HASTINGS UTILITY BOARD
AGENDA

Council Chambers – City Hall
220 North Hastings Avenue
May 10, 2018
9:00 AM

ROLL CALL:

PLEDGE OF ALLEGIANCE:

MOTION TO ADOPT CURRENT AGENDA FOR MAY 10, 2018 REGULAR MEETING.

PUBLIC NOTICE - Official Notice of the Regular Meeting was published in the Hastings Tribune on Tuesday, May 8, 2018. Pursuant to Nebraska Revised Statute Section 84-1412, the public is advised that a copy of today's agenda and all reproducible written material which will be discussed at today's meeting is located at the back of the Council Chambers. Also, a current copy of the Nebraska Open Meetings Act is posted on the south wall of the Council Chambers which is accessible to members of the public.

MANAGER'S COMMUNICATIONS:

BOARD CHAIRMAN'S COMMUNICATIONS:

BOARD MEMBERS' COMMUNICATIONS:

CITIZEN COMMUNICATIONS:

CONSENT AGENDA:

1. All Consent Items.

    (a) Approval of the minutes of the Hastings Utility Board Meeting of April 12, 2018

REGULAR AGENDA:

2. Unfinished Business of Preceding Meeting.

3. General Business.

    (a) Finance

i. Financial Results Review

(b) Production

(c) Operations

i. Critical Capital Projects Review (one)

ii. Resolution No. 2018-28 to Extend Water Meter Pit Removal Incentive

(d) Administration

i. Key Performance Metrics (KPI's) - Board Level Selections (through Q2)

ii. Strategic Initiatives Reviews (two)

iii. Hastings Utilities Oversight Committees

(e) Other

i. Hastings Area Chamber of Commerce Retail Survey - Tom Hastings

ii. Hastings Economic Development Corporation (HEDC) Proposal - Flanders

4. Possible Closed Session (if necessary or requested).

ADJOURN:

The Hastings Utility Board reserves the right to enter into an executive session at any time during the meeting, in accordance with the Nebraska Open Meetings Act, even though the closed session may not be indicated on the agenda. It is the intention of the Hastings Utility Board to take up the items on the agenda in sequential order. However, the Hastings Utilities Board reserves the right to take up matters in a different order to accommodate the schedule of the Utility Board Members, persons having items on the agenda, and the public.

CITY OF HASTINGS, NEBRASKA
MINUTES OF UTILITY BOARD REGULAR MEETING
Thursday, April 12, 2018

Pursuant to due call and notice thereof, a Regular Meeting of the Utility Board of Hastings, Nebraska was conducted in the Council Chambers of City Hall, 220 N. Hastings Avenue, on April 12, 2018.

ROLL CALL:

The meeting was called to order at 9:00 a.m. in Regular Session by Chairman Jack Schreiner with the following members present: Shawn Hartmann, Willis Hunt, Jack Schreiner, Bill Hitesman. Absent: Joanne Seberg.

PLEDGE OF ALLEGIANCE:

The Chairman led the group in recital of the Pledge of Allegiance to the United States of America.

MOTION TO ADOPT CURRENT AGENDA FOR APRIL 12, 2018 REGULAR MEETING.

Moved by Bill Hitesman seconded by Shawn Hartmann to adopt the current agenda for April 12, 2018 regular meeting. Roll Call: Ayes: Shawn Hartmann, Bill Hitesman, Willis Hunt, Jack Schreiner. Nays: None. Absent: Joanne Seberg. The motion carried.

PUBLIC NOTICE - Official Notice of the Regular Meeting was published in the Hastings Tribune on Tuesday, April 10, 2018.

Chairman Jack Schreiner read the Public Notice - Pursuant to Nebraska Revised Statute Section 84-1412, the public is advised that a copy of today's agenda and all reproducible written material which will be discussed at today's meeting is located at the back of the Council Chambers. Also, a current copy of the Nebraska Open Meetings Act is posted on the south wall of the Council Chambers which is accessible to members of the public.

MANAGER'S COMMUNICATIONS:

Manager Kevin Johnson reported that because additional security measures have begun at Hastings Utilities, he is presenting badges to the Board which will give them access in the building at Hastings Utilities, but not to the building. He asked that the Board wear them when in the building at Hastings Utilities.

BOARD CHAIRMAN'S COMMUNICATIONS:

None.

BOARD MEMBERS' COMMUNICATIONS:

None.

CITIZEN COMMUNICATIONS:

None.

CONSENT AGENDA:

1. All Consent Items.

(a) Approval of the minutes of the Hastings Utility Board Meeting of March 8, 2018

Moved by Willis Hunt seconded by Shawn Hartmann to approve All Consent Items. Roll Call: Ayes: Shawn Hartmann, Bill Hitesman, Willis Hunt, Jack Schreiner. Nays: None. Absent: Joanne Seberg. The motion carried.

REGULAR AGENDA:

2. Unfinished Business of Preceding Meeting.

None.

3. General Business.

(a) Finance

i. Financial Results Review - YTD January

Kevin Johnson gave a presentation on the first four months of financials which included the latest report, January 2018. He and Renae Jimenez plan to make some changes to the monthly report and Kevin showed an initial draft of those proposed changes. He asked the Board for any input on changes that they would like to see.

ii. Financial Statement Backlog - Update

Kevin commended Renae and her staff on working very diligently on the reports. Renae has said they are very close to having the February report done. They feel that by the May meeting, the financials should be up to date which means the March report would be ready for the May meeting.

iii. HU and City Funding Sources - Rates -vs- Taxes

Renae Jimenez discussed the differences in HU and City Funding Sources - Rates -vs- Taxes.

iv. Irrigation Rates Overview

Brian Strom gave a presentation on Irrigation Rates. He stated how the rates were set up and policed. The Board did not recommend any changes to the rate at this time, but they felt an Electric Rate Study should be done in the near future.

(b) Production

i. Approval of Change Order No. 1 for WEC Switchgear with Siemens Industry, Inc.

Keith Leonhardt reviewed with the Board the need for a change order to the contract with Siemens Industry, Inc. for WEC Switchgear.

Moved by Willis Hunt seconded by Bill Hitesman to recommend approval to the City Council of Change Order No. 1 for WEC Switchgear with Siemens Industry, Inc. for a net addition of $70,242.00. Roll Call: Ayes: Shawn Hartmann, Bill Hitesman, Willis Hunt, Jack Schreiner. Nays: None. Absent: Joanne Seberg. The motion carried.

ii. WEC-2 Outage Update

Derek Zeisler, Assistant Director of Electric Production at the Whelan Energy Center gave an update on the Spring outage at WEC-2. The outage started March 23, 2018 and it went well, but additional issues were found so the outage was extended. WEC-1 is scheduled to come back on line May 21st.

(c) Operations

None.

(d) Administration

i. Key Performance Metrics (KPI's) - Board Level Selections

Kevin Johnson handed out an initial list of Key Performance Indicators (KPI's) that staff is working on and tracking on at least a quarterly basis. He explained the template that will be used. There are several levels of KPI's that will be used but Kevin plans to report only on the Board level KPI's. During the month of April he hopes to start seeing the numbers to track and will be sharing those reports with the Board.

ii. Strategic Initiatives Reviews (two)

Don Cox gave a report on Rate Comparisons. Don handed out a copy of the April customer newsletter which contains an electric rate comparison conducted by the League of Nebraska Municipalities. He said that Hastings' electric rates are very favorable for our customers. Don said that he compiled gas rate comparisons and Hastings is still very competitive with those rates. He said that it is a different story in the water and sewer rates. Because of the cost of the ASR project, Hastings' water rates are near the bottom in comparisons. Our sewer rates are right in the middle, and was affected by costly upgrades to the Pollution Control Center.

Don said that all in all, it was a good reflection on the value of the utility system to Hastings and also the benefit the ratepayers are realizing. He said that dollars that our customers save are reinvested in our community, and that is turned over numerous times.

A discussion took place on in-lieu-of-taxes in Hastings and the various communities that participated in the rate surveys. Those cities that lease their electric system to NPPD have much higher electric rates, but receive 12% in-lieu-of-taxes from NPPD.

iii. Critical Capital Projects Review (one)

Keith Leonhardt updated the Board on the Mercury Removal Project at WEC-1. He said that in recent years there have been a couple of new environmental regulations; the Mercury Air Toxic Standard (MATS) and the Cross State Air Pollution Rule (CSAPR). The presentation that Keith presented addressed the project Hastings Utilities did to address the mercury portion of the MATS Rule. The estimated work order for this project was $1,298,842. The completed cost was $1,377,742, which includes a patent cost of $171,000 which staff was not aware of when estimating the project. Keith said that staff still plans on upgrades to the equipment to gain efficiencies.

iv. Approval of Addendum to Capacity Purchase Agreement with City of Superior

Don Cox said that the original capacity agreement with the City of Superior, Nebraska was signed February 16, 2017. The agreement went into effect January 1, 2018. He said that Superior was one of the NPPD towns that wanted to exit the long extension of terms looking to buy capacity on the open market. They are getting their energy from a marketer. Superior still needed capacity for the SPP so Hastings Utilities is selling them capacity. In the original agreement, they had the option to increase levels in 2019 and 2020 and they are exercising that option. The numbers are confidential as they are market sensitive. Don said that he would be happy to discuss those numbers in Executive Session if the Board needed more specifics.

Moved by Willis Hunt seconded by Shawn Hartmann to recommended approval to the City Council of the Addendum to the Capacity Purchase Agreement with City of Superior, NE. Roll Call: Ayes: Shawn Hartmann, Bill Hitesman, Willis Hunt, Jack Schreiner. Nays: None. Absent: Joanne Seberg. The motion carried.

(e) Other

Joe Patterson updated the Board on the consolidation of offices. The Finance Department will be moving to City Hall and one Personnel Technician will be moving from City Hall to the North Denver Station location. That date has not been finalized. The Housing Authority is moving to the YWCA building. The Developmental Services Department will move into that vacated area. The Finance Department will be located where the Developmental Services Department vacates.

Joe said that the move will probably be after the budget because the budget is so critical that we don't want functionality to be disrupted. He said that the committee will work with staff on the process.

The committee is also working on combining benefits of all city employees. Joe said that the Comparability Study is in the process. Mr. Essman estimated that he would be completed in another month or so. Joe said the committee is looking at prevalent benefit packages of other cities. He said that health insurance is the biggest challenge.

Willis Hunt shared his concern with the number of things that are being hung on Hastings Utilities' poles. He is concerned that the design capacity is being exceeded. Willis stated that drilling additional holes in the poles for attachment affects the structural capacity. He would like the Engineering Department put something together that shows the design capacity of the pole and show what is hanging on them.

4. Possible Closed Session (if necessary or requested).

None.

ADJOURN:

There being no further business, the meeting adjourned at 10:55 a.m.

APPROVED:

____

Board Secretary

HASTINGS UTILITIES

DATE: May 3, 2018

TO: Kevin Johnson, Manager of Utilities

RE: Customer Incentive for Meter Pit Removal

In May of 2001, Hastings Utilities started the process of notifying property owners with water meter pits that the pit needed to be removed due to unsafe confined space entry conditions. On April 15, 2005, the Board of Public Works approved Resolution 2004-07 allowing customers to receive an incentive for removing their meter pit of 75% of the cost of removal, with a maximum payment of $200. On June 3, 2010, the Board increased the maximum payment to $600 with the incentive ending on December 31, 2012. On March 12, 2015, Board Resolution 2015-03 was passed and approved for an incentive to be increased to $900 with the incentive ending on December 31, 2017. Currently there is not an incentive for pit removal.

In 2001, there were approximately four hundred fifty (450) pits. Today there are twenty (20) water meter pits left from the original list. The water meter pit is owned by the customer and their responsibility to maintain. All customers with meter pits have been contacted numerous times and staff will continue to work with these customers to eliminate the hazards of the meter pits for our employees. Approximately half of the meter pits that remain on the list are large pits and will take a considerable amount of work. Each pit will have to be evaluated on a case by case basis to determine a solution for eliminating the hazards for each specific pit.

To continue to facilitate the removal of the remaining twenty (20) meter pits, staff recommends that the Board recommend to the City Council to reinstate the $900 incentive as outlined on the attached Council Resolution 2018-28. The incentive would be valid until all meter pits have been removed.

We will be available at your convenience to answer any questions you may have.

Lee Vrooman
Director of Operations

Brian Strom
Manager of Customer Accounts

RESOLUTION 2018-28

WHEREAS, the City of Hastings, Nebraska (City), has a desire to eliminate existing unsafe customer water meter pits for safety purposes; and

WHEREAS, the City realizes that the meter pit is owned by and is the responsibility of the property owner; and

WHEREAS, the City has a desire to assist in the process of elimination of the water meter pits; and

WHEREAS, the City through its Utility Department desires to provide an incentive for property owners to eliminate their water meter pits;

NOW, THEREFORE, in consideration of the foregoing recitals, the Mayor and City Council of the City of Hastings, Nebraska, hereby adopt the following resolution:

BE IT RESOLVED by the Hastings City Council of the City of Hastings, Nebraska that:

1. The Hastings Utility Department will continue with the program of elimination of unsafe water meter pits;

2. The Hastings Utility Department shall continue to provide a replacement water meter in accordance with the standard policies of the City of Hastings when an unsafe water meter pit is eliminated; and

3. The Hastings Utility Department, as an incentive to the elimination of water meter pits connected to the Hastings Utilities water system, shall contribute 75% of the cost of eliminating the water meter pit, with a maximum payment of $900 to the property owner until all water meter pits are eliminated, upon the property owner's application and verification of the removal of the water meter pit and the expenditure of the costs related thereto;

4. The effective date of this Resolution shall be June 1, 2018.

PASSED AND APPROVED by this _____ day of _______________, 2018.

ATTEST:

____
Mayor

____
City Clerk

(S E A L)

APPROVED AS TO FORM:

____
City Attorney

Exhibit "A"

PROMISSORY NOTE

$125,000.00 **DATE:** 5/8, 2018

For value received, and in consideration of the extension of credit in the principal amount hereof, the undersigned, Flanders Provision Company, LLC, a foreign Limited Liability Company registered to do business in Nebraska, hereinafter referred to as "Maker", promises to pay to the order of **HASTINGS ECONOMIC DEVELOPMENT CORPORATION, a Nebraska Non-Profit Corporation,** hereinafter referred to as "Holder", the principal sum of One Hundred Twenty-five Thousand Dollars and 00/100 ($125,000.00), payable as follows:

1. There shall be no interest (0%) due hereunder; and

2. The principal sum of $125,000.00 may be forgiven if the requirements contained in the Loan Agreement dated MAY 8, 2018 (hereinafter "Loan Agreement") have been fulfilled by Maker, including the meeting of certain conditions by Maker with respect to job benefits, job creation, and job maintenance. If the requisite conditions for forgiveness have not been met, the amount of $125,000.00 shall be repayable in full by Maker upon three (3) months prior notice from Holder. In such an event, Holder must provide the necessary factual circumstances supporting the conclusion by the Holder that the conditions were not met. In the event of any required repayment, Maker shall be entitled to the provisions of the proration of repayment found in Section 6.06 of the Loan Agreement.

The terms of the Loan Agreement are incorporated herein by reference as if set forth fully herein.

As security for the repayment of the principal sum and all interest due under this Promissory Note, together with any and all other costs, indebtedness and all other obligations and amounts owing by Maker to Holder whether or not evidenced by a note or other writing, Maker has granted to Holder a security interest in certain personal or real property, including the following:

> All of Lots Three (3), Four (4), Five (5), Six (6), Ten (10), Eleven (11), and Twelve (12), all in Block One (1), Hastings Industrial Park West, in the City of Hastings, Adams County, Nebraska, according to the recorded plat thereof.
>
> All identifiable equipment in the plant used by Maker.

Maker hereby waives presentment for payment, demand, protest, notice of non-payment or dishonor.

Maker shall be in default upon the occurrence of any one or more of the following events, to wit:

1. Maker shall fail to pay, when due, any principal amount required hereunder, or any other indebtedness or other amounts owing by Maker to Holder, when due; or

2. Maker shall default in the performance of any covenant or obligation of this Promissory Note, any term or condition set forth in the deed of trust or any security agreement between Maker and Holder, or any terms or conditions set forth in the Loan Agreement.

In the event of any such default, Holder may, at Holder's option, declare the entire unpaid balance of principal immediately due and payable without notice or demand at any time after such default occurs, as such term is defined herein and in the other loan documents. Upon such default, Holder shall be entitled to invoke any and all remedies available to Holder under the loan documents and under the laws of the State of Nebraska.

In the case of default, an interest rate of 12% per annum shall be imposed on the unpaid pro-rata balance from the date of written notice of default from Maker to Holder.

This Promissory Note shall be governed by the laws of the State of Nebraska and shall be binding upon and inure to the benefit of Maker, Holder, and their successors and assigns.

DATED this 8 day of MAY, 2018.

MAKER:

FLANDERS PROVISION COMPANY, LLC, a Foreign Limited Liability Company, registered to do business in Nebraska

By ______________________
Authorized Corporate Signature

Printed Name: JERRY DUBSON

Title: CFO

LOAN AGREEMENT

THIS LOAN AGREEMENT made and entered into this 8TH day of MAY, 2018, by and between **FLANDERS PROVISION COMPANY, LLC, a Foreign Limited Liability Company, registered to do business in Nebraska,** (the "Borrower") and **HASTINGS ECONOMIC DEVELOPMENT CORPORATION, a Nebraska Non-Profit Corporation,** ("Lender").

WHEREAS, Borrower has stated that it intends to establish its manufacturing operations in Hastings by employing fifty (50) full-time equivalent employees; and

WHEREAS, Recognizing that Borrower's project encourages new jobs and investment into the City of Hastings; and

WHEREAS, Lender finds that Borrower is a member of the Hastings Economic Development Corporation and a new employer in Hastings, and Lender has committed to loan Hastings Economic Development Corporation's (HEDC) corporate funds to Borrower; and

WHEREAS, an incentive funding program via Nebraska Revised Statute 13-315 has been established by Hastings Utility Department and the City of Hastings to make incentive funds available to new and expanding companies; and

WHEREAS, it is the intent of HEDC to apply for funding using these 50 newly created jobs as a basis for replacing HEDC's corporate funds of $125,000.00 loaned to Borrower, if and when said incentive funding proposal is approved and made retroactive, and

WHEREAS, Lender and Borrower desire to enter into an Agreement establishing the terms and conditions of the loan and obligations of Lender to Borrower;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

PART I: THE LOAN

1.1 The Loan and Rate.

Subject to the terms and conditions of this Agreement, the Lender agrees to lend to the Borrower the sum of One Hundred Twenty-five Thousand and 00/100 ($125,000.00), said sum to be loaned pursuant to a Promissory Note which is being executed contemporaneously herewith. A copy of the note setting forth the terms, interest rate, and other matters, is attached hereto as Exhibit "A" and incorporated herein by this reference.

1.2 Purpose of Loan.

The purpose of the loan is to provide aid in hiring new employees to work in Borrower's production facility and the purchase and installation of approximately $1.5 million dollars worth of new equipment and transfer of existing equipment ("Hastings Equipment") with an original cost value of $2 million dollars from its Waycross, Georgia facility to its production facility in Hastings, Nebraska (the "Hastings Facility"). Borrower makes no representation or warranty as to the fair market value of the Hastings Equipment. The Borrower agrees it will perform all terms and conditions of this Agreement, Promissory Note, Security Agreement and Deed of Trust (the "Documents").

PART II: REPRESENTATION AND WARRANTIES

The Borrower represents and covenants the following:

2.1 Duly Organized.

The Borrower is a Delaware Corporation, duly organized, validly existing, and in good standing under the laws of the State of Delaware and authorized to do business in the State of Nebraska and has company power to enter into this Agreement and to borrow funds.

2.2 Duly Authorized.

The making and performance of the Borrower of this Agreement, and the execution and delivery of the Documents associated with this transaction have been duly authorized by all necessary corporate action and will not violate any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect having applicability to the Borrower or any provision of the Borrower's Articles of Incorporation or By-laws or result in a breach of or constitute a default under any indenture or bank loan or credit agreement or any other agreement or instrument to which the Borrower is a party or by which it or its property may be bound or affected.

2.3 Legally Binding Instrument.

When this Agreement is executed by the Borrower and the Lender, and when the Note is executed and delivered by the Borrower, such instrument will constitute a legal, valid, and binding obligation of the company in accordance with it terms. Any security agreements and instruments, financing statements, deeds of trust, mortgages and other liens on chattel or real estate will constitute legal, valid and binding liens free and clear of all prior liens and encumbrances except as provided for.

2.4 No Legal Suits.

There are no legal actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower before any court or administrative agency, which, if determined adversely to the Borrower, would have a material adverse effect on the financial condition or business of the Borrower.

2.5 No Legal Authorization Needed.

No authorization, consent or approval, or any formal exemption of any governmental body, regulator authorities (federal, state or local or mortgagee, trustee, creditor or third party) is or was necessary for the valid execution and delivery by the Borrower of this Agreement.

2.6 Not in Default.

The Borrower is not in default of any obligation, covenant, or condition contained in any bond, debenture, note, or other evidence of indebtedness or any mortgage or collateral instrument securing the same.

2.7 Taxes Paid.

The Borrower has filed all tax returns which are required and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments levied against the Borrower or its personal or real property by an taxing agency, federal, state or local. No tax liability has been asserted by the Internal Revenue Service or other taxing agency, federal, state or local, for taxes materially in excess of those already provided for and the Borrower know of no basis for any such deficiency assessment.

2.8 No Adverse Change.

The borrower certifies that there has been no adverse or material change since the date of loan application in the financial condition, organization, operation, business prospects, fixed properties, or personnel of the Borrower.

PART III: CONDITIONS OF LENDING

The obligation of the Lender to make the Loan will be subject to the fulfillment at the time of closing of each of the following conditions:

3.1 Execution and Delivery of Loan Agreement and Other Documents.

The Borrower will have executed and delivered to the Lender this Agreement, the Promissory Note, a Deed of Trust, Resolution of the Board of directors, and any other documents which may be necessary or required in connection with this Agreement. Such documentation shall provide a security interest and lien of $125,000.00 in Borrower's equipment or real property.

3.2 Execution and Certification of Resolution of Board of Directors.

The Borrower will have executed and delivered to the Lender, a duly certified copy of a Resolution of the Board of Directors authorizing the execution and delivery by the Borrower of this Agreement.

3.3 The Borrower will have delivered to the lender copies of the Borrower's Articles of Incorporation and By-Laws.

PART IV: AFFIRMATIVE COVENANTS OF THE BORROWER

The Borrower agrees to comply with the following covenants from this date until the Lender has been fully repaid with interest, if any, unless the Lender or its assigns otherwise consent in writing.

4.1 Payments of the Loan.

The Borrower agrees to pay punctually the principal and any interest on the Note according to the terms and conditions and to pay punctually any other amounts that may become due and payable to the Lender pursuant to the terms of the Agreement and the Documents.

4.2 Payments of Other Indebtedness.

The Borrower agrees to pay punctually the principal and interest due on any other indebtedness now or at any time owing by the Borrower to the Lender under any loan or advancement, or any other lender on any other obligation that relates to the Hastings Facility.

4.3 Maintain and Insure Property.

The Borrower agrees at all times to maintain the property provided as security for this loan in such condition and repair that the Lender's security will be adequately protected. The borrower also agrees to maintain during the term of the loan adequate hazard insurance policies covering fire and extended coverage and such other hazards as may be deemed appropriate in amounts and form sufficient to prevent the Borrower from becoming a coinsurer and issued by companies satisfactory to the Lender with acceptable loss payee clauses in favor of the Lender.

The borrower agrees to at all times maintain a policy or policies of comprehensive general liability insurance in the amount of not less than two million dollars ($2,000,000.00), for damage to property or inquiry or death of any person arising out of or related to Borrower's manufacturing and business operations.

4.4 Pay All Taxes.

The Borrower agrees to duly pay and discharge all taxes, assessments and governmental charges upon it or against its properties prior to the date on which penalties are attached, except that the Borrower will not be required to pay any such tax, assessment or governmental charge which is being contested by it in good faith and by appropriate proceedings.

4.5 Maintain Existence.

The Borrower agrees to maintain its company/corporate existence, rights, privilege and franchises within the State of Delaware and remain qualified as a foreign corporation in each jurisdiction in which its present or future operations or its ownership of property require such qualification.

4.6 Right of Inspection.

The Borrower agrees to grant to the Lender, until the Note has been fully repaid, the right at all reasonable hours to inspect the collateral used to secure the loan; and, the Borrower further agrees to provide Lender reasonable access to Borrower's premises for the purposes of such inspection and to determine the condition of the collateral; provided however that Lender shall not unreasonable interfere with Borrower's conduct of its business.

4.7 Null and Void Covenants.

The Borrower agrees that in the event that any provision of this Agreement or any other instrument executed at closing or the application to any person or circumstances is declared null and void, invalid, or held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of such agreement will nevertheless remain in full force and effect, and to this end, the provisions of all covenants, conditions, and agreement described herein are deemed separate.

4.8 Expenses and Closing Costs.

The Borrower agrees to pay all fees, expenses and charges, which result from making the loan.

4.9 Notice of Default.

The Borrower agrees to give written notice to the Lender of any event which constitutes an Event of Default under this Agreement as described in Article VI or that would, with notice or lapse of time or both, constitute an Event of Default under this Agreement.

4.10 Indemnification.

The Borrower agrees to indemnify and save the Lender or its assigns harmless against any and all liability with respect to, or resulting from, any delay in discharging any obligation of the Borrower.

4.11 Expenses of Collection or Enforcement.

The Borrower agrees, if at any time the Borrower defaults in any provision of this Agreement, to pay Lender's reasonable attorney's fees and costs and expenses of collection, enforcement, correction or waiver of the default.

4.12 Job Creation and Job Retention.

The Borrower commits and agrees to create 50 full-time equivalent (FTE) jobs no later than January 1, 2019, and retain said 50 FTE jobs for a period of 24 months after the January 1, 2019 Performance Target has been met. The Borrower agrees to the retention and creation of jobs in accordance with the Section 6.06 below.

The $125,000.00 loan forgiveness and or proration of loan shall be calculated as illustrated in 6.06 below.

4.13 Compliance with Law.

Evidence satisfactory to the Lender will be furnished certifying that all improvements and their use comply fully with all applicable zoning and building laws, ordinances and regulations, and all other applicable federal, state, county and municipal law requirements. The loan will be in all respects legal and will not violate any applicable law or other requirements of any governmental authority.

4.14 Environmental Protection Laws.

Borrower shall have receipt of evidence satisfactory to the Lender of compliance with all applicable environments protection and land use and development laws, ordinances and regulations of all federal, state and local governmental authorities and agencies having jurisdiction.

PART V: NEGATIVE CONVENANTS OF THE BORROWER

The Borrower covenants and agrees that, from this date until payment in full of this Note, unless the Lender or its assigns otherwise consent in writing, it will not enter into any agreement or other commitment the performance of which would constitute a breach of any of the covenants contained in the Agreement including, but not limited to the following covenants:

5.1 Change Ownership.

Should there be any material change in the ownership, structure control, or operation of Borrower's ownership of the Hastings Facility during the Term of this Agreement, the Lender reserves the right to renegotiate this Agreement or make the entire unpaid principal of the Note immediately due and payable upon written demand of the Lender.

5.2 Maintain Operations of Hastings Facility.

Should the Borrower close the Hastings Facility, sell the Hastings Facility, or fail to maintain ordinary and regular operations plus the creation of 50 new jobs as set forth in Paragraph 4.12 above during the Term of this Agreement, Lender reserves the right to renegotiate this Agreement or make the entire unpaid principal of the Note immediately due and payable upon written demand of the Lender.

PART VI: EVENTS OF DEFAULT.

The entire unpaid principal of the Note and the accrued interest will become and be immediately due and payable upon the written demand of Lender, except where noted, without any other notice or demand of any kind or any presentment or protest, if any one of the following events (an "Event of Default") occurs and is continuing at the time of such demand, whether voluntarily or involuntarily, or without limitation, occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rules or regulations of any administrative or governmental body, if Borrower should suffer or commit any of the following during the term and same is not cured within thirty (30) days (15 days failure to pay monies owed to Lender, as provided in 6.01) after receipt of written notice to Borrower.

6.1 Non-Payment of Loan.

If the Borrower fails to make payment when due of any installment of principal on the Note or accrued interest and if the default remains unremedied for fifteen (15) days after the Lender gives Borrower written notice.

6.2 Incorrect Representation or Warranty.

Any representation or warranty contained in, or made in connection with the execution and delivery of the Agreement, or the Documents, or in any provided information proves to be materially incorrect.

6.3 Default in Covenants.

If Borrower defaults in the performance of any other term, covenant or agreement contained in this Agreement and other Documents, and such default continues unremedied for thirty (30) days after either:

i) it becomes known to an executive officer of the Borrower; or

ii) written notice has been given to the Borrower by the Lender.

6.4 Voluntary insolvency.

If the Borrower becomes insolvent or ceases to pay its debts as they mature or voluntarily files a petition seeking reorganization of its business, or appoints a receiver, trustee, or liquidates of a substantial portion of its assets, effects a plan or other arrangements with creditors, or is adjudicated bankrupt, or makes a voluntary assignment for the benefit of creditors, and if any of the foregoing proceedings are not dismissed within ninety (90) days from the date of filing thereof.

6.5 Involuntary Insolvency.

If an involuntary petition is filed against the Borrower under any bankruptcy, insolvency or similar law or seeking the reorganization of or the appointment of any receiver, trustee or liquidator for the Borrower, or of a substantial part of the property of the Borrower, or a writ or warrant of attachment or similar process is issued against a substantial part of the property of the Borrower, and such petition is not dismissed, or such writ or warrant of attachment or similar process is not released or bonded, within thirty (30) days after filing of levy.

6.6 Default in Job Creation.

If the Borrower fails to maintain 50 FTE jobs for the 24-month period starting no later than January 1, 2019 as described herein and to qualify such.

Performance Targets. As a result of this project, the Borrower will retain the 50 FTE jobs which represent the agreed employment at the Hastings Facility. This will be known as the hiring period. This hiring period will end with the employment of the 50th FTE position by a person, but no later than January 1, 2019. At that time, the job maintenance period will begin. Each of the 50 FTE positions shall be maintained for twenty-four (24) continuous months starting from the end of the hiring period. The jobs maintenance period will end after twenty-four (24) months from the beginning of the maintenance period, but no later than January 1, 2021. If the same people do not hold the 50 positions during the job maintenance period, then the Borrower shall demonstrate that they have made an earnest effort to refill the 50 FTE positions.

No credit will be given for any position or hours in excess of the fifty (50) FTE positions anticipated by this project. No credit will be given toward establishing full-time equivalency, unless each person works at least three (3) continuous months. Temporary employees or those positions created or retained away from the Hastings Facility site may not be counted toward the performance targets. All positions qualifying the loan will be personnel working for the Borrower in Hastings, Adams County, Nebraska.

In addition, Borrower shall pay at least a starting minimum hourly rates for positions as shown on the attached Exhibit "B", which is made part of this Agreement, and shall provide all employees with an appropriate package of employee benefits.

If the Performance Target of jobs is not achieved, then a pro rata portion of the Note will be required to be repaid, equivalent to the ratio of (i) jobs created, (ii) divided by the number of jobs required to be created.

If the Performance Target of jobs is met, but the jobs are not maintained for a required job maintenance period (24 months), then a pro rate portion of the Note will be required to be repaid, equivalent to the ratio of (i) the required maintenance period in months, less the number of months the jobs were maintained, (ii) divided by the required maintenance period in months.

If both the Performance Target of jobs and the job maintenance period are not met, then a pro rata portion of the Note will be required to be repaid, equivalent to (i) using the number of jobs required to be created, multiplied by the number of months the jobs were to be maintained, resulting in a computational factor of "required job months" – then (ii) using the number of jobs actually created by the number of months the jobs were actually maintained, resulting in a computational factor of "achieved job months"
– and then (iii) subtracting the "achieved job months" factor from the "required job months" factor to calculate a "failed job months" factor - and then (iv) establishing a ratio of:

$$\frac{\text{"failed job months"}}{\text{"required job months"}}$$

With such ratio (with "failed jobs months" as the numerator, and "required job months" as the denominator), being the required pro rate portion of the Note to be repaid.

An <u>example</u> to illustrate application of this requirement is:

Note	=	$125,000.00
# of jobs to be created	=	50
# of months the jobs were to be maintained	=	24
# of jobs actually created	=	36
# of months the jobs were actually maintained	=	12

50 x 24	=	1,200 "required job months"
36 x 12	=	432 "achieved job months"
1,200 – 432	=	768 "failed job months"

768 "failed job months" = 64.00%
1,200 "required job months"

$125,000.00 x 64.00% = $80,000 to be repaid.

PART VII

7.1 Waiver of Notice

No failure of delay on the part of the Lender in exercising any right, power, or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No modification or waiver of any provision of this Agreement, the Note, or the other Documents, nor any consent to the same, will be effective unless is in writing and then such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case will entitle the Borrower to any other or further notice or demand in similar other circumstances.

7.2 Amendments.

The Borrower and the Lender reserve all rights to amend any provision of this Agreement, to consent to or waive any departure from the provisions of the Agreement, to amend or consent to or waive departure from the provisions of the Note or other Documents, and to release or otherwise deal with any collateral security for payment of the Note provided, all such amendments, consents, or waivers shall be in writing and signed by the Lender and the Borrower.

7.3 Notices.

All notices, consents, requests, demands and other communications shall be in writing and will be deemed to have been duly given to a party if mailed to the Lender and to the Borrower at the following addresses unless hereafter changed by written notice:

LENDER: Hastings Economic Development Corporation
P.O. Box 1104
Hastings, NE 68902-1104

BORROWER: Flanders Provision Company, LLC
2001 Summit Avenue
Hastings, NE 68901

7.4 Survival of Representations and Warranties.

All agreements, representations, and warranties made by the Borrower or any other document or certificate delivered to the Lender in connection with the transactions contemplated by this Agreement shall survive the delivery of the Agreement, the Note and other Documents, and will continue in full force and effect so long as the Note is outstanding.

7.5 Successors and Assigns.

This Agreement shall be binding upon the Borrower, its successors and assigns. The Borrower may not assign or transfer its rights without prior written consent of the Lender.

7.6 Counterparts.

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

7.7 Governing Law.

This Agreement and the Note and other Documents shall be deemed contracts made under the laws of the State of Nebraska and for all purposes will be construed in accordance with the laws of the State.

7.8 Article and section Headings.

Article and section headings used in this Loan Agreement are for convenience only and will not affect the construction of this Loan Agreement.

7.9 Term and Expiration of Agreement.

This Agreement shall commence on the date first written above and shall remain in effect for so long as there is any unpaid or un-forgiven balance due under the Note (the "Term"). Upon the expiration of the Term, this Agreement shall terminate and be without any further force or effect, except for those provisions in this Agreement which explicitly survive.

IN WITNES WHEREOF, the parties hereto have each caused this Loan Agreement to be executed in duplicate.

LENDER:
HASTINGS ECONOMIC DEVELOPMENT CORPORATION, a Nebraska Non-Profit CORPORATION,

BY______________________________

Patrick Mertens, President

BORROWER:
FLANDERS PROVISION COMPANY, LLC, a Foreign Limited Liability Company, registered to do business in Nebraska

By______________________________
Printed Name: JERRY DODSON
Title: CFO

Exhibit "B"

Flanders Provision Company,LLC Job Creation Report

Contract signed as of MAY 8, 2018

$125,000.00 Grant for 50 FTE's agreed as of January 1, 2019

#	Position	Rate		TOTAL
3	Maintenance Tech	$15.00/hr	=	$ 93,600
1	Production Clerk	$13.50/hr	=	$ 28,080
1	Dock Lead	$13.50/hr	=	$ 28,080
1	Sanitation Lead	$13.50/hr	=	$ 28,080
1	Building/Grounds	$13.50/hr	=	$ 28,080
2	Production Line Lead	$13.50/hr	=	$ 56,160
2	QA Plant Tech	$12.50/hr	=	$ 52,000
1	Production Forklift	$12.50/hr	=	$ 26,000
4	Grind Operator	$12.50/hr	=	$ 104,000
4	Machine Operator	$12.50/hr	=	$ 104,000
2	Pick/Load	$12.50/hr	=	$ 52,000
6	Sanitation	$11.50/hr	=	$ 143,520
10	General Production	$11.00/hr	=	$ 228,800
15	Salaried (total)	$471.49/hr	=	$ 980,700
53				$1,953,100

Must retain 50 FTE's for a 24-month period ending January 1, 2021

APPLICATION FOR ECONOMIC DEVELOPMENT ASSISTANCE
HASTINGS UTILITIES 13-315 FUNDS

APPLICANT IDENTIFICATION:

Applicant Name:	Flanders Provision Company, LLC
Address:	2001 Summit Avenue
City & State:	Hastings, NE 68901
Local Contact:	Kevin Simpson, Plant Manager
Email:	ksimpson@flandersprovision.com

APPLICATION PREPARED BY:

Name:	Maggie Vaughan, Interim Director, HEDC
Address:	301 S. Burlington Avenue
City & State:	Hastings, NE 68901
Phone:	(402) 461-8403
Email:	mvaughan@hastingsedc.com

Job Creation:
Full-time Equivalent (FTE's)
New FTE's: 50

Funding Sources:

New Equipment:	$1,500,000
Facility Upgrades:	$250,000
Transferred Equipment:	$2,000,000
Total Investment	$3,750,000

13-315 Funding Request: $125,000.00

PROJECT SUMMARY:
Flanders Provision Company, LLC, a manufacturer of beef products, has committed to moving their manufacturing operations to Hastings as they close their 50-year-old plant in Waycross, Georgia. Flanders will bring approximately 50 new jobs to the Hastings area. Because of the nature of the project, resources such as the federal program are not applicable.

In an effort to secure Flanders' new Hastings operation, and to bring new production lines and new jobs to Hastings, the Hastings Economic Development Corporation (HEDC) would propose that a commitment for funding be made to Flanders Provision Company for the creation of 50 new full-time equivalent positions, the investment of $3,500,000 in facility equipment, and $250,000 in facility upgrades.

On behalf of Flanders Provision Company, HEDC would respectfully request that the Utility Board give consideration to providing a performance-based forgivable loan to Flanders Provision Company under the following terms: (1) Flanders Provision Company will add 50 new jobs; (2) invest $1.75 million in the Hastings facility with $250,000 being dedicated to facility upgrades and $1,500,000 in new equipment ; (3) transfer and install equipment with an original value of $2 million from the Waycross, GA plant to Hastings; and (4) all FTE positions will be held for a minimum period of 24 months from the point in time at which the 50th position is hired. The job maintenance period of 24 months for no fewer than 50 total FTE positions will begin no later than January 1, 2019 and will end no later than January 1, 2021.

APPLICANT SIGNATURE, TITLE, AND DATE OF APPLICATION:

Kevin Simpson, Plant Manager, Flanders Provision Company, LLC

4/16/18
Date