

COUNCIL ACTION FORM

SUBJECT: APPROVAL OF A \$50,000 FORGIVABLE LOAN TO SMART AG AS LOCAL MATCH TO IOWA ECONOMIC DEVELOPMENT AUTHORITY (IEDA) FINANCIAL ASSISTANCE AGREEMENT

BACKGROUND:

At the August 14, 2018 meeting, Council approved the endorsement of an IEDA application for economic development assistance for Ames based Smart Ag. The assistance package included a \$50,000 forgivable loan as the local match.

SmartAg, LLC is a startup agriculture automation company that has developed a driverless tractor system that it will be bringing to the market in the near future. The company is in the process of expanding and moving from the ISU Research Park to a building in the South Bell TIF District. The new space will accommodate employment growth to expand its product line and to build, distribute and support products. SmartAg was founded in 2015 and currently has nine full-time and four part-time employees. The company is well funded; after successful trials of its product, \$5 million in capital financing was raised and will be providing the majority of the funding of the proposed expansion.

THE PROJECT:

The company has received approval from the IEDA for economic development assistance for a project that includes the build out and leasing of 10,000 square feet in a spec building located in the South Bell TIF district. The project also includes employment growth to 40 full-time positions with 33 of the jobs above 120% of the IEDA Story County labor-shed rate of \$26.11 per hour and 7 jobs just below. Funding for the expansion project is as follows:

SmartAg	\$2,140,000
State Assistance	330,000
Local Match	<u>50,000</u>
Total	\$2,520,000

The State assistance will be in the form of investment tax credit, research and development tax credit, a forgivable loan, and a no interest loan. **Funding for the local match will be half from the City of Ames and half from the Ames Economic Development Commission.** Terms of loan forgiveness are included in the attached loan agreement and require that the company expand as proposed and meet the employment target. The next step in the process is to approve the local match agreement.

ALTERNATIVES:

1. Adopt a resolution approving the attached economic development assistance agreement with SmartAg including a \$50,000 forgivable loan as the local match to an IEDA financial assistance agreement.
2. Do not adopt a resolution of approving the SmartAg economic development assistance agreement.

MANAGER'S RECOMMENDED ACTION:

SmartAg is an Ames-based startup company that has developed a product and is preparing to take to market. The company has chosen Ames as the location to make an investment of capital to expand high paying jobs. In keeping with the Council's goal to promote economic development, this project will expand the number of quality jobs within our city.

Therefore, it is the recommendation of the City Manager that the City Council support Alternative #1, adopting a resolution approving an economic development assistance agreement with SmartAg including a \$50,000 forgivable loan as the local match to an IEDA financial assistance agreement.

**ECONOMIC DEVELOPMENT
COMMUNITY INVESTMENT FUND PROGRAM
FORGIVABLE LOAN AGREEMENT
(Smart Ag, Inc.)**

ARTICLE 1.0 - GENERAL

1.1 Identification of Parties. This Agreement is entered into by and between the City of Ames, Iowa and the Ames Chamber of Commerce, jointly as Lenders (hereafter referred to as the "Lenders") and Smart Ag, Inc. (hereinafter referred to as the "Borrower").

1.2 Statement of Purpose. **WHEREAS**, as part of its policy to foster economic development, the Lenders have adopted a program of financial assistance to selected business enterprises by means of loans made in accordance with an adopted loan policy known as THE COMMUNITY INVESTMENT FUND; and,

WHEREAS, the Lenders have agreed to loan up to the amount of fifty thousand dollars (\$50,000.00) to the Borrower to assist in a certain project; and,

WHEREAS, the Borrower has made application to the Lenders for this loan; and

WHEREAS, the Borrower has qualified and been approved for such a loan and has agreed to the conditions of the receipt of such a loan;

NOW, THEREFORE, the parties hereto, in consideration of the premises, do agree as follows:

1.3 The Forgivable Loan. The Lenders agree, upon the terms and conditions hereinafter set forth, to make a forgivable loan of money to the Borrower in a total amount not to exceed \$50,000.00 in order to assist in the financing of the project described in Article 2.2 of this Agreement. The obligation of the Borrower to repay the loan shall be evidenced by a Promissory Note of the Borrower to the Lenders in the amount of \$50,000.00, setting forth an obligation to repay the said amount in one lump sum, plus interest, if the loan is not forgiven as herein provided. In the event the Borrower fails to receive and/or spend the full face amount of any loan as set out herein and in said Promissory Note, then the amount of the loan shall be reduced accordingly.

1.4 Reports. The Borrower shall submit to the Lenders copies of the reports submitted to the Iowa Economic Development Authority pursuant to Section 7.5 of the Economic Development Financial Assistance Contract, Contract No. 19-DF/TC-004.

1.5 Assurances. The representations appearing in the Borrower's application to the Lender for the loan are incorporated herein and made a part of this agreement.

ARTICLE 2.0 - BORROWER'S PROJECT

2.1 Statement of Work and Services. The Borrower shall perform in a satisfactory and proper manner, as determined by the Lenders, the activities described in the approved application, Attachment "B" to this Agreement. This Attachment is hereby made a part of this Agreement by reference. In addition, Borrower's activities shall conform to the approved Project Budget found in Attachment "B" to this Agreement, and the approved Project Schedule in Attachment "B" to this Agreement.

2.2 Project Description. As more specifically described in Borrower's approved application to the Lenders, the Project shall be the expansion operations within the corporate

limits of the City of Ames including advanced soil testing and related operations and administration.

Create or retain a total of forty (40) full-time positions located in Ames, Iowa in the course of the funded project.

2.3 Conveyance or Disposition of Project. The Borrower shall not sell, transfer, convey, lease or otherwise dispose of the Project or of any part thereof, without the consent of the Lenders until the date on which this loan has been fully repaid.

2.4 Cost Sufficiency. The Lenders do not make any warranty, either expressed or implied, that the proceeds of the loan available for payment of the costs of the Project will be sufficient to pay all the costs which will be incurred in that connection. The Lenders are under no obligation to advance funds in addition to those specified in this Agreement.

ARTICLE 3.0 - BORROWER'S CONTRIBUTION TO THE PROJECT

3.1 Source(s) of Other Contributions (as stated in Borrower's Loan Application).

3.2 The obligation of the Borrower to pay the principal and interest on this loan and to perform its other obligations as described within this loan agreement will be secured by a security interest in and to certain property now owned or hereafter acquired by Borrower, together with the proceeds, products, increase, issue, accessions, attachments, accessories, parts, additions, repairs, replacements and substitutes of, to any or all of the foregoing.

ARTICLE 4.0 - TERMS OF THE LOAN

4.1 Maximum Amount of Loan. It is expressly understood and agreed that the maximum amount to be loaned to the Borrower by the Lenders shall be \$50,000.00.

4.2 Loan Rate. The Lenders and Borrower agree that all funds loaned to Borrower shall be at an interest rate of 10.00%, with a principal and interest payment due per the terms of this agreement. No amount will be due if the Borrower meets all the terms of the forgivable loan.

4.3 Loan Term. The Lenders and Borrower agree that the term of the loan shall be five years from the 7th day of January, 2019.

4.4 Loan Repayment. At the end of five years from the initial disbursement of loan proceeds, the borrower shall provide documentation of job retention and creation in the City of Ames related to the project described in Section 2.2 above. If the Borrower has created/retained a total of forty (40), full-time jobs, no amount will be due. If the Borrower has not created/retained a total of twenty-five (40) full-time jobs, the Borrower shall pay the Lenders \$1,593.53 in principal and interest for each full-time position below the target of forty (40). Total repayment of principal and interest paid by the Borrower shall not exceed \$63,741.20.

ARTICLE 5.0 - CONDITIONS OF PAYMENT OF LOAN FUNDS TO BORROWER

5.1 Requisition for Payment.

a. Payments to the Borrower. All payments to the Borrower shall be subject to the receipt by the Lenders of a requisition for payment. The requisition shall be made according to the format specified by the Lenders. Loan proceeds shall be disbursed to the

Borrower when certain Project components are completed by the Borrower.

The Lenders will fund the \$50,000.00 loan when the Borrower provides documentation for the following:

A lease agreement for expansion of operations within the corporate limits of the City of Ames; executed financial assistance contract between the Borrower and Iowa Department of Economic Development.

b. Supporting Evidence to Accompany Requisition. The Borrower shall submit to the Lenders such supporting evidence as may be reasonably required by the Lenders to substantiate all payments which are requested and to substantiate all payments then made with respect to the project. In addition, the Lenders may require the Borrower to secure and provide evidence to the Lenders of lien waivers from any contractor or subcontractor for all work done and for all materials furnished by them for the project.

5.2 Time of Requisitions. Borrower shall requisition loan funds per the provisions of paragraph 5.1.

5.3 Use of Loan Proceeds. Borrower understands and agrees that loan proceeds shall not be spent on any other purpose(s) or project(s) than those described in Article 2.2.

5.4 Suspension of Payments. The Lenders shall have the right to suspend, withhold, or delay loan payments to the Borrower if it is determined that the Borrower's project has been changed, interrupted, or significantly delayed or if the Borrower is found to be not in compliance with any provision of this Agreement.

5.5 Promissory Note Required. The Lenders shall not provide loan funds to the Borrower prior to the completion and execution of the promissory note, Attachment "A" to this Agreement.

ARTICLE 6.0 - LOAN REPAYMENT

6.1 Repayment Schedule. Repayment of the loan shall be made by the Borrower to the Lenders as specified in the terms of this agreement.

6.2 Default. If any of the following events ("Event of Default") shall occur and be continuing, the Lenders may declare the Borrower to be in default:

a. Any representation or warranty made by the Borrower under or in connection with this Agreement shall prove to have been incorrect in any material respect when made; or

b. The Borrower shall fail to perform or observe any other term or condition contained in this Agreement and any such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Borrower by the Lenders; or

c. Execution shall have been levied against the project or any lien creditors sued to enforce a judgment against the project, or such other proceeding shall have been brought and shall continue unstayed and in effect for a period of more than thirty (30) consecutive calendar days; or

d. The Borrower not shall sell, transfer, lease or convey the project, or any part thereof, except as herein provided, without the prior written consent of the Lenders.

e. If Borrower's Project related business leaves Ames, Iowa before five years from the date of this agreement, then liquidated damages in the amount of \$50,000.00 are due and payable to the Lenders along with the balance of principal and interest due on the loan. Said damages pertain to lost economic development.

6.3 Actions Upon a Declaration of Default. Upon declaration of default by the Lenders, the Lenders may:

a. By notice to the Borrower, declare the loan payable under the Promissory Note and this Agreement to be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by the Borrower.

b. Take whatever action at law or in equity may appear necessary or desirable to collect the payments and other amounts including principal, interest and liquidated damages then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement. No remedy herein conferred upon or reserved to the Lenders is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

6.4 Form of Payments. All payments of principal, interest, or penalty, hereunder, or under the promissory note, shall be checks made payable to the City of Ames.

ARTICLE 7.0 - ADMINISTRATIVE REQUIREMENTS

7.1 Accounts and Records. The Borrower shall maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues acquired under this Agreement to the extent and in such detail as will properly reflect all costs, direct and indirect, of labor, materials, equipment, supplies, services, and other costs and expenses of whatever nature, for which payment is made with the Loan Proceeds.

7.2 Inspection of Records. Upon prior notice to the Borrower and in no event more than once per month, the Borrower shall make available to the Lenders, for their examination during normal business hours, all of its records, invoices, payrolls, personnel records, conditions of employment, and all other matters covered by this Agreement.

7.3 Monitoring by Lenders. The Lenders shall have the right to make scheduled visits to the Borrower in order to monitor project performance and compliance with this Agreement.

7.4 Audit Requirements. The Borrower shall permit an audit of the Project to be conducted by a certified public accountant, to include all income and expenditures of Loan Proceeds (an "Audit"), if and when called for by the Lenders. The cost of an Audit shall be paid for by the Lenders.

ARTICLE 8.0 - OTHER CONDITIONS

8.1 This agreement is, and the Promissory Note, other documents and agreements required by the Agreement when delivered hereunder or pursuant thereto shall be, legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms.

8.2 Neither the execution, delivery or performance of this Loan Agreement or the Promissory Note, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction in any organizational document or any agreement or instrument to which the Borrower is now a party or by which the Borrower is bound, or constitutes a default under any of the foregoing, or results in the creation

or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement, other than as provided in this Loan Agreement.

8.3 There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against the Borrower affecting in any manner whatsoever the right of the Borrower to execute this Agreement or the other agreements required to be executed by the Borrower under the Agreement or the ability of the Borrower to pay the payments required hereunder or to otherwise comply with the Borrower's obligations contained herein or therein.

8.4 The Borrower will comply in all material respects with all applicable laws, rules, ordinances, regulations and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon the Borrower or upon the Borrower's property except to the extent contested in good faith.

8.5 The Borrower agrees that the Lenders shall have no responsibility nor incur any expense for maintenance or preservation of the Project or for the payment of any taxes, assessments or other governmental charges assessed or levied with respect to the Project.

ARTICLE 9 - MISCELLANEOUS

9.1 Agreement Coverage.

a. This instrument, and any referenced attachments hereto or documents referred to herein, contains the entire agreement between the parties and any statements, inducements or promises not contained herein shall not be binding upon said parties. This Agreement shall be binding upon the successors in interest of the respective parties.

b. If any of the provisions herein shall be in conflict with the laws of the State of Iowa, or shall be declared to be invalid by any court of record of this state, such invalidity shall be construed to affect only such portions as are declared invalid or in conflict with the law and such remaining portion or portions of the agreement shall remain in effect and shall be construed as if such invalid or conflicting portion of such agreement were not contained herein.

9.2 Term of the Agreement. This Agreement shall be in full force and effect from the effective date hereof and shall continue in effect so long as the loan is outstanding and unpaid or unforgiven.

9.3 Maintenance of the Project and Insurance. The Borrower covenants that, so long as the loan is outstanding and unpaid, the Borrower shall keep, or cause to be kept, the Project in as good repair and condition, as same may be, or may be hereafter placed upon completion, ordinary wear and tear only excepted; and shall not suffer or commit waste or damage upon the Project. In addition, the Borrower may be required to keep in force insurance, premiums therefore to be prepaid without notice or demand, against loss by fire, tornado, and other hazards, casualties, and contingencies as the Lenders may require on the Project, in an amount not less than the full insurable value of the Project, or not less than the unpaid balance of principal on the loan with such insurance payable to the Borrower and the Lenders as their interests may appear. The Borrower may be required to deposit such policies with proper riders with the Lenders.

9.4 Amendment of this Agreement. The Lenders or the Borrower may, during the duration of this Agreement, deem it necessary to make alterations to the provisions of this Agreement. Any changes to this Agreement, which are approved by the Lenders, shall be incorporated into this Agreement. The provisions of the amendment shall be in effect as of the

date of the amendment unless otherwise specified within the amendment. A waiver of any condition of this Agreement must be in writing from the duly authorized official of the Lenders.

9.5 Indemnity, Fees and Expenses.

a. The Borrower will indemnify and save harmless the Lenders and their officers and employees from and against any and all losses, by it or them while it or they are acting in good faith to carry out the transactions contemplated by this Agreement or to safeguard its or their interests or ascertain, determine or carry out its or their obligations under this Agreement or any law or contract applicable to said transaction.

b. The Borrower shall, upon demand, pay to the Lenders the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, which the Lenders may incur in connection with the exercise or enforcement of any of the rights of the Lenders hereunder, the failure by the Borrower to perform or observe any of the provisions hereof, the collection of payments due under this Agreement, and any other reasonable expenses of the Lenders related to the Project or this financing (including reasonable attorney's fees) which are not otherwise expressly required to be paid by the Borrower under the terms of this Agreement.

c. The Borrower agrees to pay all appraisal fees, survey fees, recording fees, license and permit fees and insurance premiums related to Borrower's Project.

d. It is the intention of the parties that the Lenders shall not incur pecuniary liability by reason of the terms of this Agreement and the Borrower shall indemnify and hold harmless the Lenders (including any person at any time serving as an officer or employee of the Lenders) against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon.

The obligation of the parties under this Section shall survive the termination of this Agreement.

9.6 Binding Effect: Governing Law. This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lenders and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders. This Agreement shall also inure to the benefit of the Lenders. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Iowa.

9.7 Obligations of the Borrower Hereunder Unconditional. The obligations of the Borrower to make the payments required to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Lenders of any obligation to the Borrower, whether hereunder or otherwise, or out of any indebtedness or liability at any time owing to the Borrower by the Lenders and until such time as the principal shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Agreement, the Borrower (i) shall not suspend or discontinue any payments agreed to, (ii) shall perform and observe all other agreements contained in this Agreement, and (iii) shall not terminate this Agreement for any cause, it being the intention of the parties that the payments required hereunder will be paid in full when due without any delay or diminution whatsoever.

9.8 Waivers. No waiver by the Lenders of any default hereunder shall operate as a waiver of any other default or of the same default on a future occasion. No delay on the part of the Lenders in exercising any right or remedy hereunder shall operate as a waiver thereof. No

single or partial exercise of any right or remedy by the Lenders shall preclude future exercise thereof or the exercise of any other right or remedy.

9.9 Additional Provisions. The following items or requirements are also agreed to:

a. The Borrower represents that it will take all actions necessary, on a best effort basis, to secure the accomplishment of the following benefits to the Lenders:

To create and retain forty (40) permanent full-time jobs, in accordance with 2.2 above, before the end of the loan term, in the City of Ames, Iowa, in addition to the current employee total.

b. Agreement with Business. Loan proceeds shall not be advanced nor shall loan proceeds be used to reimburse project expenses prior to approval of a loan agreement between the Lenders and Borrower.

9.10 Suspension and Termination of This Agreement

a. Suspension. If the Borrower fails to comply with the conditions of this Agreement, the Lenders may, after notice to the Borrower, suspend the Agreement and withhold further payments or prohibit the Borrower from incurring additional obligations of funds, pending corrective action by the Borrower or a decision to terminate. The Lenders may determine to allow such necessary and proper costs which the Borrower could not reasonably avoid during the period of suspension.

b. Termination for Cause. The Lenders may terminate this Agreement in whole, or in part, at any time before the date of completion, whenever it is determined that the Borrower has failed to comply with the conditions of the Agreement after notice and reasonable opportunity to cure. The Lenders shall promptly notify the Borrower in writing of the determination and the reasons for the termination, together with the effective date. Payments made to Borrower or recoveries by the Lenders under Agreements terminated for cause shall be in accord with the legal rights and liabilities of the parties. Payments and recoveries may include, but are not limited to the following: Payments may be allowed for costs determined to be in compliance with this Agreement up to the date of termination, based on audits approved by Lenders. The Borrower shall return to the Lenders all unspent funds within one week of notice of termination. Further, any costs previously paid by the Lenders which are subsequently determined to be unallowable through audit shall be returned to the Lenders within thirty (30) days of such determination.

9.11 Litigation. The Borrower agrees to pay the costs of any litigation arising from the failure of the Borrower to comply with this Agreement or resulting from the negligence or incompetence of the Borrower. Furthermore, the Borrower shall indemnify and save harmless the Lenders from suits, actions or claims of any character brought for or on account of any injuries or damages received by any person or property resulting from operations of the Borrower or any persons working under him, carrying out the terms of this Agreement.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year last specified below:

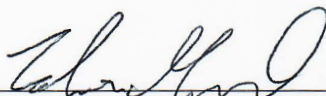
CITY OF AMES, IOWA

By: _____

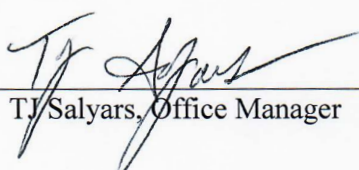
Date: _____

Attest: _____
Diane R. Voss, City Clerk

SMART AG, INC.

By:  _____
Colin Hurd, CEO

Date: 01/07/2019

Attest:  _____
TJ Salyars, Office Manager

ECONOMIC DEVELOPMENT COMMUNITY INVESTMENT FUND

PROMISSORY NOTE

FOR VALUE RECEIVED, Smart Ag, Inc. (the "MAKER"), promises to pay to the order of the City of Ames, Story County, Iowa, and the Ames Chamber of Commerce d/b/a Ames Economic Development Commission, jointly (the "LENDER"), at such place as may be designated from time to time by the holder of this Promissory Note, the principal sum of FIFTY THOUSAND DOLLARS (\$50,000 USD) (the "Loan Proceeds") to be paid or forgiven, in full or in part, pursuant to the terms of the Economic Development Community Investment Fund Program Forgivable Loan Agreement, dated January 7, 2019, by and between the City of Ames, Iowa, the Ames Chamber of Commerce and SmartAg, Inc. (the "Loan Agreement").

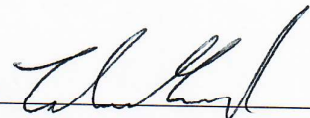
In the event the MAKER fails to requisition and spend the full face amount of the loan as set out above and as set out in the Loan Agreement, then the amount of loan shall be reduced accordingly.

If default is made in the payment of this Promissory Note pursuant to the Loan Agreement, or if LENDER believes itself insecure, the entire principal amount of this Promissory Note shall at once become due and payable without notice at the option of the LENDER, and thereupon the MAKER agrees to pay all reasonable costs of collection, including attorney fees. Failure to exercise this option shall not constitute a waiver of the right to declare the entire principal amount of this Promissory Note due and payable at once at any subsequent time.

MAKER represents and warrants that the extension of credit evidenced by this Promissory Note is for the purposes described in the Loan Agreement.

MAKER acknowledges that this Promissory Note is the "Promissory Note" referred to in the Loan Agreement. The Loan Agreement, among other things, contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

Smart Ag, Inc.

By:  _____