

WALWORTH COUNTY EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of July 16, 2012, by and between Walworth County (the “County”), Wisconsin and Kevin M. Brunner (the “Employee”); and

WHEREAS, the County Administrator desires to appoint Employee as Director - Central Services and Employee is willing to render services to the County on the terms and conditions of employment set forth below.

NOW, THEREFORE, in consideration of the promises, terms and conditions hereof, the County and Employee agree as follows:

1. Employment. The County Administrator appoints Employee as the Director - Central Services, and Employee accepts such appointment with the County upon the terms and conditions hereinafter set forth. Employee represents and warrants that neither the execution by him of this Agreement nor the performance by him of his duties and obligations hereunder will violate any agreement to which he is a party or by which he is bound. The County and Employee agree that his employment shall be at-will, which means that either party may, at any time, for any reason, decide to terminate the relationship. Employee may be removed at the pleasure of the County Administrator pursuant to this Agreement and section 15-6 of the Walworth County Code of Ordinances (“Code”).
2. Term. The term of employment hereunder shall be indefinite and shall commence on July 16, 2012. This Agreement shall continue indefinitely unless terminated by either party pursuant to paragraph 7 of this Agreement.
3. Duties. Employee is employed as the Director - Central Services of Walworth County and shall carry out those duties specified in the Code, as amended from time to time, and the job description, which may be amended from time to time at the discretion of the County Administrator, and in accordance with the Code.
4. Performance Evaluation. Annually, the County Administrator shall define such goals and performance objectives for Employee, and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. The goals and performance objectives shall generally be obtainable within the time limitations specified, within the annual operating and capital budgets and appropriations provided by the County, and within the scope of authority of the position. Employee shall have an opportunity to present his ideas prior to the reduction to writing of the goals and objectives.

The County Administrator shall review and evaluate Employee’s performance at least once annually. The County Administrator shall provide Employee with a written summary statement of the annual performance evaluation.

5. Exclusive Services. Employee shall devote all necessary working time, ability, and attention to the business of the County during his employment with the County and shall not, directly or indirectly, render any material services of a business, commercial, or professional nature to any other person, corporation, or organization, whether for compensation or otherwise, without the prior disclosure to and prior consent of the County. At all times, Employee shall have the duty of loyalty to the County in the provision of his services under this Agreement.

6. Compensation. As compensation for services rendered pursuant to this Agreement, Employee shall be entitled to receive the following:

- a) Salary. The County shall pay Employee a salary at the rate of \$110,000 per annum (the "Salary"). The Salary shall be payable in accordance with the ordinary payroll practices of the County. Employee shall participate in the County's management "MX" pay plan and be eligible for salary increases in accordance with the County's performance-based pay plan.
- b) Benefits. Except as otherwise provided herein, Employee shall be permitted to participate in any and all employee benefit plans, including paid holidays, group term life insurance, disability insurance, retirement plan contributions, vacation and sick time, as may be in effect department heads of the County. Employee acknowledges that provision of these benefits by the County is subject to change at any time with or without notice by the County, and that these benefits are provided solely at the County's discretion. However, the County agrees to provide benefits to Employee consistent with benefits provided to department heads of the County.

The Employee shall be entitled to four weeks of vacation per year.

The Employee has chosen to waive County health insurance in lieu of a \$6,200 annual stipend, payable in accordance with 15-6 (f)(1)(b) of the Code. One time during the course of this Agreement the Employee may elect County health insurance. Said election may be made only upon the occurrence of a COBRA-qualifying event. The Employee certifies as follows:

- (1) He is not currently eligible to obtain health insurance through Tricare.
- (2) In the event the Employee's status changes such that the Employee becomes eligible to obtain coverage under Tricare, the Employee shall notify the County.
- (3) He is not:
 - An active duty military member
 - A military retiree with twenty years of active military service

- A military retiree from the National Guard and Reserves who has begun to draw monthly retiree payments at age sixty
- A drilling National Guard/Reserve member

(4) He currently has other health insurance in effect, and that to his knowledge, he is not prohibited from waiving the County's coverage in exchange for the stipend.

(5) Such stipend will end upon the earliest of the following occurrences:

(a) The Employee needing, through a COBRA-qualifying event, to be on the County's Health Plan; or

(b) The Employee's status changes such that the Employee becomes eligible to obtain coverage under Tricare; or

(c) It becomes unlawful for the Employee to receive increased compensations in exchange for waiving County insurance coverage; or

(d) The County no longer offering health insurance benefits to the class of employees said Employee belongs to by definition; or

(e) The County no longer offering health insurance benefits to any classification of employee; or

(f) Government sponsored health care (either Federal or State of Wisconsin) is the only option being made available to Walworth County for its employees, whether or not the Employee elects this coverage.

c) Business Expenses. Employee is required to furnish his own automobile for business-related travel. Employee agrees to maintain a valid driver's license and maintain an adequate level of automobile collision insurance consistent with County policies. The County shall reimburse Employee for all business expenses incurred in the performance of his duties under this Agreement in a manner consistent with County policies pertaining to reimbursement of business expenses in effect at any relevant time. Consistent with the County's practices, an annual budget has been and will be established for Employee's incurrence of necessary business expenses such as mileage reimbursement for business use of his personal automobile, commercial travel needs, meal, lodging, and registration for seminars, conventions, membership dues, license fees and subscriptions to professional journals related to his work.

7. Termination. Employee's employment as the Director - Central Services may be terminated as follows:

a) By the Employee. Employee may terminate his employment at any time for any reason by giving 30 days advance written notice of termination to the County Administrator. Employee shall receive any compensation and benefits

accrued to the last day actually worked, calculated in the same manner as department heads of the County and shall not be entitled to any compensation beyond the last day actually worked. The County Administrator may elect to relieve Employee of his duties under this Agreement prior to the expiration of the 30-day notice period, in which event the County shall pay the compensation otherwise due the Employee under paragraph 6a above for the remainder of the 30-day notice period in a lump sum. The Employee shall continue to receive benefits under paragraph 6b above for the remainder of the 30-day period. Continued compensation will not include any additional accrual of sick or vacation pay beyond the last day on which services are performed. Furthermore, if Employee requests to be relieved of his duties prior to the expiration of the 30-day notice period and the County Administrator agrees to release Employee from his duties under this Agreement, Employee shall not be entitled to any compensation beyond the actual day he ceases performing services under this Agreement.

b) By the County. The County Administrator may at any time, for any reason, remove Employee from the Director - Central Services position and terminate this Agreement subject only to the following notice provision. The County must provide Employee with 120 days advance written notice of termination or, in the alternative, must pay Employee any continued compensation including benefits as described in paragraph 6 for any reduction in the notice period. For example, if the County gives Employee 30 days advance written notice, it must then pay Employee 90 days continuing compensation and benefits. If the County gives Employee no advance notice of termination, it must pay him 120 days continuing compensation and benefits. Continued compensation will not include any additional accrual of sick or vacation pay beyond the last day on which services are performed. Notice and/or severance shall not be payable if discharge is due to gross misconduct or illegal activity by Employee.

If the County gives Employee advance written notice of termination and Employee requests to be released from his duties under this Agreement prior to the expiration of the advance notice, the County may, in its discretion, honor Employee's request, in which case the County will pay no continuing compensation to Employee after the last day actually worked.

c) Death. Employee's employment under this Agreement shall terminate as a result of his death. The designated beneficiary or beneficiaries shall be entitled to receive any due and owing compensation. The rights under the benefit plans of the County shall be determined in accordance with the terms and provisions of such plans.

8. Notices. Any Notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid, with return receipt requested. Mailed notices shall be addressed as follows:

If to the County: County Administrator

Walworth County Government Center
100 W. Walworth/P.O. Box 1001
Elkhorn, Wisconsin 53121

If to the Employee: Kevin M. Brunner
1155 W. South Street
Whitewater, WI 53190

Either party may change its address for notice by giving notice in accordance with the terms of this paragraph.

9. Indemnification/Defense. To the extent authorized by Wisconsin Statutes, the County shall defend and indemnify any and all demands, claims, suits, actions, and legal proceedings brought against Employee (a) in his official capacity or (b) personally for actions performed within the scope of his employment.

10. General Provisions.

a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

b) Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and, the remaining provisions hereof shall remain in full force and effect, and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom.

c) Binding Effect. This Agreement shall extend to and be binding upon and inure to the benefit of the parties hereto. This Agreement may not be assigned by Employee.

d) Entire Agreement. This Agreement sets forth the entire understanding of the parties and supersedes all prior arrangements or/and understandings, whether written or oral, with respect to the subject matter hereof. No terms, conditions, warranties, other than those contained herein, and no amendments or modifications hereto shall be binding unless made in writing and signed by the parties hereto.

e) Execution. This Agreement may be executed in one or more counterparts, each of which shall be considered an original, and all of which taken together shall be considered one and the same instrument. A facsimile signature will have the same legally binding effect as an original signature.

DRAFT

Resolution No. 18 - 05/12

Approving Amendment to the Wisconsin Community Development Block Grant Agreement between the Wisconsin Economic Development Corporation, Walworth County and Crunch Holding Corporation

1 **WHEREAS**, the Wisconsin Community Development Block Grant Agreement between the
2 Wisconsin Economic Development Corporation, Walworth County and Crunch Holding
3 Corporation, Contract #ED FY11-20732, was fully executed on April 4, 2012; and,
4

5 **WHEREAS**, the above-stated agreement (“Agreement”) was entered into pursuant to Wisconsin
6 Statutes Chapter 238, between the successor to the economic and community development
7 operations of the Wisconsin Department of Commerce, the Wisconsin Economic Development
8 Corporation (“WEDC”), Walworth County (“Municipality”), and Crunch Holding Corporation
9 (“Borrower”) for the purpose of providing economic development assistance under the
10 Community Development Block Grant for Economic Development (CDBG-ED) program; and,
11

12 **WHEREAS**, WEDC is authorized to grant funds for the purpose of economic development
13 pursuant to Chapter 238 of the Wisconsin Statutes ; and,
14

15 **WHEREAS**, WEDC agreed to award up to \$1,306,000 in grant funding, to be available to
16 Crunch Holding Corporation (Borrower) for eligible economic development project costs,
17 specifically, improvements at the Birds Eye Foods LLC facility in Darien, Wisconsin; and,
18

19 **WHEREAS**, as a condition of the loan, the borrower shall be eligible for forgiveness of the note
20 provided that the borrower invests at least \$29,000,000 in new equipment in Darien, Wisconsin
21 by December 31, 2015 and creates at least One Hundred Twenty-Seven (127) new full time
22 positions in Darien, Wisconsin by December 31, 2013 and thereafter maintains these positions
23 through December 31, 2015 over and above the established threshold; and,
24

25 **WHEREAS**, Walworth County (Municipality) agreed to adopt a Revolving Loan Fund Manual
26 and administer the loan funds, subject to the Borrower’s compliance with the terms and
27 conditions of the Agreement; and,
28

29 **WHEREAS**, WEDC has requested an amendment to the Agreement, to reflect the following
30 changes:
31

- 32 • Change of name of the borrower from Crunch Holding Corporation to Birds Eye Foods
33 LLC to more accurately depict which entity is creating the jobs in Darien.
- 34 • Change in the sources and uses table in the Agreement to reflect a reduction in the
35 borrower’s equipment match from \$28,500,000 to \$1,300,000.
36

37 **NOW, THEREFORE, BE IT RESOLVED** that the Walworth County Board of Supervisors
38 does hereby authorize the proper County officials to execute the amendment attached hereto.
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40 **BE IT FURTHER RESOLVED** that
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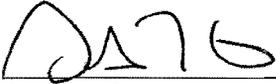
Nancy Russell
County Board Chair

Kimberly S. Bushey
County Clerk

County Board Meeting Date: May 17, 2012

Action Required: Majority Vote X Two-thirds Vote _____ Other _____

Policy and Fiscal Note is attached.
Reviewed and approved pursuant to Section 2-91 of the Walworth County Code of Ordinances:

	<u>5/17/2012</u>	_____ Nicole Andersen	_____ Date
David A. Bretl	Date	Nicole Andersen	Date
County Administrator/Corporation Counsel		Deputy County Administrator - Finance	

If unsigned, exceptions shall be so noted by the County Administrator.

Policy and Fiscal Note
Resolution No. 18 - 05/12

- I. **Title:** Approving Amendment to the Wisconsin Community Development Block Grant Agreement between the Wisconsin Economic Development Corporation, Walworth County and Crunch Holding Corporation
- II. **Purpose and Policy Impact Statement:** The purpose of this resolution is to approve an amendment to the Wisconsin Community Development Block Grant Agreement between the Wisconsin Economic Development Corporation, Walworth County and Crunch Holding Corporation, as requested by the Wisconsin Economic Development Corporation (WEDC).
- III. **Budget and Fiscal Impact:**
- IV. **Referred to the following standing committees for consideration and date of referral:** The contract amendment requested by WEDC was not reviewed by a standing committee of the board.

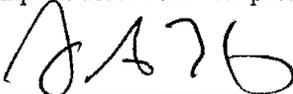
Committee:

Meeting Date:

Vote:

County Board Meeting Date: May 17, 2012

Policy and fiscal note has been reviewed and approved as an accurate statement of the probable policy and fiscal impacts associated with passage of the attached resolution.

 5/17/2012

Date
David A. Bretl
County Administrator/Corporation Counsel

Date
Nicole Andersen
Deputy County Administrator – Finance

If unsigned, exceptions shall be so noted by the County Administrator.

Attachment A

CONTRACT # ED FY11-20732

AMENDMENT ONE

TO THE

WISCONSIN COMMUNITY DEVELOPMENT BLOCK GRANT

AGREEMENT

BETWEEN THE

WISCONSIN ECONOMIC DEVELOPMENT CORPORATION,

WALWORTH COUNTY

AND

CRUNCH HOLDING CORPORATION

The Wisconsin Economic Development Corporation ("WEDC"), Walworth County ("Municipality"), and Crunch Holding Corporation ("Borrower") agree to amend the above referenced Agreement as follows:

1. Throughout the existing Agreement, including all Exhibits, delete "Crunch Holding Corporation" and change to "Birds Eye Foods LLC".
2. On Page 12 of the Agreement, Exhibit A, Section 2., delete the existing sources and uses table and replace with the following sources and uses table:

Code	USES	SOURCES		TOTAL
		CDBG-ED	Birds Eye Foods LLC	
0240	Equipment	\$1,300,000	\$1,300,000	\$2,600,000
0130	Administration	\$6,000		\$6,000
TOTAL		\$1,300,000	\$1,300,000	\$2,606,000

All portions of the original agreement and any previous amendments not amended herein remain unchanged.

Please sign and forward to WEDC. Once all parties have signed, the Amendment will be in effect.

WISCONSIN ECONOMIC DEVELOPMENT CORPORATION

By: _____
Paul F. Jadin, Chief Executive Officer

_____ Date

WALWORTH COUNTY

By: _____
Nancy Russell, County Board Chair

_____ Date

By: _____
David Bretl, County Administrator

_____ Date

BIRDS EYE FOODS LLC

By: _____

_____ Date