and authorities under of the Program. The Amendment, and those adjustments made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic. The Amendment is also made to address the current performance of the Applicant, in realizing a grant approach to the assistance that fits the Applicant's performance better than a loan approach.
3. All other terms and conditions of the Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.
4. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Bytes Computer and Network Solutions, Inc.

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Todd Lewis, President

## Amendment to Economic Development Assistance Agreement

This Amendment to the Economic Development Assistance Agreement (the "Amendment") is made Effective September 30, 2020, and is by and between the City of Scottsbluff, Nebraska (the "City") and Croell, Inc. (the "Applicant").

### RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated March 4, 2019 (the "Agreement"). The Agreement was made under the Economic Development Program of the City (the "Program"), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the Agreement as set forth below.

### AMENDMENT:

1. Loan Modification. The "Loan" provided under the EDA Agreement is "repaid" each Year (as that term is defined in the EDA Agreement) partially through credits from job creation. For the Year beginning July 1, 2019 and ending June 30, 2020, the following Amendment is made to paragraph 7.a(3) of the EDA Agreement:

"(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 For the Year beginning July 1, 2019 and ending June 30, 2020 the term "FTE's" shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full Time Employees divided by 1,560 hours and then round it down to the nearest tenth. For such Year, the maximum hours paid that can be counted for any Eligible Full Time Employee shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of an Eligible Full time Employee during the such Year shall be presumed to have been paid 1,560 hours. The modification of hours for FTE credits shall only apply to the Year beginning July 1, 2019 and ending June 30, 2020."

2. Interest accruing on the principal sum under the Note shall be waived from April 1, 2020 through June 30, 2020, and an updated amortization schedule is attached. All other terms and conditions of the Note shall remain in full force and effect.

3. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator's responsibilities and authorities under of the Program. The Amendment, and those adjustments



made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic.

4. All other terms and conditions of the Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.

5. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Croell, Inc.

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Kurt Croell, President

## Amendment to Economic Development Assistance Agreement

This Amendment to the Economic Development Assistance Agreement (the "Amendment") is made Effective September 30, 2020, and is by and between the City of Scottsbluff, Nebraska (the "City") and Western Farms, LLC. (the "Applicant").

### RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated January 21, 2020 (the "Agreement"). The Agreement was made under the Economic Development Program of the City (the "Program"), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the Agreement as set forth below.

### AMENDMENT:

1. Loan Modification. The "Loan" provided under the EDA Agreement is "repaid" each Year (as that term is defined in the EDA Agreement) partially through credits from job creation. For the Year beginning January 1, 2020 and ending December 31, 2020, the following Amendment is made to paragraph 5.c of the EDA Agreement:

"c. "Full Time Equivalent" Employees (the "FTE's") shall mean the sum of the number arrived at by dividing the total hours of all Full Time Employees paid by the Applicant during a given Year by 2,080 hours, and then rounding down to the nearest tenth; provided, however, the maximum hours paid that can be counted for any one Full Time Employee shall not exceed 2,080 hours. Salaried employees meeting the definition of a Full Time Employee shall be presumed to have been paid for 2,080 hours For the Year beginning January 1, 2020 and ending December 31, 2020 the term "FTE's" shall be the number arrived at by dividing the total hours paid by the Applicant to the Full Time Employees divided by 1,560 hours and then round it down to the nearest tenth. For such Year, the maximum hours paid that can be counted for any Full Time Employee shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of a Full time Employee during the such Year shall be presumed to have been paid 1,560 hours. The modification of hours for FTE credits shall only apply to the Year beginning January 1, 2020 and ending December 31, 2020."

2. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator's responsibilities and authorities under of the Program. The Amendment, and those adjustments made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic.

3. All other terms and conditions of the Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.

4. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Western Farms, LLC

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Patrick Hoehn, President

## Amendment to Economic Development Assistance Agreement

This Amendment to the Economic Development Assistance Agreement (the "Amendment") is made Effective September 30, 2020, and is by and between the City of Scottsbluff, Nebraska (the "City") and Factory Crimp Services, Inc. (the "Applicant").

### RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated January 6, 2020 (the "Agreement"). The Agreement was made under the Economic Development Program of the City (the "Program"), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the Agreement as set forth below.

### AMENDMENT:

1. Job Credit Modification. The "Grant Amount" provided under the EDA Agreement is "repaid" each Year (as that term is defined in the EDA Agreement) through credits from job creation. For the Year beginning January 1, 2020 and ending December 31, 2020, the following Amendment is made to paragraph 5.c of the EDA Agreement:

"c. "Full Time Equivalent" Employees (the "FTE's") shall be the total of (i) the number of Eligible Full Time Employees which are paid based on a salary, plus (ii) with respect to hourly Eligible Full Time Employees, the number arrived at by dividing the total hours paid by the Applicant to its hourly Eligible Full Time Employees during a Year divided by 2080 hours, and then rounded down to the nearest tenth; provided, however, the maximum hours paid that can be counted for any one hourly Eligible Full Time Employee shall not exceed 2080 hours. For the Year beginning January 1, 2020 and ending December 31, 2020 the term "FTE's" shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full Time Employees divided by 1,560 hours and then round it down to the nearest tenth. For such Year, the maximum hours paid that can be counted for any Eligible Full Time Employee shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of an Eligible Full Time Employee during the such Year shall be presumed to have been paid 1,560 hours. The modification of hours for FTE credits shall only apply to the Year beginning January 1, 2020 and ending December 31, 2020."

2. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator's responsibilities and authorities under of the Program. The Amendment, and those adjustments made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic.

3. All other terms and conditions of the Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.

4. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Factory Crimp Services, Inc.

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Scott James, President

## Amendment to Economic Development Assistance Agreement

This Amendment to the Economic Development Assistance Agreement (the “Amendment”) is made Effective September 30, 2020, and is by and between the City of Scottsbluff, Nebraska (the “City”) and Gardner Technologies, LLC (the “Applicant”).

### RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated January 21, 2020 (the “Agreement”). The Agreement was made under the Economic Development Program of the City (the “Program”), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the Agreement as set forth below.

### AMENDMENT:

1. Interest accruing on the principal sum under Non-Contingent Loan shall be waived from April 1, 2020 through June 30, 2020. All other terms and conditions of the Note shall remain in full force and effect.

2. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator’s responsibilities and authorities under of the Program. The Amendment, and those adjustments made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic.

3. All other terms and conditions of the Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.

4. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Gardner Technologies, LLC

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Jerry Gardner, President

## Second Amendment to Economic Development Assistance Agreement

This “Second Amendment” to the Economic Development Assistance Agreement is made Effective April 1, 2020, and is by and between the City of Scottsbluff, Nebraska (the “City”) and BDS3C, L.L.C. (the “Applicant”).

### RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated August 29, 2017 (the “Agreement”). The Agreement was amended by an Amendment to Economic Development Assistance Agreement dated May 21, 2018 (the “Amendment”). The Agreement and Amendment were made under the Economic Development Program of the City (the “Program”), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Second Amendment for the purposes of amending the Agreement and the Amendment as set forth below.

### SECOND AMENDMENT:

1. Assistance Modification. The “Loan” obligations as defined in paragraph 2 of the Agreement and paragraph 1 of the Amendment, are hereby amended as follows:

a. The balance of the Note owed on March 1, 2020 shall become payable in 93 equal monthly payments of principal and interest, payable under an Amended and Restated Note, carrying interest at the rate set forth in the Amended Promissory Note. Interest on the Amended Promissory Note shall be waived from April 1, 2020 to June 30, 2020. The first monthly payment due under the Amended and Restated Note shall be due and payable on October 1, 2020, and each monthly payment shall be due on the first of each month thereafter. Job credits will continue to be applied to the Amended and Restated Note.

2. Modified Note. The terms, conditions, and obligations of the “Amended Promissory Note” executed as of May 21, 2018 shall be incorporated into an Amended and Restated Note executed by the Applicant, in the form of the attached Exhibit A, the terms of which are incorporated herein by reference.

3. FTE Employees. Paragraphs 5.a and 5.c of the Agreement is hereby amended in total as follows:

“a. “Full Time Employee” shall mean a bona fide employee of the Applicant who (1) is classified by the Applicant as full time; (2) subject to normal and reasonable waiting periods, is eligible for the employer’s normal fringe benefit package; and (3) is primarily employed to work in the Applicant’s brewing operation and/or in the wholesale distribution of products produced by the Applicant at the Business. For purposes of this Agreement, one or more of the owners of the Applicant that acts as the regular manager and receives

pay, a regular draw, or guaranteed payment from the Applicant (or is taxed on undistributed earnings) equal to or greater than average earnings as stated in paragraph 4.b above shall be considered “employed to work in the Applicant’s brewing operation” and shall be eligible to be a “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 2,080 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 on the basis of 40 hours per week. An owner of the Applicant described in paragraph 5.a above shall be considered a “salaried employee.” For the “Year” ending June 30, 2020, the term “FTE’s” shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full-Time Employees during that Year divided by 1,560 hours and then round it down to the nearest hundredth. For such Year ending June 30, 2020, the maximum hours paid that can be counted for any Eligible FTE shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of an FTE during the Year ending June 30, 2020 shall be presumed to have been paid 1,560 hours. The modification of hours for FTE credits shall only apply to the Year beginning July 1, 2019 and ending June 30, 2020.”

5. This Second Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator’s responsibilities and authorities under of the Program. The Second Amendment, and those adjustments made, is intended to address business difficulties and the economic downturn related to the COVID-19 pandemic.

6. All other terms and conditions of the Agreement and the Amendment shall continue in full force and effect, and shall be amended only as set forth in this Second Amendment.

7. This Second Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Second Amendment shall be covered by the laws of Nebraska. This Second Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

BDS3C, L.L.C.

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Joseph Margheim, Member



**AMENDED AND RESTATED NOTE**

\$450,840.17

Date: March 1, 2020

BDS3C, L.L.C. (the “Borrower”), promises to pay to the order of the City of Scottsbluff, Nebraska (the “Lender”), the principal sum of \$450,840.17. Interest shall accrue on this Amended and Restated Note at the rate of 1.92% per annum, and shall be payable over 93 monthly equal installments of principal and interest. Interest that has accrued on the “Amended Promissory Note” (as defined below) since March 1, 2020 shall be paid under this Amended and Restated Note, subject to a waiver of interest from April 1, 2020 to June 30, 2020. The first monthly payment shall be due on October 1, 2020, and each additional payment due on the same date of each month thereafter. Job credits under the EDA Agreement and the Amended EDA Agreement (both, as defined below) shall be applied and shall continue to be applied to this Amended and Restated Note, pursuant to the EDA Agreement, the Amended EDA Agreement, and the Second Amendment to the EDA Agreement (as defined below). An amortization schedule is attached to this Amended and Restated Note and incorporated herein by reference. The Borrower shall have the right to prepay all or any part of the principal at any time.

This Amended and Restated Note is being made pursuant to an Economic Development Assistance Agreement (the “EDA Agreement”) dated August 29, 2017, and an Amendment to Economic Development Assistance Agreement (the “Amended EDA Agreement”) dated May 21, 2018 as well as a Second Amendment thereto dated September 8, 2020, between the Lender and the Borrower, the terms of which are incorporated in this Amended and Restated Note by reference. This Amended and Restated Note shall continue to be secured by (1) a Security Agreement given by the Borrower to the Lender dated August 29, 2017, and (2) a Deed of Trust covering certain real estate dated August 29, 2017 and recorded September 14, 2017 in the office of the Register of Deeds of Scotts Bluff County, Nebraska. This Amended and Restated Note will continue to be guaranteed with the Guaranty of Andrea Margheim, Joe Margheim, and Peter Meyer, dated August 29, 2017.

The Borrower waives presentment, demand for payment, notice of dishonor, notice of protest, and all other notices or demands in connection with the delivery, acceptance, performance, default or endorsement of this Amended and Restated Note.

If default is made in any payment when due, then, at the option of the Lender, the entire balance due shall become due and payable. In the event that a default is declared, the entire remaining balance at that time shall bear interest at the rate of 7% per annum until paid. In the event that legal action is necessary to enforce payment of this Amended and Restated Note, the Borrower shall be liable for reasonable attorney fees and costs of suit. This Amended and Restated Note shall be governed by the laws of Nebraska.

This Note is being given to modify the “Amended Promissory Note” dated May 21, 2018. An original copy of the Amended Promissory Note is attached to this Amended and Restated Note and is being cancelled pursuant to the execution of this Amended and Restated Note. All obligations and rights of the Amended Promissory Note shall be hereinafter governed by the terms of this Amended and Restated Note.

BDS3C, L.L.C.

By: \_\_\_\_\_  
Joseph Margheim, Member

## **Amendment to Economic Development Assistance Agreement**

This Amendment to the Economic Development Assistance Agreement (the “Amendment”) is made Effective January 1, 2020, and is by and between the City of Scottsbluff, Nebraska (the “City”) and Bsquared Farming and Trucking, LLC and S C Blanton Express, LLC (the “Applicant” collectively).

### RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated November 27, 2018 (the “Agreement”). The Agreement was made under the Economic Development Program of the City (the “Program”), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the Agreement as set forth below.

### AMENDMENT:

1. Loan Modification. The “Loan” provided under the EDA Agreement is “repaid” each Year (as that term is defined in the EDA Agreement) partially through credits from job creation. For the Year beginning January 1, 2020 and ending December 31, 2020, the following Amendment is made to paragraph 6.c of the EDA Agreement:

“c. “Full Time Equivalent” Employees (the “FTE’s”) shall be the number arrived at by dividing the total hours paid by the Applicants to their Eligible Full Time Employees during a Year divided by 2,080 hours, and then rounded down to the nearest tenth; provided, however, the maximum hours paid that can be counted for any one Eligible Full Time Employee shall not exceed 40 hours per week. Salaried employees shall be presumed to have been paid on the basis of 40 hours per week. For the Year beginning January 1, 2020 and ending December 31, 2020, the term “FTE’s” shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full Time Employees divided by 1,560 hours and then round it down to the nearest tenth. For such Year, the maximum hours paid that can be counted for any Eligible Full Time Employee shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of an Eligible Full Time Employee during the such Year shall be presumed to have been paid 1,560 hours. The modification of hours for FTE credits shall only apply to the Year beginning January 1, 2020 and ending December 31, 2020.”

2. Interest accruing on the principal sum under the Note shall be waived from April 1, 2020 through June 30, 2020, and an updated amortization schedule is attached. All other terms and conditions of the Note shall remain in full force and effect.

3. For the Annual Payment due April 1, 2020 for the Year ending December 31, 2019, the Applicant shall make that payment on or before December 31, 2020, and if paid by December 31,

2020 the payment date shall be retroactive to April 1, 2020. The Annual Payment due by April 1, 2021 shall remain paid when scheduled (subject to FTE proration and interest waiver set forth in this Amendment), as set forth in the attached updated amortization schedule.

4. The Applicant shall, to the satisfaction of the City, before execution of this Agreement, note and perfect liens of the City on vehicles of SC Blanton Express, LLC that should have been noted and perfected at the closing of the Agreement.

5. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator's responsibilities and authorities under of the Program. The Amendment, and those adjustments made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic.

6. All other terms and conditions of the Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.

7. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Bsquared Farming and Trucking LLC

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Valerie Baker, Manager

By: \_\_\_\_\_  
S. Clifford Brabson, Member

By: \_\_\_\_\_  
Scott Blanton, Member

S C Blanton Express, LLC

By: \_\_\_\_\_  
Scott Blanton, Member