

City of Scottsbluff, Nebraska

Monday, January 4, 2021

Regular Meeting

Item Reports1

**Council to discuss and consider action on an Economic
Development Agreement for CS Precision Manufacturing, Inc.**

Staff Contact: Starr Lehl, Economic Development Director

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on January 4, 2021, between the City of Scottsbluff, Nebraska (the “City”) and CS Precision Manufacturing, 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 grant (the “Grant”) 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 Grant.

Agreement:

1. Purpose of Grant:

The Applicant is expanding a business in Gering, Nebraska which will be engaged in the manufacture and distribution of hydraulic fittings and couplings (the “Business”). The proceeds of the Grant (as defined below) will be used primarily for the construction of an expanding manufacturing facility, and assembly line improvements and machinery for the expansion of the Business.

2. Amount of Grant:

The Grant shall be in the amount of \$900,000 and shall be disbursed from the City’s Economic Development Fund (the “Fund”) to the Applicant as provided for below. The Grant shall be represented by a promissory note (the “Note”) to be signed at the Grant Closing in the form of the attached Exhibit A. The Note shall not carry interest. Repayment and the application of job credits against the outstanding amount of the Grant shall be as set out below.

3. Grant Disbursement and Grant Closing:

a. Following approval of this Agreement, \$750,000 be scheduled as a claim at the next Council meeting for which the matter may be reasonably scheduled. Following claim

approval of \$750,000 by Council, and if the Applicant has satisfied all conditions to Closing, disbursement of \$750,000 shall be made within 10 business days. The disbursement of the Grant proceeds shall constitute the “Grant Closing”.

b. Between October 1 2021 and July 1, 2022, the Applicant may request, in writing, the remaining \$150,000 of the Grant for the purposes of financing any equipment and machinery purchases related to the expansion of the Business. Upon receipt of such request, \$150,000 shall be scheduled as a claim at the next Council meeting for which the matter may be reasonably scheduled. Following claim approval of \$150,000, and if the Applicant has satisfied all conditions to Closing and is not in default of this Agreement or any document executed pursuant to this Agreement, disbursement of \$150,000 shall be made within 10 business days.

4. 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 balance due under the Note 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 2021. “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

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.

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

d. The cumulative Job Credits earned by the Applicant before January 1, 2024 shall be pooled and applied against the Grant on the January 1, 2024 (which time-frame shall allow the Applicant time to ramp-up in its expansion plan). Thereafter, the Grant shall earn Annual Job Credits for the next ten (10) Years, beginning January 1, 2024. After the tenth (10th) Year of earning Annual Job Credits, the balance due on the Note, if any, shall be repaid by the Applicant to the Fund. An anticipated job credit schedule is attached to this Agreement as Exhibit B.

5. Employee Definitions:

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

b. “Eligible Full Time Employee” shall mean a Full Time Employee who: (1) primarily lives in the City, or (2) resides within 60 miles of the corporate limits of the City; provided, however any Full Time Employee who does not reside within 60 miles of the corporate limits of the City at the time that the Full Time Employee is hired, shall nevertheless be considered an Eligible Full Time Employee if the Full Time Employee moves to a residence within the required geographic area within 6 months of the hiring of the Eligible Full Time Employee.

c. “Full Time Equivalent” Employees (the “FTE’s”) shall be the number arrived at by dividing the total hours paid by the Applicant to their Eligible Full Time Employees during a Year divided by 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.

d. Eligible FTE’s shall mean the FTE’s calculated for a Year, less 66 (allowing for existing employees of the Applicant before expansion contemplated by this Agreement).

6. 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 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 Grant Closing.

7. Representations and Warranties of the City:

The City represents and warrants the following, all of which shall survive the Grant 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.

8. Conditions to Grant Closing:

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

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

b. The Applicant shall have delivered to the City:

- (1) Evidence of Good Standing of the Applicant from 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 approval and loan closing from Platte Valley Bank in the amount of \$1,500,000.00, as indicated in the Application.
 - d. The Applicant shall have received approval from the City Council for the City of Gering, for \$100,000 in the City of Gering LB 840 funds, as indicated in the Application.
 - e. Couplamatic, Inc. (an affiliate of the Applicant) shall have committed as an investor of the Applicant for the expansion of Applicant.
 - f. In order to secure the Grant, the Applicant shall have delivered to the City the following:
 - (1) a joint and several guaranty (the “Guaranty”) of the all the owners of the Applicant and their spouses, in a form agreeable to the City.
 - (2) a security agreement (the “Security Agreement”) covering the Applicant’s equipment, inventory, accounts, and other personal property which shall be second in priority to the Applicant’s primary lender, Platte Valley Bank. The form of the Security Agreement is attached as Exhibit C
 - (3) a deed of trust (the “Deed of Trust”) on the Applicant’s business real estate located at 140028 Lockwood Road, Gering, NE 69341, which shall be junior in priority only to the Applicant’s primary lender, Platte Valley Bank, and to the a deed of trust the Applicant has executed for the benefit of Factory Crimp Service, Inc. (a subsidiary/affiliate) for a currently outstanding grant with the Program. The form of the Security Agreement is attached as Exhibit D.
 - g. 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 Grant Closing.
 - h. There shall have been no material adverse change in the operation or financial status of the Applicant and the Grant Closing shall constitute the Applicant’s representations that there has been no such material adverse change.

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

9. Annual Reports:

If the Applicant desires to claim Annual 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 for the Year (the "Annual Report"). The Administrator shall have the right at any time to (i) require that the Annual Reports be reviewed at the Applicant's expense by a Certified Public Accountant reasonably acceptable to the Administrator, or (ii) hire, at the Administrator's own expense, an independent Certified Public Accountant or other Business or financial expert, to review the books and records of the Applicant pertaining to the Annual Report and any other terms and conditions as provided for in this Agreement. If after a review or audit of the Applicant's records it is discovered that the Annual Job Credit claimed on the Annual Job Credit Report exceeds 10% of the Annual Job Credit as determined by the Administrator, then the Administrator may require the Applicant to reimburse the Fund for the actual cost of the audit.

10. Default:

The Applicant shall be in default in this Agreement and the Note if any of the following happen:

- a. Failure to comply with any of the terms of this Agreement, the Note, the Security Agreement, the Deed of Trust, or the Guaranty to include an assignment not permitted under this Agreement.
- b. Any warranty, representation or statement made or given to the City by the Applicant proves to have been false in any material respect when made or given.
- c. The Applicant ceases to conduct its Business or moves its Business outside of Scotts Bluff County, Nebraska.
- d. Dissolution or liquidation of any of the Applicant, the termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or bankruptcy of the Applicant.

11. 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 Partners owning less than 51% of the ownership interests of the Applicant.

12. 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.

13. Notices:

Any notices or other communications between the parties shall be personally delivered, sent by certified or registered mail, return receipt requested, by Federal Express or similar service that records delivery, to the addresses set out below, or to such other address as a party may designate, from time to time, by written notice to the other. A notice shall be deemed effective upon receipt.

a. If to the City:

City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69361
Attention: City Manager

b. If to the Applicant:

CS Precision Manufacturing, Inc.
140028 Lockwood Road
Gering, NE 69341
Attention: Scott James

14. 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 CS Precision Manufacturing, Inc.**

City of Scottsbluff, Nebraska

CS Precision Manufacturing, Inc.

By: _____
Economic Development
Program Administrator

By: _____
Scott James, President

CITY OF SCOTTSBLUFF
ECONOMIC DEVELOPMENT APPLICATION REVIEW COMMITTEE
December 19, 2020

A meeting of the Economic Development Application Review Committee was held on December 19, 2020 at 9:00 a.m. at City Hall, 2525 Circle Drive, Scottsbluff, Nebraska.

Present were committee members Hod Kosman, Dave Schaff, Nate Merrigan, Jim Trumbull, and Dennis Hadden. Also present were Starr Lehl, Economic Development Director, Rick Kuckkahn, Interim City Manager, and Adam Hoelsing, Deputy City Attorney.

The meeting was called to order by Chairman Merrigan at 9:00 a.m.

It was moved by member Trumbull and seconded member Hadden to approve the Minutes of the December 1, 2020 Application Review Committee Meeting. Voting yes: Schaff, Merrigan, Trumbull and Hadden. Voting no: None. Abstaining Kosman.

The next item on the agenda was consideration of an Amended Application from CS Precision Manufacturing, Inc. CS Precision had presented to the Committee during the Committee's meeting on November 17, 2020, regarding an application for expansion of business that would employ approximately 35 new local employees. At the November 17, 2020 meeting, CS Precision generally presented their application, the business plan for expansion, and their funding sources. Among their funding sources for expansion included State of Nebraska CDBG funds, in the amount of \$750,000. Since the November 17, 2020 meeting, it has been learned by the Applicant that the State of Nebraska is without CDBG funds at the moment, and that the \$750,000 expected grant from the State of Nebraska CDBG funds would not be available. The Applicant is therefore amending its application to include a larger request from the City of Scottsbluff LB 840, in the amount of \$900,000. The Committee had previously recommended for approval a grant in the amount of \$750,000.

Other sources to address the short-fall from the lack of CDBG grant funding are the City of Gering LB 840 funds (which have received a recommendation for approval in the amount of \$100,000), increased funding from Platte Valley Bank (the primary lender), and other internal capital expected to be attributed by the Applicant.

Questions were asked of the Applicant regarding capacity for expansion, as well as purchasing partners (customers). Applicant again stated that Couplamatic, Inc. (its affiliated corporation) continues to be and will continue to be the main purchaser of products for the Applicant, but that the Applicant was at capacity and the anticipation that other purchasing orders from other customers will become available due to consolidation within the industry. The Applicant was also asked about the ability to hire current residents versus the ability to attract residents to the area for employment positions. The Applicant stated that mostly the Applicant has relied on local hires from the current workforce as well as from hires out of high school. The Applicant has found it slightly difficult to hire out-of-the-area residents but will continue to make efforts to do so.

Deputy City Attorney Hoelsing discussed specifics of the Applicant's cash-flow needs. The Applicant stated that \$750,000 of the request was needed fairly quickly, but that the increased request of \$150,000 could be provided within the next 18 months.

Thereafter, it was moved by member Schaff and seconded by member Trumbull that the Committee recommend for approval grant assistance to CS Precision Manufacturing, Inc. in the amount of \$900,000, with \$750,000 being available at closing, and \$150,000 being payable upon request of the Applicant between October 1, 2021 and July 1, 2022. The grant would be a full grant, for the available job credit application in the amount of \$2,000 per base full time equivalent and additional credits for "enhanced full time equivalents" for higher paying jobs. The structure of the grant would remain the same as originally recommended by the Committee at the November 17, 2020 meeting: 3 years in which the ramp-up to full job creation, at which point the balance of the assistance would be termed-out and would continue for a ten-year term, with job credits available to be applied against the amount owed.

The grant assistance would still be collateralized by a Deed of Trust on the Applicant's real estate, as well as a security interest in all the Applicant's inventory, receivables, goods, and other intangibles. The lien on the Deed of Trust and the security interest would be second to the interest of Platte Valley Bank as the primary lender. Voting yes: Merrigan, Schaff and Trumbull. Voting no: None. Abstaining Kosman and Hadden.

Following discussion of the application, future members of the Committee were discussed again. Members of the Committee felt that any future members would need to be present in at least one or more Committee meetings to determine their interest and skill-set for the Committee. Following their presence at one of the committee meetings, the Committee was comfortable recommending their appointment by the City Council. The staff was directed to invite perspective community members to future meetings to meet and discuss the Committee business with current Committee members

Following that discussion, the Committee Meeting was adjourned at 9:45 a.m.

Starr Lehl, Economic Development Director