



October 11, 2023

Deschutes County Board of County Commissioners
1300 NW Wall Street
Bend, OR 97702

RE: Deschutes County Economic Development Loan Program - Proposal for Forgiveness and Repayment of Broken Top Candle Company (BTCC or Broken Top Brands) Loan.

Board of County Commissioners:

With respect to Broken Top Candle's loan \$16,200 loan from the Deschutes County Economic Development Loan Program, Economic Development for Central Oregon (EDCO) recommends that the Deschutes County Board of Commissioners approve conversion to a grant (\$14,400) and repayment (\$1,800) plus interest by the Company.

Summary of Agreement and Support for Recommendation

Agreement Date:	April 1, 2021
Loan amount:	\$16,200
Agreement #:	DC: 2021-287
Employment Requirement:	From base of 11 full-time employees, create 9 full-time jobs between January 14, 2021, and December 31, 2021, and maintain 20 full-time employees through December 31, 2022.
Average Wage for New Jobs:	\$41, 767

Company Background:

Broken Top Candle Company (BTCC) is a growing consumer home products company. Founded in 2015, BTCC offers a wide variety of home and beauty products including candles, diffusers, lotions, soaps, and perfumes. All products are manufactured and /or packaged in Bend, using natural and organic based ingredients. The Company's customers include 2,000 independent US and Canadian boutique retailers, large retailers, and direct-to-consumer online sales. The Company has grown from a one-woman kitchen operation to its current 17,700 square foot manufacturing and warehousing facility in Bend.

**Economic Development
for Central Oregon**

705 SW Bonnett Way, Suite 1000
Bend, OR 97702

541.388.3236

www.edcoinfo.com

The Company has grown rapidly and expects to continue to grow, although at a slower rate than the rapid annual growth experienced over the last several years. The Company's more improved production processes in its new Bend facility combined with labor workforce shortages have forced the Company to become more efficient,

suppressing new job growth. While BTCC exceeded its employment requirement for a part of 2022, it fell one job short late in 2022. New job average wages during 2022 of over \$64,000, exceeded the required \$41,767. Employment has remained constant since the end of 2022 and is expected to grow, but at a slower rate.

BTCC believes that the pace of new job growth is unpredictable and has decided that it would prefer to repay the loan according to paragraph 3.3.3 of the Agreement rather than request to renegotiate the agreement and extend its terms. The Agreement provides partial conversion whereby BTCC repays \$1,800 for every full-time employee below 20 as of December 31, 2022. As of December 31, 2022, BTCC had 19 full time employees resulting in conversion of \$14,400 to a grant, and repayment of \$1,800 plus interest at 5% from April 21, 2021.

Below is a summary of full-time employees:

Beginning, January 14, 2021	11
Required new jobs	9
Total required, December 31, 2022	20

Actual full-time employees reported by quarter:

Q1	26
Q2	23
Q3	19
Q4	19

Attached is the certification prepared by Economic Development for Central Oregon regarding the information above.

EDCO recommends conversion to a grant of \$14,400 and repayment of \$1,800 plus interest from April 21, 2021.



Don Myll
Bend Area Director

DESCHUTES COUNTY
Economic Development Forgivable Loan Program

Loan Recipient: Broken Top Candle Company (Broken top Brands or BTCC)
2491 Twin Knolls Dr.
Bend, OR 97701

Agreement No.: DC: 2021-287

Date of Agreement: April 1, 2021

On behalf of Economic Development for Central Oregon, I hereby certify that Broken Top Candle Company has met all conditions of the Deschutes County Economic Development Forgivable Loan Program as specified in Agreement DC: 2021-287 (attached), except as follows:

The Company did not add and retain 9 new jobs for a total of 20 full-time employees for the period December 31, 2021, through December 31, 2022. Instead, the Company's actual full-time employees by quarter were as follows:

Full-time Employees - 2021

Q1	26
Q2	23
Q3	19
Q4	19

I further attest that a representative of Economic Development for Central Oregon has reviewed employment and payroll records furnished by BTCC and that such records confirm that the company:

- a) Created within and/or relocated to Deschutes County at least 8 new full-time, family wage positions by or before December 31, 2021, and
- b) Maintained these new positions in Deschutes County for a 12-month period beyond the creation/relocation date through December 31, 2022, and
- c) Provided wages of at least \$41,767 per year for each new position.

I therefore request that the Deschutes County Board of County Commissioners authorize that the business development loan made to BTCC be converted to a grant in accordance with the terms of the attached Agreement as follows:

Convert to a grant	\$14,400
Repayment by BTCC	\$1,800 plus interest from April 1, 2021

Economic Development for Central Oregon

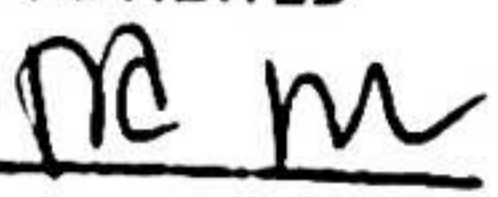


By: _____

Name: Don Myll

Title: Bend Area Director

Date: October 11, 2023

REVIEWED

LEGAL COUNSEL

**DESCHUTES COUNTY
ECONOMIC DEVELOPMENT LOAN PROGRAM
DC: 2021-287**

AGREEMENT WITH Broken Top Candle Company

This Economic Development Loan Agreement ("Agreement") is entered into:

BETWEEN: Deschutes County (*hereinafter referred to as "County"*)
PO Box 6005
Bend, OR 97708-6005
541-330-4640

AND: Broken Top Candle Company (*hereinafter referred to as "Company"*)
62980 Boyd Acres Road, Building B
Bend, OR 97701
541-306-3079

RECITALS

WHEREAS, County finds that the program set forth in this Agreement will promote state and local economic activity by creating new jobs and investment; and

WHEREAS, Company wishes to expand its existing equipment and business operations within Bend, Oregon by increasing employment and investing in equipment and building improvements; and

WHEREAS, the said expansion in Bend, Oregon will create at least nine (9) new full-time, jobs between January 14, 2021 and December 31, 2021 for total employment by Company of 20 full-time equivalent employees; and

WHEREAS, once filled, the new full-time jobs will be maintained for an additional consecutive 12-month period to occur on or before December 31, 2022; and

WHEREAS, County desires to promote the expansion of Company's facility by loaning funds in the amount of \$16,200 for certain hiring and training expenses and such loan will later be converted to a grant upon the condition that Company satisfy certain requirements; and

WHEREAS, County has engaged Economic Development for Central Oregon (EDCO) to assist in administering and implementing the loan;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to as follows:

SECTION 1 DEFINITIONS

- Section 1.1** Dollars and \$ shall mean lawful money of the United States of America.
- Section 1.2** Loan shall mean funds loaned by County to Company as provided under Section 3.
- Section 1.3** Project shall mean expansion of Company employment in Deschutes County, Oregon.
- Section 1.4** Full-Time Employee shall mean any employee who has been hired with the expectation that the job will last for at least one (1) year and who will work at least forty (40) hours per week or the equivalent of 2,080 hours per year.

SECTION 2 TERM

This Agreement shall be effective as of the date of execution by all parties and continue until the loan is paid in full or the loan is converted to a grant as provided in Section 3.3 below.

SECTION 3 LOAN

Section 3.1 Loan

County agrees to loan Company the sum of \$16,200 no later than 30 days following delivery of this signed Agreement to County.

Section 3.2 Loan Purpose and Representations of the Company

The purpose of the loan is to carry out the project, and for no other purposes. Company represents and warrants that it will diligently pursue and complete the following:

- 3.2.1** Company will employ at least thirteen (9) additional full time employees between January 14, 2021 and December 31, 2021 for a total of 20 full-time employees.
- 3.2.2** Company will maintain these new positions from the date all are filled for an additional consecutive 12-month period to occur on or before December 31, 2022.
- 3.2.3** Wages for the new positions will average \$41,767 per year excluding commissions, per annum.
- 3.2.4** Company will submit quarterly and annual progress reports to EDCO with documentation for job creation, capital investment relating to new facilities, and equipment associated with the project.
- 3.2.5** Company shall comply with all applicable federal, state, regional, and local laws, regulations, and ordinances.

- 3.2.6 Company shall timely pay all Deschutes County real and personal property tax when due and shall satisfy all delinquent property tax accounts in full.

Section 3.3 Loan Repayment or Conversion to Grant

- 3.3.1 Unless the loan is converted to a grant as provided below, Company agrees to pay to the order of County the full amount of the loan as well as interest at the rate of 5% per annum beginning from the date County releases funds to Company until the earlier of: (a) the occurrence of an event of default, as defined below, or (b) December 31, 2022.
- 3.3.2 County agrees to convert the loan to a grant that does not need to be repaid, if and when County determines in its sole discretion that Company has satisfied all of the obligations in Section 3.2 and its other obligations under this Agreement. Such conversion shall only be effective upon written verification by the County Administrator that the loan has been converted to a grant.
- 3.3.3 County may, in its sole discretion, convert a portion of the loan to a grant if all of the obligations under Section 3.2 and this Agreement have been fulfilled to the reasonable satisfaction of County. In the event of such partial conversion of the loan, the loan shall continue to be payable on a pro-rated basis in an amount determined by multiplying \$1,800 by the difference between twenty (20) and the number of full-time employees employed in Deschutes County by Company as of December 31, 2022. Interest will accrue on this portion of the loan at a rate of five percent (5%) per annum from the time the Company received the loan monies to the time they are repaid.

SECTION 4 DEFAULT

Section 4.1 Events of Default

The following shall be considered events of default:

- 4.1.1 Company fails to complete, or County reasonably determines that Company will not be able to complete, the obligations described in Section 3.2 and its other obligations under this Agreement; provided, however, that upon such failure or determination, County shall first provide to Company written notice of such failure or determination, and Company shall have thirty (30) days to correct the matter. If the matter has not been corrected by Company within such thirty (30) day period to the reasonable satisfaction of County, County shall be entitled to declare Company in default of its obligations under this Agreement and the loan and accrued interest shall be payable in full.
- 4.1.2 Company effects a change of ownership or change of control of its business which results in dissolution or conversion of the original business entity or relocates its business operations outside of Deschutes County, Oregon on or before the end of

the contract period. Change of ownership and/or change of control of the business will not be deemed a default if Company notifies County which may then condition consent on any reasonable term(s) necessary to adequately secure the loan. A change in majority stock ownership will not constitute a default if all other provisions in this agreement are met.

- 4.1.3 The occurrence of any event that has or may reasonably be expected to have a material adverse effect on Company's financial condition or Company's ability to make any payment required by this Agreement.
- 4.1.4 Company fails to pay, becomes insolvent or unable to pay, or admits in writing an inability to pay Company's debts as they become due, or makes a general assignment for the benefit of creditors.
- 4.1.5 A proceeding with respect to Company is commenced under any applicable law for the benefit of creditors, including, but not limited to, any bankruptcy or insolvency law, or an order for the appointment of a receiver, liquidator, trustee, custodian, or other officer having similar powers over Company is entered.

SECTION 5 MISCELLANEOUS

Section 5.1 Right to Inspect

Company agrees that County, their agents, and employees shall be entitled, upon reasonable prior notice to Company, to access and inspect the property and employment records of Company and its affiliates in order to insure that Company is complying with the terms of this Agreement and all applicable federal, state, and local laws and regulations. The right to inspection shall also include any property or employment records that are in the possession of any affiliate of Company. The right of inspection shall continue until all of the obligations of Company under this Agreement have been satisfied.

Section 5.2 Attorney's Fee Provision

In the event suit or action is instituted to enforce any of the terms or conditions of this Agreement, the unsuccessful party shall pay to the prevailing party, in addition to the costs and disbursements allowed by statute, such sum as the court may adjudge reasonable as attorney fees in such suit or action, in both trial court and appellate courts.

Section 5.3 Indemnification

Company shall defend, indemnify and hold harmless County and EDCO, their officers, agents, employees, and members from all claims, suits, and causes of action, including attorney's fees, of any nature whatsoever relating to claims by third parties resulting from or arising out this Agreement or funds provided to Company under this Agreement.

Except as otherwise provided in this Section 5.3, County and EDCO shall defend, indemnify, and hold harmless Company, their officers, agents, employees, and members from all claims, suits, and causes of action, including attorney's fees, relating to claims by third parties as to the validity

under public finance law of this Agreement or funds provided to the Company under this Agreement.

Section 5.4 Entire Agreement

This Agreement constitutes the entire agreement between the parties regarding the matters herein.

Section 5.6 Titles and Subtitles

The titles in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.

Section 5.7 Notice

All notices, requests demands, and other communications to or upon the parties hereto shall be in writing and shall be deemed to have been duly given or made: Upon actual receipt, if delivered personally or by fax or an overnight delivery service; and at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested; and to the addresses set forth on page 1 of this Agreement or at such other address of which such party shall have notified in writing the other parties hereto.

Section 5.8 Time is of the Essence

All parties agree that time is of the essence under this Agreement.

Section 5.9 Applicable Law

This Agreement is made, and shall be construed and interpreted under the laws of the State of Oregon without regard to the principles of conflicts of law. Venue shall lie in state courts located in Deschutes County, Oregon, provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

Section 5.10 Disclosure

Under Oregon law, most agreements, promises, and commitments made by a lender after October 3, 1989 concerning loans and other credit extensions which are not for personal, family, or household purposes or secured solely by borrower's residence must be in writing, express consideration, and be signed by the lender to be enforceable.

Section 5.11 No Waiver

No failure or delay of County in exercising any right, power or remedy under this Agreement shall operate as a waiver of such right, power or remedy of County, or of any other right. A waiver of any provision of this Agreement shall not constitute a waiver of or prejudice County's right otherwise to demand strict compliance with that provision or any other provision. Any waiver, permit, consent or approval of any kind or character on the part of County must be in writing and shall be effective only to the extent specifically set forth in such writing.

Section 5.12 No Assignment by Company

No obligation or right under this Agreement may be assigned by the Company without the prior consent of County, which consent may be withheld, conditioned, or delayed in the sole discretion of County.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signatures.

Deschutes County

Broken Top Candle Company

By: 
Tom Anderson, County Administrator

By: 
Afton Coffelt | CEO + Founder

Date: 3-29-21

Date: 4-1-21