

City of Scottsbluff, Nebraska

Monday, October 19, 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 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”), Candy Barn Express, LLC (the “Applicant”), and KLM Products Group, LLC (“KLM”).

RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated April 13, 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) 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.d 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 for its Eligible 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 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 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 Employee 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 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. The Applicant has moved some FTE’s and assets to KLM, which is an affiliate company. KLM operates for and accomplishes the same purposes as represent by the Applicant

in its application. The City agrees to accept job reports from KLM and treat them the same as a job report from the Applicant, per the terms of the Agreement. In exchange of this agreement, KLM agrees to execute and grant a security interest in its assets according to the terms and conditions of the Security Agreement attached as Exhibit B. **KLM Products Group, LLC also expressly, unconditionally, and jointly and severally, guarantees the payment and performance of the Agreement, as well as the Note executed pursuant thereto, by the execution of the Amendment.**

4. 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.

5. 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.

6. 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

Candy Barn Express, LLC

By: _____
Economic Development
Program Administrator

By: _____
Patrick Maag, Sole Member

KLM Products Group, LLC

By: _____
Patrick Maag, Sole Member

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 Effective Date 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. Job credits are calculated using a Year, with the first Year beginning January 1, 2020. The Applicant has been unable to begin operations and employment to the level initially anticipated due to the economic down-turn related to the COVID-19 pandemic. Accordingly, the following Amendment is made to paragraph 4.a of the EDA Agreement:

“a. The "Effective Date" of this Agreement for Job Credit calculation purposes shall be October 1, 2020 (the “Effective Date”).”

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.

[SIGNATURE PAGE FOLLOWS]

City of Scottsbluff, Nebraska

Factory Crimp Services, Inc.

By: _____
Economic Development
Program Administrator

By: _____
Scott James, President