

Pocatello Development Authority

Board of Commissioners Meeting
January 21, 2015 – 11:00 a.m.
Paradise Conference Room

City of Pocatello
911 North 7th Avenue
Pocatello, Idaho 83205

An urban renewal agency for the City of Pocatello, Idaho

11:00 a.m.

Call to order by Michael Orr, Chairman
Acknowledge guests of the Board
Disclosure of conflicts of interest
Agenda; delete action or discussion items

see how

- 45:90

Action and Discussion Items:

Agenda Item No. 1: Positron, Inc. Foreclosure Update by Attorney Craig Christensen.

Agenda Item No. 2: SICO Grant Update by Susan Lorenz and Lon Crowell.

Agenda Item No. 3: Minutes.

Motion to approve and/or amend Minutes of December 17, 2014.

Agenda Item No. 4: Financial Report.

Motion to approve and/or amend December Income and Expenses.

Agenda Item No. 5: Payment Requests/Reimbursements.

Reimburse Tiffany Olsen \$16.81 for PDA beverages.

Agenda Item No. 6: Peterson Incorporated: Update per semi-annual review of Economic Development Agreement.

Agenda Item No. 7: Approval of Loan Documents with Citizens Community Bank for \$5,750,000.00 for Payment of Infrastructure Improvements within the Pocatello Regional Airport TIF District.

Motion to approve the loan documents with Citizens Community Bank for \$5,750,000.00 for payment of infrastructure improvements within the Pocatello Regional Airport TIF District on the condition that a Lease Agreement has been signed by Project Pipe and that Project Pipe has entered into a Construction Agreement/Contract with its Developer/Contractor for the project.

Agenda Item No. 8: Idaho Power Construction Agreement and Approval to Purchase Transformer.

Motion to approve the Idaho Power Construction Agreement and approve the purchase of a transformer on the condition that a Lease Agreement has been signed by Project Pipe and that Project Pipe has entered into a Construction Agreement/Contract with its Developer/Contractor for the project.

Matters exist for discussion in an executive session as per I.C. §67-2345(1)(e)

Motion: "I move that we enter into an executive session as per Idaho Code §67-2345(1)(e) to consider preliminary negotiations involving matters of trade or commerce in which the PDA may be in competition with other jurisdictions."

Adjourn.

AGENDA ITEM

NO. 1

DRAFT

Craig W. Christensen
CRAIG W. CHRISTENSEN, CHARTERED
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Attorneys For: Pocatello Development Authority

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

POCATELLO DEVELOPMENT AUTHORITY,)
an Urban Renewal Agency formed under the laws)
of the State of Idaho,)

Case No. _____

Plaintiff,)

-vs-)

COMPLAINT

POSITRON SYSTEMS, INC., a Delaware)
Corporation authorized to conduct business in the)
State of Idaho; IDAHO STATE UNIVERSITY, a)
body politic and corporate; PIONEER TITLE)
COMPANY OF BANNOCK COUNTY, INC., an)
Idaho Corporation,)

Defendants,)

COMES NOW, Plaintiff, POCATELLO DEVELOPMENT AUTHORITY, an Urban Renewal Agency formed under the laws of the State of Idaho, by and through its undersigned counsel of record, Craig W. Christensen of Craig W. Christensen, Chartered, and for a claim against the Defendants, and each of them, alleges as follows:

I. INITIAL ALLEGATIONS

1. At all times herein mentioned, the Plaintiff, Pocatello Development Authority, (hereinafter referred to as "PDA") an Urban Renewal Agency formed under the laws of the State of Idaho, located at 911 North 7th Avenue, Pocatello, Idaho is a public body created as an urban renewal agency pursuant to I.C. § 50-2006 charged with aiding and assisting economic development in Pocatello, Idaho and is authorized to conduct business within the State of Idaho.

2. At all times herein mentioned, the Defendant, Positron Systems, Inc., (hereinafter referred to as "Positron") is a Delaware corporation originated on March 5, 2007 and authorized to conduct business within the State of Idaho pursuant to Certificate of Authority (File C 171876) dated March 5, 2007; that T. Erik Oaas is the current registered agent with an address of 411 South 6th Street, Boise, Idaho.

3. At all times herein mentioned, the Defendant, Idaho State University (hereinafter referred to as "ISU"), is a body politic and corporate with general supervision, government and control being vested in the State Board of Education, which acts as the Board of Trustees; that all rights and title to property belonging to and vested in ISU are vested in its Board of Trustees.

4. At all times herein mentioned, the Defendant, Pioneer Title Company of Bannock County, Inc., (hereinafter referred to as "Pioneer") is an Idaho corporation originated on July 17, 1981 and authorized to conduct business within the State of Idaho; that Tim Bundgard is the current registered agent with an address of 8151 West Rifleman, Boise, Idaho.

II. JURISDICTION AND VENUE

5. Subject matter jurisdiction is proper in this Court under I.C. §§ 1-701 and 705. This Court has personal jurisdiction over the Defendants, in that they have purposefully availed themselves of the privilege of conducting activities within the State of Idaho by transacting business within Idaho,

thus invoking the benefits, protections of the laws of Idaho, and subjecting themselves to the jurisdiction of Idaho Courts, including those activities particularly described in I.C. § 5-514.

6. Venue is proper in this Court pursuant to I.C. § 5-401 as the proceeding relates to real property or claimed interests in real property, fixtures, and improvements thereon which is located in Bannock County, State of Idaho.

III. GENERAL ALLEGATIONS
COUNT ONE - MONEY JUDGMENT (Positron Systems, Inc.)

7. On or about September 30, 2003, ISU, entered in to a Lease Agreement with Positron by the terms of which ISU leased to Positron certain unimproved real property ("Leased Premises") adjacent to the Idaho Accelerator Center on Alvin ^{Ricker} Ricks Drive in Pocatello, Idaho to be used for the development and construction of a new accelerator cell at the Accelerator Center for Positron's research purposes. A copy of said Lease Agreement is attached hereto as Exhibit "A" and by reference incorporated herein.

8. The said Lease Agreement, Exhibit "A" hereto, provides in part as follows:

- "3.1 The term of the lease shall commence upon commencement of construction of the proposed cell, but no later than September 30, 2003.
- 3.2 The lease shall continue for a period of fifty (50) years, and through September 30, 2053.
- 3.3 Positron shall have exclusive possession of the Leased Premises beginning on the date of this agreement.
- 6.1 Positron shall construct, and is authorized to construct, upon the Leased Premises an accelerator cell building, together with appurtenant utility connections, access ways, parking areas and landscaping.
- 13.1 Positron may encumber by mortgage, deed of trust, assignment of security, Uniform Commercial Code security agreement or other proper instrument, its leasehold interest in the Leased Premises under this Lease Agreement, together with all buildings and improvements constructed by Positron on the Leased Premises, as security for indebtedness incurred by Positron in connection with

constructing the buildings and improvements, long-term financing or refinancing of the construction costs or remodeling, restoration or maintenance and repair of the buildings and improvements, or any other additional financing or refinancing.”

13.5 ISU agrees to subordinate its interest with respect to the Leased Premises to the mortgage or deed of trust of a lender who loans funds for the purposes set out in Paragraph 13.1.”

9. On or about December 16, 2003, Positron entered into an Economic Development Loan Agreement with PDA by the terms of which up to the sum of \$400,000.00 of the PDA economic development revolving loan fund was to be loaned to Positron to assist Positron with its research and test facility project on real property leased from ISU at the Idaho State University Research and Business Park, adjacent to the Idaho Accelerator Center in Pocatello, Idaho. A copy of said Economic Development Loan Agreement is attached hereto as Exhibit “B” and by reference incorporated herein.

10. By the terms of said Economic Development Loan Agreement, Exhibit “B” hereto, the sum of \$400,000.00 was loaned to Positron to enable Positron to construct a research and test facility on the real property leased from ISU.

11. As part of said Economic Development Loan Agreement, Exhibit “B” hereto, the parties agreed as follow:

“2.4 The loan shall be evidenced by a Deed of Trust Note, executed on behalf of Positron. The Note shall provide that the loan is made without interest and is to be repaid within seven (7) years from the date of the Note. Positron shall have full right of prepayment.”

“3.1 To secure repayment to the PDA of the loan funds, Positron (as grantor) shall execute in favor of PDA (as beneficiary) a Deed of Trust encumbering the Positron interest of the long-term lease with Idaho State University, together with the improvements (research and test facility) to be constructed thereon.”

“3.2 To define the relationship between the PDA, as a secured lender, and Positron and Idaho State University, as parties to leases respecting the property, the PDA will enter into such subordination and non-disturbance agreement as Positron and Idaho State University may reasonably require.”

“4.3 In any litigation arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees from the non-prevailing party. Determination of the prevailing party in any such litigation shall be made on the basis of the factors enumerated in Rule 54(d)(1)(B), Idaho Rules of Civil Procedure, as the same now exists or may subsequently be amended.”

12. As part of said Economic Development Loan Agreement, Exhibit “B” hereto, Positron, on or about March 25, 2004, executed and delivered to PDA a Deed of Trust Note in the principal amount of \$400,000.00 with interest thereon at the rate of 0.0% per annum, “payable within seven (7) years from completion of the construction of the building at the Idaho Accelerator Center more particularly described in said Deed of Trust”. A copy of said Deed of Trust Note is attached hereto as Exhibit “C” and by reference incorporated herein.

13. In order to secure the payment of said Deed of Trust Note, Exhibit “C” hereto, on the 25th day of March, 2004, the Defendant, Positron, executed and delivered to PDA its Deed of Trust, by the terms of which Defendant, Positron, pledged as collateral to PDA “that certain real property interest in the form of leasehold with respect to real property located in Bannock County, Idaho, and more particularly described in Exhibit “A” hereto, together with real property improvements thereon”, more particularly described as:

A parcel of land located in the Southwest 1/4 of Section 30, Township 6 South, Range 35 East, Boise Meridian, Bannock County, described as follows:

Commencing at the West 1/4 of Section 30, being marked by a Bannock County Monument as indicated in the Corner Perpetuation and Filing record instrument number 575624, thence South 89° 26' 48" East, along the Latitudinal centerline to the West 1/16 corner on the Latitudinal centerline being marked by a Bannock County Monument as indicated in the Corner Perpetuation and Filing record instrument number 97015769, a distance of 1,181.84 feet; thence continuing along the Latitudinal centerline South 89° 26' 48" East a distance of 999.50 feet; thence South 00° 33' 12" West a distance of 207.06 feet to the True Point of Beginning:

Thence South 54° 44' 09" East a distance of 157.32 feet;
Thence North 40° 39' 21" East a distance of 55.59 feet;
Thence North 33° 35' 57" West a distance of 144.21 feet;

Thence South 54° 27' 51" West a distance of 80.64 feet;
Thence South 38° 02' 24" West a distance of 31.22 feet; to the True Point of
Beginning. (Containing 0.29 acres)

Together with the tenements, hereditaments and appurtenances thereunto belonging.

Said Deed of Trust was duly recorded in the official records of Bannock County, Idaho, on the 12th
day of May, 2004, as instrument number 20409858; a copy of said Deed of Trust is attached hereto
as Exhibit "D" and by reference incorporated herein.

14. Said Deed of Trust, Exhibit "D" hereto, provides in part as follows:

"FOR THE PURPOSE OF securing payment to Beneficiary from Grantor of all
indebtedness or obligations evidenced by or arising under:

- a. Deed of Trust Note dated March 25, 2004, executed by Grantor in favor of
Beneficiary in the original principal sum of \$400,000 full payment due seven
(7) years from date of completion of the building.
- b. Economic Development Loan Agreement of December 16, 2003, between
Grantor and Beneficiary.

15. Positron initiated the development and physical construction of the new accelerator cell
at the Accelerator Center for Positron's research purposes on the Leased Premises on or about _____
_____, 20__.

16. Positron completed development and physical construction of the new accelerator cell at
the Accelerator Center for Positron's research purposes on the Leased Premises on or about _____
_____, 20__.

17. The Deed of Trust Note, Exhibit "C" hereto, provided for a maturity date of "within seven
(7) years from completion fo the construction of the building at the Idaho Accelerator Center more
particularly described in said Deed of Trust", i.e. March 24, 2011.

18. On or about March 16, 2011, the PDA elected "to not pursue calling the loan due until
the Board so directed, but not sooner than two years from" the day of the meeting, i.e. March 15, 2013.

19. On or about January 24, 2013, the PDA submitted a letter to Positron advising that the PDA Board would meet on April 17, 2013 to “consider whether or not to call the above described Deed of Trust Note due and payable”. A copy of said letter is attached hereto as Exhibit “E” and by reference incorporated herein.

20. Positron failed to pay said Deed of Trust Note upon its maturity, i.e. March 24, 2011; Positron failed to pay said Deed of Trust Note upon the two (2) year extension date, ie. March 15, 2013.

21. On or about April 1, 2013, Positron submitted a letter to PDA stating in part:

- a. “...Our initial “Angel Investor” funding dried up due to the disastrous economic downturn and commercial funding sources became non-existent. Even the so-called hard money lenders were nowhere to be found....”
- b. “...The company is not in a financial position currently to pay back the existing loan secured by the Deed of Trust...”

A copy of said letter is attached hereto as Exhibit “F” and by reference incorporated herein.

22. At the PDA meeting held on April 17, 2013, the PDA decided not to further extend the maturity deadline past March 15, 2013 and to call the entire indebtedness due and payable in full.

23. On or about May 14, 2013, Positron submitted a letter to PDA stating in part:

- a. “We have painfully come to the conclusion that we see no way to continue working under this cloud of doubt and the untenable conditions being contemplated by the Board...”

24. The Defendant, Positron, is in default under the terms and conditions of the Economic Development Loan Agreement, Deed of Trust Note, and the Deed of Trust, Exhibits “B”, “C”, and “D” hereto, having failed to pay the indebtedness in full.

Need minutes?

Attach as an exhibit?

25. The Defendant, Positron, failed and refused to cure the default; as a result of said default and failure to pay the indebtedness in full, PDA has elected to accelerate the payment of the entire indebtedness due and owing to PDA under said Deed of Trust Note, Exhibit "C" hereto.

26. After applying all payments, credits, and offsets, as of January ____, 2015, the balance due and payable to PDA on the Deed of Trust Note, Exhibit "C" hereto, was the sum of \$_____, comprised of a principal balance of \$400,000.00; accrued interest of \$_____; late charges of \$ -0-; and advances of \$_____, including advances for the Alliance Title & Escrow Corp Litigation Guarantee. Interest accrues at the rate of twelve percent (12.0%) per annum from March 15, 2013 ("money after the same comes due" per I.C. § 28-22-104(1)(2)) until paid in full (i.e. \$131.51 per day).

27. That at all times herein mentioned PDA is the owner and holder of said Economic Development Loan Agreement, Deed of Trust Note, and the Deed of Trust, Exhibits "B", "C", and "D" hereto, and other underlying loan documentation.

28. PDA is entitled to judgment against Defendant, Positron, on the Deed of Trust Note, Exhibit "C" hereto, as of January ____, 2015, in the sum of \$_____, comprised of a principal balance of \$400,000.00; accrued interest of \$_____; late charges of \$ -0-; and advances of \$_____ for the Alliance Title & Escrow Corp Litigation Guarantee. Interest accrues at the rate of twelve percent (12.0%) per annum from March 15, 2013 until paid in full (i.e. \$131.51 per day), together with interest thereon until date of judgment, plus interest thereon at the highest lawful rate until paid, together with costs of foreclosure, attorney fees and Court costs as herein alleged.

29. PDA has duly performed each and every act and thing required to be performed by it under the Economic Development Loan Agreement, Deed of Trust Note, and the Deed of Trust, Exhibits "B", "C", and "D" hereto, and other underlying loan documentation.

30. Pursuant to the provisions of said Economic Development Loan Agreement, Deed of Trust Note, and the Deed of Trust, Exhibits “B”, “C”, and “D” hereto, and other loan documentation, on or after default, Defendant, Positron, is obligated for payment to PDA of all attorney fees, costs and expenses incurred by PDA to enforce collection of said indebtedness in connection with the failure to comply with any covenant, condition or agreement by the Defendant, PDA.

31. PDA has been required to obtain a Litigation Guarantee for the preparation of this suit and will pay Alliance Title & Escrow Corp. a sum of money to be proven at time of trial; Defendant, Positron, is obligated to pay the costs of said Litigation Guarantee to PDA.

32. PDA has been required to retain the services of Craig W. Christensen, Chartered to prosecute this action and agreed to pay a reasonable attorney fee and costs incurred; that \$20,000.00 is a reasonable attorney fee should the action result in a default judgment, plus such other sums as the Court deems proper should the action be contested; that said fees and costs should be awarded pursuant to the terms of said underlying loan documentation and Idaho Code §12-120(3).

COUNT TWO - (FORECLOSURE/PRIORITY)

33 PDA realleges the allegations contained in Paragraph I - Initial Allegations, paragraphs 1 through 6; Paragraph II - Jurisdiction and Venue, paragraphs 7 and 8; and Paragraph III - General Allegations, Count One - Money Judgment (Positron Systems, Inc.) paragraphs 9 through 32 as if fully set forth herein and incorporates the same herein by reference.

34. The Defendant, Positron, claims some right, title, or interest in the above described real property, collateral and fixtures or a portion thereof, by virtue of its Lease Agreement, Exhibit “A” hereto, and “that certain real property interest in the form of leasehold with respect to real property located in Bannock County, Idaho, . . . , together with real property improvements thereon”, as

provided in the Deed of Trust, Exhibit "D" hereto; that said claimed right, title or interest is subordinate and inferior to the claims of Plaintiff.

35. The Defendant, ISU, may claim some right, title, or interest in the above described real property, collateral and fixtures or a portion thereof, by virtue of its ownership interest in said above described real property; that said claimed right, title or interest is subordinate and inferior to the claims of Plaintiff.

36. The Defendant, Pioneer Title Company may claim some right, title or interest in the above described real property, collateral and fixtures or a portion thereof, by virtue of being named as the Trustee in the Deed of Trust, Exhibit "D" hereto; that said claimed right, title or interest is subordinate and inferior to the claims of Plaintiff.

37. The security interest of PDA in said real property, collateral and fixtures should be declared a valid and existing first lien against the subject real property, collateral and fixtures and superior to and having priority over all claims of Defendants, and each of them; and any and all persons or entities claiming an interest by or through said Defendants, and each of them, should be foreclosed according to law.

38. By reason of the aforesaid payment defaults by Defendant, Positron, and pursuant to said Economic Development Loan Agreement, Deed of Trust Note and Deed of Trust, Exhibits "B", "C", and "D" respectively hereto, PDA has the right to take immediate possession of the real property, collateral and fixtures above described, and to sell, lease, or otherwise dispose of the same in its present condition, or following repair, reconditioning or processing, and to apply the proceeds thereof to the expenses of retaking, protecting, holding, preparing for sale, selling or otherwise realizing on the collateral, and to reasonable attorney fees and costs necessarily incurred herein by PDA, and

thereafter apply the balance to the unpaid principal balance, accrued interest, late charges, advances, costs and fees owed by Defendant, Positron, to PDA as described above.

39. PDA is entitled to a deficiency judgment against Defendant, Positron, to the extent that the proceeds from the sale of the hereinabove described real property, collateral and fixtures are insufficient to pay the total indebtedness, costs and attorney fees hereinabove described.

40. PDA, to its best knowledge, information and belief, asserts that the fair market value of the above described real property, collateral, and fixtures located in Bannock County, Idaho is the sum of \$_____, based upon observation and inspection, but to be determined at the trial of these proceedings.

WHEREFORE, Plaintiff, Pocatello Development Authority, prays judgment against said Defendants, and each of them, as follows:

1. UPON COUNT ONE (Money Judgment - Positron Systems, Inc.):

a) Upon the Deed of Trust Note, Exhibit "B" hereto, against the Defendant, Positron Systems, Inc., as of January _____, 2015, in the sum of \$_____, comprised of a principal balance of \$400,000.00; accrued interest of \$_____; late charges of \$ -0-; advances of \$_____; together with interest thereon at the statutory rate of interest until date of judgment, plus costs and attorney fees, together with other and additional costs, expenses and fees incurred by Plaintiff in an amount to proven at trial, together with those costs incurred for title and abstract costs, together with interest thereon plus interest thereon at the highest lawful rate until paid.

b) For reasonable attorney fees in the sum of \$20,000.00, if judgment is entered by default and for such further sums as the Court deems just and reasonable if the matter is contested.

2. UPON COUNT TWO (Foreclosure and Priority)

a) That the total judgment of Plaintiff, Pocatello Development Authority, be adjudged a first valid and existing lien in said hereinabove described real property, collateral and fixtures, superior to and having priority over all claims or interests of any and all Defendants, and each of them, and any and all persons or entities claiming by or through them, either as purchasers, encumbrancers, successors, assigns or otherwise and that said claims or interest be forever barred and foreclosed of any right, title or interest, or equity of redemption in and to the above described real property, collateral and fixtures, or any part thereof.

b) That the security interest, right, title and lien of Pocatello Development Authority in the real property, together with buildings and appurtenances, as well as the collateral and fixtures as hereinabove described, be foreclosed and the usual decree by made for the sale of said real property, collateral and fixtures by the Sheriff of Bannock County, Idaho, according to the laws of the practices of the Court.

c) That the usual Decree of Foreclosure issue and that any and all rights or interests of the Defendants, and each of them, in or to the said real property, collateral and fixtures be decreed to be subsequent and inferior to the rights and interests of this Plaintiff, and that all, or so much of said real property, collateral and fixtures as is necessary to satisfy the judgment be sold and the proceeds disposed in accordance with the orders of this Court and the statutes therefor provided.

d) That Pocatello Development Authority have judgment granting Pocatello Development Authority the immediate possession, custody and control of the hereinabove described real property, collateral and fixtures hereinabove referenced and further ordering that Pocatello Development Authority may sell, lease, or otherwise dispose of any and all real property, collateral and fixtures in its present condition or following any commercially reasonable preparation and processing and the proceeds of said disposition be applied in the following order:

(1) to the payment of costs of these proceedings, including Sheriff's fees and costs, including expenses of retaking, holding, protecting, preparing for sale, selling or otherwise disposing of the collateral;

(2) the amount owing to Pocatello Development Authority on said judgment, including principal, accrued interest, late charges, advances, unpaid real property or personal property taxes, costs and attorney fees whether incurred prior to entry of the judgment or incurred after entry of the judgment;

(3) other perfected lienholders in the order of their priority, and all persons claiming under them; and

(4) the balance tendered to the Court for determination as to disbursement.

e) That Pocatello Development Authority, or any other party to this suit, may become a purchaser at the foreclosure sale of the real property, collateral and fixtures and that said Sheriff may execute a Sheriff's Certificate of Sale on the subject real property and fixtures; and subsequently a Sheriff's Deed on the subject real property and fixtures, to the purchaser(s), and that said purchaser(s) be let into, or granted immediate possession of the subject real property, collateral and fixtures upon production of the Sheriff's Certificate of Sale.

f) That Pocatello Development Authority have judgment and execution against Defendant, Positron Systems, Inc., for any deficiency which may remain after applying all the proceeds of the sale of said real property, collateral and fixtures applicable to the satisfaction of the judgment as hereinabove provided.

DRAFT

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Idaho State Bar No. 2086
Utah State Bar No. 10355

Attorneys For: Pocatello Development Authority

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

POCATELLO DEVELOPMENT AUTHORITY,)
an Urban Renewal Agency formed under the laws)
of the State of Idaho,)

Plaintiff,)

-vs-)

POSITRON SYSTEMS, INC., a Delaware)
Corporation authorized to conduct business in the)
State of Idaho; IDAHO STATE UNIVERSITY, a)
body politic and corporate; PIONEER TITLE)
COMPANY OF BANNOCK COUNTY, INC., an)
Idaho Corporation,)

Defendants,)

Case No. _____

L I S P E N D E N S

TO ALL WHOM IT MAY CONCERN:

A. TAKE NOTICE that an action has been commenced in the above-entitled Court by the above-named Plaintiff against the above-named Defendants, which suit is now pending, that the object of the suit is for a money judgment and to foreclose a deed of trust against certain real property, collateral and fixtures:

1. Lease Agreement by and between Idaho State University and Positron Systems, Inc., dated September 30, 2003;

L I S P E N D E N S

2. Amendment Number 1 to the Lease Agreement by and between Idaho State University and Positron Systems, Inc., dated September 30, 2003;
3. Economic Development Loan Agreement by and between Positron Systems, Inc. And Pocatello Development Authority;
4. Deed of Trust Note of Positron Systems, Inc. dated March 25, 2004, to Pocatello Development Authority in the principal sum of \$400,000.00 together with interest thereon at the contract rate; and
5. Deed of Trust dated March 25, 2004 from Positron Systems, Inc. to Pocatello Development Authority describing real property pledged as collateral to secure payment of said indebtedness.

B. The real property premises affected by this suit are situate in the County of Bannock, State of Idaho, and is more particularly described as follows:

A parcel of land located in the Southwest 1/4 of Section 30, Township 6 South, Range 35 East, Boise Meridian, Bannock County, described as follows:

Commencing at the West 1/4 of Section 30, being marked by a Bannock County Monument as indicated in the Corner Perpetuation and Filing record instrument number 575624, thence South 89° 26' 48" East, along the Latitudinal centerline to the West 1/16 corner on the Latitudinal centerline being marked by a Bannock County Monument as indicated in the Corner Perpetuation and Filing record instrument number 97015769, a distance of 1,181.84 feet; thence continuing along the Latitudinal centerline South 89° 26' 48" East a distance of 999.50 feet; thence South 00° 33' 12" West a distance of 207.06 feet to the True Point of Beginning:

Thence South 54° 44' 09" East a distance of 157.32 feet;
Thence North 40° 39' 21" East a distance of 55.59 feet;
Thence North 33° 35' 57" West a distance of 144.21 feet;
Thence South 54° 27' 51" West a distance of 80.64 feet;
Thence South 38° 02' 24" West a distance of 31.22 feet; to the True Point of Beginning. (Containing 0.29 acres)

Together with the tenements, hereditaments and appurtenances thereunto belonging.

DATED this ____ day of January, 2015.

POCATELLO DEVELOPMENT AUTHORITY

By Michael Orr, Chairman
Authorized Signature

STATE OF IDAHO)
) ss
County of Bannock)

_____, being first duly sworn, deposes and says:

That he is the _____ of Pocatello Development Authority, an Urban Renewal Agency formed under the laws of the State of Idaho, Plaintiff in the above entitled action, and makes this statement on its behalf; that he has read the above and foregoing Lis Pendens, knows the contents thereof and that the facts therein stated are true as he verily believes.

SUBSCRIBED AND SWORN To before me this _____ day of January, 2015.

Notary Public for Idaho
Residing at _____, Idaho
My Commission Expires: _____

STATE OF IDAHO)
) ss
County of Bannock)

On this _____ day of January, 2015, before me, the undersigned Notary Public, personally appeared Michael Orr, known or identified to me to be the person whose name is subscribed to the within instrument as the Chairman of Pocatello Development Authority, an Urban Renewal Agency formed under the laws of the State of Idaho, and acknowledged to me that he executed the same as such Chairman of Pocatello Development Authority, an Urban Renewal Agency formed under the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____, Idaho
My Commission Expires: _____

AGENDA ITEM

NO. 3

POCATELLO DEVELOPMENT AUTHORITY MEETING MINUTES
January 21, 2015

Members present: Brian Blad, Darlene Gerry, Cynthia Hill, Michael Orr (Chair), Linda Tigert, Ryan Ward, and Caroline Wight.

Members absent: Larry Fisher, Russell Meyers, and John Regetz (ex officio)

Staff present: Lon Crowell, Executive Director; Dean Tranmer, Kirk Bybee (left at 11:30am) and Tiffany Olsen, City Legal Dept.; and Joyce Stroschein, City Finance Dept.

Chair Orr called the meeting to order at 11:05 a.m.

Introductions, Conflicts, and Agenda: Guests in attendance included Mark Lupo and Jim Burdick with Idaho Power Company (left at 11:50am), Attorney Craig Christensen (left at 11:20am), and Kathleen Lewis and Susan Lorenz with SICOG (left at 11:45am). There were no conflicts with the Agenda items, nor were there any deletions to the Agenda. Chair Orr moved Agenda Item No. 8 to be heard after the SICOG Grant Agenda item.

1. Action and Discussion Items:

Agenda Item No. 1: Positron, Inc., Foreclosure Update by Attorney Craig Christensen. PDA Attorney Craig Christensen summarized the history of how the PDA got to the position it is in with regard to the foreclosure of Positron's leasehold interest in the Idaho Accelerator Center. He further explained there are two methods to foreclosure, non-judicial and judicial. The non-judicial course is not viable as the underwriters at Alliance Title Company were not comfortable due to the inconsistency of dates within the Promissory Note, Deed of Trust Note, and the Economic Development Agreement, as three different dates are referenced for satisfaction of the loan. The judicial course is the PDA's only option for foreclosure. Accordingly, Christensen has prepared a draft Complaint and Lis Pendens to file with the District Court. The Complaint will be modified to incorporate a count for obtaining an access easement. ISU has been cooperative thus far and will sign the necessary documents to provide access to the building. The costs of the judicial foreclosure action are estimated to be between \$3,500 and \$5,000. This would include the preparation of legal documents, filing fees, process of service, Summary Judgment proceeding, and recordation of the Lis Pendens. Christensen has provided for a reimbursement of attorney's fees and costs in the Complaint to the prevailing party in hopes of recovering some monies for the PDA. **Chair Orr** asked what the PDA will get out of going this route? Christensen replied the rental income from future prospective tenants (ISU contends they have two or three interested individuals) or the sale of the improvements on the property. **R. Ward** asked if ISU was interested in purchasing the leasehold interest in the facility. Christensen promptly replied in the negative. ISU (via David Alexander) has no interest in foreclosing on their own and it is suspected for political reasons. **Chair Orr** excused Christensen from the meeting and the Board moved on to the next agenda item. No motion was made. Secretary Olsen notes the Board previously approved at its April 16, 2014 meeting to approve the payment to Christensen to proceed with either a non-judicial or judicial foreclosure and not to exceed a retainer amount of \$5,500. Given Christensen's estimation of between \$3,500 and \$5,000, no additional motions are needed at this time for authorization of payment. A motion will need to be made to pursue foreclosure through judicial proceedings at the next meeting.

Agenda Item No. 2: SICOG Grant Update by Susan Lorenz and Lon Crowell. Susan Lorenz requested the Board withdraw the EDA Grant from the Airport Development project due to two reasons; (1) Initially, City Staff represented the total amount of the infrastructure improvements available for the EDA Grant would total approximately \$1.5M. After a more thorough review, it appears the EDA Grant amount is really more like \$600,000. Given this is a 50% matching grant, \$300,000 is too small of an EDA grant and would not be worth the costs of moving forward; and (2) Lorenz explained there are time constraints with an EDA Grant. The EDA approves and funds the grant on its timeframe; not necessarily what will fit for our project. It could be months after the grant is awarded before it will be funded. With the information she has received from City Staff, she realizes time is of the essence. **L. Crowell** stated this project has evolved daily for over year and a half. There has been way too many approvals needed for every step along the way and that process has now taken longer than expected and is holding up the project from moving forward.

D. Gerry wondered where we are at in the development of the Airport? Her last recollection was at the December PDA Meeting, the Board was hard pressed to sign a Loan Agreement or risk the City/PDA would lose the project. **B. Blad** explained that the project is already 6 weeks behind schedule for ordering the transformer due to Project Pipe's inability to execute a Lease Agreement with the City and additionally no contracts have been entered between Project Pipe and their building contractor. Besides those issues, it has become unclear who is authorized to negotiate and make commitments on behalf of the PDA (the Chair or Executive Director?) **L. Crowell** feels like he has negotiated on behalf of the PDA and has continually informed the PDA of the ongoing developments at the Airport; however the Board disagreed. **B. Blad** elaborated that Idaho Power needs at least 54-56 weeks to order, manufacture, and install the transformer. With Project Pipe's demands of being operational by January 1, 2016, achieving their operational date is virtually impossible given Idaho Power's timeframe. **D. Gerry** reminded the Board the improvements at the Airport are not being done for Project Pipe, they are being done for Economic Development at the Airport and are being paid for by Project Pipe's increment contributed to the TIF. If Project Pipe is reducing their numbers of employees as J. Stroschein represented she had heard, then the taxable valuation could also decrease if the building size is reduced. **D. Gerry** clarified with J. Stroschein that if the EDA Grant was withdrawn, the City would not be required to borrow additional monies from Citizens Community Bank. It was then **MSC (D. Gerry, C. Hill)** to withdraw the EDA Grant from the Airport project.

Agenda Item No. 3: Idaho Power Construction Agreement and Approval to Purchase Transformer. **L. Crowell** requested the Board make payment to Idaho Power for the transformer bid/purchase but only if Project Pipe signs a Lease Agreement with the City. **B. Blad** added the payment should also be contingent upon the Loan Agreement being executed with Citizens Community Bank. Crowell reminded the Board that representatives from Idaho Power were in attendance to answer any questions on the Construction Agreement. **L. Tigert** sought clarification that the scope of work was for the bid, purchase and associated work with the transformer and not with the distribution line. M. Lupo confirmed. **D. Gerry** noted the dates listed within the current Agreement are in 2014; the requested execution date and Table 1 (Estimated Schedule). M. Lupo explained those would be amended to a current 2015 schedule. **L. Tigert** asked J. Burdick if the bid acquired last fall/winter was no longer valid and a second bid was necessary, is it likely the PDA could see an increase in price? Burdick explained it is not likely but possible. Burdick's concern was if a re-bid was necessary, meeting the stringent time

demands of Project Pipe for an estimated completion date of December 31, 2015 is not expected. Burdick will check the current bid to see if it included a sunset clause and if so, advise the Board (via Chair Orr and L.Crowell) of that date. No motion was made at this time. The Board continued moving forward with the Agenda items in the order contained in the Agenda. See Agenda Item No. 8 for the MSC related to this Agenda Item No. 3.

Agenda Item No. 4: Minutes. The Minutes of the regularly scheduled meeting of December 17, 2014 were reviewed. It was **MSC (R. Ward, B. Blad. Tigert abstained)** to approve the Minutes as presented.

Agenda Item No. 5: Financial Report. **J. Stroschein** presented the Financial Report for the month of December 2014. At month end, the Authority had cash on hand of \$4,902,295.63. The checking account balance was \$2,676,611.99, the savings account was \$745,990.02, and cash being held by Zions Trust amounted to \$1,479,693.62. The Authority recognized minor financial activity during the month of December. The Authority received revenues totaling \$2,268.08 of which \$857.10 was interest earnings on cash invested and property taxes. The \$1,000.00 payment received on the note receivable applied \$179.66 towards the principal of the note. Property tax revenue totaled \$1,231.32 for the North Yellowstone District. Expenses for the month totaled \$189.60 which was an administrative expenditure for lunch. Year to date revenues (the first quarter) of \$2,911,328.07(see page 3) are not greater than expenses of \$4,219,574.94. The General Fund District has a net income year to date of \$2,901,664.69. It was **MSC (C. Hill, L. Tigert)** to approve the Financial Report as presented.

Agenda Item No. 6: Payment Requests/Reimbursements. **J. Stroschein** presented a request to reimburse Tiffany Olsen \$16.81 for beverage for the PDA Board Members. It was **MSC (C. Hill, L. Tigert)** to reimburse Tiffany Olsen \$16.81 for PDA beverages.

Agenda Item No. 7: Petersen Incorporated: Update per semi-annual review of Economic Development Agreement. Petersen, Inc. provided a power point presentation documenting their performance which was presented to the Authority by **L. Crowell**. Petersen currently has 58 positions on the payroll, with 54 over \$14.00 and an average wage of \$20.56 per hour. Work orders have slightly increased with several bids recently being awarded. **B. Blad** asked what happens if Petersen fails to meet the requirements of the Economic Development Agreement. **L. Crowell** explained if Petersen defaults, it will be obligated to repay the funds provided by the Regional Development Alliance, Inc., at an annual pro-rata rate, based upon the length of time Petersen fails to meet criteria for qualifying full time employment positions herein described within any one year period, for the term of Petersen's operating commitment. **R. Ward** reminded the Board that Petersen has always been good in providing information when requested and has continued to operate a successful facility.

Agenda Item No. 8: Approval of Loan Documents with Citizens Community Bank for \$5,750,000.00 for Payment of Infrastructure Improvements within the Pocatello Regional Airport TIF District. **Chair Orr** asked the Board for a motion to approve the loan documents with Citizen's Community Bank for \$5,750,000.00 for payment of infrastructure improvements within the Pocatello Regional Airport TIF District on the condition that a Lease Agreement has been signed by Project Pipe and that Project Pipe has entered into a Construction Agreement/Contract with its Developer/Contractor for the project. He stated there has been several miss-steps on the project and if those get resolved and the aforementioned contracts are

signed, it would be in the best interests of time to already have the Board's approval to sign the Loan Agreement. Although there was some issue with whether or not a Development Agreement would be necessary with the PDA, there is no way to tie company to the PDA. Essentially, he thought it more appropriate for an Agreement between the City and the PDA. **R. Ward** confirmed that the Development Agreements executed in the past have only been between the prospective company/developer and the PDA. **Chair Orr** and **L. Crowell** reiterated this is a unique situation where the owner of the property is the City and the City is also the developer. **B. Blad's** interpretation from the December Board Meeting was the Board requested a Development Agreement between the PDA and Project Pipe and didn't want to move forward without one. **D. Gerry's** concerns were strictly with the Loan Agreement modifications and if those were made, she was ready to move on the project; the Development Agreement was not a deal breaker for her. **D. Gerry, L. Tigert** and **C. Wight** are all concerned that the timeline is already behind given the Idaho Power transformer order so how is it appropriate for the PDA to commit to a loan amount if Project Pipe may not make their operational date deadlines. **B. Blad** clarified with **R. Ward** that the terms of the Loan Agreement do not have an expiration date regardless of when the document is signed. **B. Blad** made a motion for the Board to give the Chairman the authority to initiate conversation with the Mayor and Project Pipe wherein the PDA authorizes the Chair to sign the Loan Agreement once Project Pipe has signed a Lease Agreement with the City, a Construction Contract with a Contractor and the financial review of the increment valuation is confirmed by J. Stroschein. No second was made and the motion failed. **B. Blad** advised the Board there are additional issues with the FAA. The City used to fall within the jurisdiction of the Seattle, Washington office; now the City is mandated by the Helena, Montana office. The representatives in Helena are imposing very different restrictions on the Airport property and are making negotiations very difficult. There will be no development at the Airport until this issue is resolved. Given the discussion, **D. Gerry, L. Tigert** and **C. Wight** did not feel comfortable giving the Chair authority to sign any documents without a special meeting to verify tax increment valuation figures and other relevant information/updates. **R. Ward** added even if the Loan Agreement is signed, the loan is set up as a draw and you don't have to spend the money right away. **L. Crowell** noted that immediately upon signing the Agreement with Idaho Power, \$3.1M will be paid for the transformer. It was **MSC (D. Gerry, B. Blad)** to (1) verify the tax increment valuation numbers with Project Pipe and make sure J. Stroschein confirms the valuation is sufficient to pay the loan, and (2) if the valuation numbers are sufficient to pay the loan, allow B. Blad and Chair Orr to relay to Project Pipe that the PDA is confident it will enter into the Loan Agreement with Citizens Community Bank for \$5,750,000.00 and the Construction Agreement with Idaho Power, on the condition that Project Pipe has entered into a Lease Agreement with the City and entered into a contract with a Developer/Contractor for construction. A special meeting shall be noticed for Monday, January 26, 2015 at 9:00 a.m. to relay to the Board the above conversation and information and if applicable, obtain a vote at that time to enter the Loan Agreement and Construction Agreement.

2. Adjournment:

There being no additional business on the Agenda and no matters for executive session, it was **MSC (L. Tigert, B. Blad)** to adjourn the meeting at 1:10 p.m.

By: Tiffany G. Olsen
Tiffany G. Olsen, Secretary

AGENDA ITEM

NO. 4

FINANCIAL

REPORTS

(will be supplemented)

Pocatello Development Authority
Balance Sheet by Class
As of December 31, 2014

	1-General Fund	2-Central Corridor	3-North Yellowstone	4-Naval Ordinance	6-North Portneuf	7-Pocatello Regional Airport	TOTAL
ASSETS							
Current Assets							
Checking/Savings							
Checking Wells Fargo	2,400,572.69	1,000.00	37,268.38	79,759.67	0.00	158,011.25	2,676,611.99
Savings Wells Fargo	745,953.82	0.00	36.20	0.00	0.00	0.00	745,990.02
Zions 2012 Bnd Fnd 7110526D	0.00	0.00	0.32	0.00	0.00	0.00	0.32
Zions Bnd Reserve Fnd 7110526B	0.00	0.00	677,522.32	0.00	0.00	0.00	677,522.32
Zions Rev Alloc Fnd 7110526	0.00	0.00	802,170.98	0.00	0.00	0.00	802,170.98
Total Checking/Savings	3,146,526.51	1,000.00	1,516,998.20	79,759.67	0.00	158,011.25	4,902,295.63
Accounts Receivable							
Notes Receivable	50,000.00	597,621.97	0.00	0.00	0.00	0.00	647,621.97
Total Accounts Receivable	50,000.00	597,621.97	0.00	0.00	0.00	0.00	647,621.97
Other Current Assets							
Accrued Interest Income	0.00	0.00	35.96	0.00	0.00	0.00	35.96
Property Tax Receivable	0.00	21,713.24	27,117.52	0.00	12,964.56	0.00	61,795.32
Total Other Current Assets	0.00	21,713.24	27,153.48	0.00	12,964.56	0.00	61,831.28
Total Current Assets	3,196,526.51	620,335.21	1,544,151.68	79,759.67	12,964.56	158,011.25	5,611,748.88
TOTAL ASSETS	3,196,526.51	620,335.21	1,544,151.68	79,759.67	12,964.56	158,011.25	5,611,748.88
LIABILITIES & EQUITY							
Liabilities							
Long Term Liabilities							
Deferred Notes Receivable Rev	50,000.00	597,621.97	0.00	0.00	0.00	0.00	647,621.97
Deferred Tax Revenues	0.00	15,601.56	14,241.05	0.00	12,964.56	0.00	42,807.17
Total Long Term Liabilities	50,000.00	613,223.53	14,241.05	0.00	12,964.56	0.00	690,429.14
Total Liabilities	50,000.00	613,223.53	14,241.05	0.00	12,964.56	0.00	690,429.14
Equity							
Fund Balance	244,861.82	2,974,145.20	2,350,693.52	418,042.02	14,679.84	162,500.35	6,164,922.75
Opening Balance Equity	0.00	0.00	64,643.86	0.00	0.00	0.00	64,643.86
Net Income	2,901,664.69	-2,967,033.52	-885,426.75	-338,282.35	-14,679.84	-4,489.10	-1,308,246.87
Total Equity	3,146,526.51	7,111.68	1,529,910.63	79,759.67	0.00	158,011.25	4,921,319.74
TOTAL LIABILITIES & EQUITY	3,196,526.51	620,335.21	1,544,151.68	79,759.67	12,964.56	158,011.25	5,611,748.88

Pocatello Development Authority
Profit & Loss by Class
October through December 2014

	<u>1-General Fund</u>	<u>2-Central Corridor</u>	<u>3-North Yellowstone</u>	<u>4-Naval Ordinance</u>	<u>6-North Portneuf</u>	<u>7-Pocatello Regional Airport</u>	<u>TOTAL</u>
Ordinary Income/Expense							
Income							
Interest Income	20.21	2,463.26	218.54	0.00	0.00	0.00	2,702.01
Miscellaneous Income	2,904,520.93	0.00	0.00	0.00	0.00	0.00	2,904,520.93
Principal received on notes	0.00	536.74	0.00	0.00	0.00	0.00	536.74
Property Taxes	0.00	0.00	3,568.39	0.00	0.00	0.00	3,568.39
Total Income	<u>2,904,541.14</u>	<u>3,000.00</u>	<u>3,786.93</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>2,911,328.07</u>
Gross Profit	2,904,541.14	3,000.00	3,786.93	0.00	0.00	0.00	2,911,328.07
Expense							
Administrative	626.45	1,904,612.06	889,213.68	96,015.35	14,679.84	0.00	2,905,147.38
Dues and Memberships	2,250.00	0.00	0.00	0.00	0.00	0.00	2,250.00
Economic Grants Issued	0.00	1,065,421.46	0.00	242,267.00	0.00	4,489.10	1,312,177.56
Total Expense	<u>2,876.45</u>	<u>2,970,033.52</u>	<u>889,213.68</u>	<u>338,282.35</u>	<u>14,679.84</u>	<u>4,489.10</u>	<u>4,219,574.94</u>
Net Ordinary Income	<u>2,901,664.69</u>	<u>-2,967,033.52</u>	<u>-885,426.75</u>	<u>-338,282.35</u>	<u>-14,679.84</u>	<u>-4,489.10</u>	<u>-1,308,246.87</u>
Net Income	<u>2,901,664.69</u>	<u>-2,967,033.52</u>	<u>-885,426.75</u>	<u>-338,282.35</u>	<u>-14,679.84</u>	<u>-4,489.10</u>	<u>-1,308,246.87</u>

Pocatello Development Authority
Profit & Loss by Class

	December 2014			
	1-General Fund	2-Central Corridor	3-North Yellowstone	TOTAL
Ordinary Income/Expense				
Income				
Interest Income	19.01	820.34	17.75	857.10
Principal received on notes	0.00	179.66	0.00	179.66
Property Taxes	0.00	0.00	1,231.32	1,231.32
Total Income	19.01	1,000.00	1,249.07	2,268.08
Gross Profit	19.01	1,000.00	1,249.07	2,268.08
Expense				
Administrative	189.60	0.00	0.00	189.60
Total Expense	189.60	0.00	0.00	189.60
Net Ordinary Income	-170.59	1,000.00	1,249.07	2,078.48
Net Income	-170.59	1,000.00	1,249.07	2,078.48

At month end the Authority had cash on hand of \$4,902,295.63. The checking account balance was \$2,676,611.99, the savings account was \$745,990.02, and cash being held by Zions Trust amounted to \$1,479,693.62.

Pocatello Development Authority recognized minor financial activity during the month of December. The Authority received revenues totaling \$2,268.08 of which \$857.10 was interest earnings on cash invested and property taxes. The \$1,000.00 payment received on the note receivable applied \$179.66 towards the principal of the note. Property tax revenue totaled \$1,231.32 for the North Yellowstone District.

Expenses for the month totaled \$189.60 which was an administrative expenditure for lunch.

Year to date revenues of \$2,911,328.07 (see page 3) are not greater than expenses of \$4,219,574.94. The General Fund District has a net income YTD of \$2,901,664.69.

AGENDA ITEM

NO. 6

**Pocatello
Development
Authority
&
Petersen Inc.
Status Update**

East Idaho's Partner in Growth
December 31, 2014



PDA Agreement

- Grant, Loan and guarantee terms contingent on Petersen Inc. performance
 - 50 full time employees
 - Period of fifteen years
 - Minimum wage of \$14.00/hour

*Regional
Development Alliance, Inc.*

East Idaho's Partner in Growth

Current Conditions

- Work is picking up slightly
- No planned reductions
- Several good bids recently won, and in the works with positive outlook
- Future bright, commitment strong
- Currently 58 heads on roll
 - 54 heads at/over \$14.00 per hour
 - Average wage of \$20.56 per hour

Current Conditions

Petersen Inc.
Idaho Facility Qtrly Headcount



●

AGENDA ITEM

● NO. 7

●



00000000180272932%0450%1222014%00000000000000

GOVERNMENTAL CERTIFICATE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,750,000.00	12-22-2014	01-15-2034	180272932	8 / 700		0105	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Entity: POCATELLO DEVELOPMENT AUTHORITY
P O BOX 4169
POCATELLO, ID 83205

Lender: CITIZENS COMMUNITY BANK, Division of Glacier Bank
S. ARTHUR BRANCH
P. O. BOX 1689
280 S. ARTHUR
POCATELLO, ID 83204

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:

THE ENTITY'S EXISTENCE. The complete and correct name of the governmental entity is POCATELLO DEVELOPMENT AUTHORITY ("Entity"). The Entity is a governmental entity which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws and regulations of the State of Idaho. The Entity has the full power and authority to own its properties and to transact the business and activities in which it is presently engaged or presently proposes to engage. The Entity maintains an office at 911 N 7TH ST, POCATELLO, ID 83201. The Entity shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of the Entity and any other governmental or quasi-governmental authority or court applicable to the Entity and the Entity's business activities.

CERTIFICATES ADOPTED. At a meeting of the appropriate governing body of the Entity, duly called and held on December 15, 2014, at which a quorum was present and voting, or by other duly authorized action in lieu of a meeting, the resolutions set forth in this Certificate were adopted.

OFFICIAL. The following named person is an Official of POCATELLO DEVELOPMENT AUTHORITY:

<u>NAMES</u>	<u>TITLES</u>	<u>AUTHORIZED</u>	<u>ACTUAL SIGNATURES</u>
MICHAEL L ORR	CHAIRMAN	Y X	

ACTIONS AUTHORIZED. The authorized person listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Entity. Specifically, but without limitation, the authorized person is authorized, empowered, and directed to do the following for and on behalf of the Entity:

Borrow Money. To borrow, as a cosigner or otherwise, from time to time from Lender, on such terms as may be agreed upon between the Entity and Lender, such sum or sums of money as in his or her judgment should be borrowed, without limitation.

Execute Notes. To execute and deliver to Lender the promissory note or notes, or other evidence of the Entity's credit accommodations, on Lender's forms, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of the Entity's indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

Grant Security. To mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber and deliver to Lender any property now or hereafter belonging to the Entity or in which the Entity now or hereafter may have an interest, including without limitation all of the Entity's real property and all of the Entity's personal property (tangible or intangible), as security for the payment of any loans or credit accommodations so obtained, any promissory notes so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), or any other or further indebtedness of the Entity to Lender at any time owing, however the same may be evidenced. Such property may be mortgaged, pledged, transferred, endorsed, hypothecated or encumbered at the time such loans are obtained or such indebtedness is incurred, or at any other time or times, and may be either in addition to or in lieu of any property theretofore mortgaged, pledged, transferred, endorsed, hypothecated or encumbered.

Execute Security Documents. To execute and deliver to Lender the forms of mortgage, deed of trust, pledge agreement, hypothecation agreement, and other security agreements and financing statements which Lender may require and which shall evidence the terms and conditions under and pursuant to which such liens and encumbrances, or any of them, are given; and also to execute and deliver to Lender any other written instruments, any chattel paper, or any other collateral, of any kind or nature, which Lender may deem necessary or proper in connection with or pertaining to the giving of the liens and encumbrances.

Negotiate Items. To draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Entity or in which the Entity may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the Entity's account with Lender, or to cause such other disposition of the proceeds derived therefrom as he or she may deem advisable.

Further Acts. In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements, including agreements waiving the right to a trial by jury, as the Official may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Certificate.

ASSUMED BUSINESS NAMES. The Entity has filed or recorded all documents or filings required by law relating to all assumed business names used by the Entity. Excluding the name of the Entity, the following is a complete list of all assumed business names under which the Entity does business: None.

NOTICES TO LENDER. The Entity will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in the Entity's name; (B) change in the Entity's assumed business name(s); (C) change in the structure of the Entity; (D) change in the authorized signer(s); (E) change in the Entity's principal office address; (F) change in the Entity's principal residence; or (G) change in any other aspect of the Entity that directly or indirectly relates to any agreements between the

GOVERNMENTAL CERTIFICATE
(Continued)

Loan No: 180272932

Page 2

Entity and Lender.

CERTIFICATION CONCERNING OFFICIALS AND CERTIFICATES. The Official named above is duly elected, appointed, or employed by or for the Entity, as the case may be, and occupies the position set opposite his or her respective name. This Certificate now stands of record on the books of the Entity, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

CONTINUING VALIDITY. Any and all acts authorized pursuant to this Certificate and performed prior to the passage of this Certificate are hereby ratified and approved. This Certificate shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address shown above (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of the Entity's agreements or commitments in effect at the time notice is given.

IN TESTIMONY WHEREOF, I have hereunto set my hand and attest that the signature set opposite the name listed above is his or her genuine signature.

I have read all the provisions of this Certificate, and I personally and on behalf of the Entity certify that all statements and representations made in this Certificate are true and correct. This Governmental Certificate is dated December 22, 2014.

CERTIFIED TO AND ATTESTED BY:

X _____
MICHAEL L ORR, CHAIRMAN of POCATELLO
DEVELOPMENT AUTHORITY

NOTE: If the Official signing this Certificate is designated by the foregoing document as one of the officials authorized to act on the Entity's behalf, it is advisable to have this Certificate signed by at least one non-authorized official of the Entity.



00000000180272932%0070%1222014%00000000000000

BUSINESS LOAN AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,750,000.00	12-22-2014	01-15-2034	180272932	8 / 700		0105	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.

Borrower: POCATELLO DEVELOPMENT AUTHORITY
P O BOX 4169
POCATELLO, ID 83205

Lender: CITIZENS COMMUNITY BANK, Division of Glacier Bank
S. ARTHUR BRANCH
P. O. BOX 1689
280 S. ARTHUR
POCATELLO, ID 83204

THIS BUSINESS LOAN AGREEMENT dated December 22, 2014, is made and executed between POCATELLO DEVELOPMENT AUTHORITY ("Borrower") and CITIZENS COMMUNITY BANK, Division of Glacier Bank ("Lender") on the following terms and conditions. Borrower has received prior commercial loans from Lender or has applied to Lender for a commercial loan or loans or other financial accommodations, including those which may be described on any exhibit or schedule attached to this Agreement. Borrower understands and agrees that: (A) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement; (B) the granting, renewing, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (C) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

TERM. This Agreement shall be effective as of December 22, 2014, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until January 15, 2034.

CONDITIONS PRECEDENT TO EACH ADVANCE. Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

Loan Documents. Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) together with all such Related Documents as Lender may require for the Loan; all in form and substance satisfactory to Lender and Lender's counsel.

Borrower's Authorization. Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel, may require.

Payment of Fees and Expenses. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

Representations and Warranties. The representations and warranties set forth in this Agreement, in the Related Documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

No Event of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any Indebtedness exists:

Organization. Borrower is a governmental entity which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Idaho. Borrower is duly authorized to transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Borrower maintains an office at 911 N 7TH ST, POCATELLO, ID 83201. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name.

Assumed Business Names. Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: **None.**

Authorization. Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.

Properties. Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all liens and security interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing statement under any other name for at least the last five (5) years.

COVENANTS. Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

Notices of Claims and Litigation. Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

Financial Records. Maintain its books and records in accordance with accounting principles acceptable to Lender, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

Financial Statements. Furnish Lender with the following:

**BUSINESS LOAN AGREEMENT
(Continued)**

Loan No: 180272932

Page 2

Annual Statements. As soon as available after the end of each fiscal year, Borrower's balance sheet and income statement for the year ended, prepared by Borrower.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

Additional Requirements. THE POCATELLO DEVELOPMENT AUTHORITY WILL MAINTAIN AT LEAST ONE FULL PAYMENT OF RESERVE, DEPOSITED WITH CITIZENS COMMUNITY BANK FOR THE LIFE OF THE LOAN.

Loan Proceeds. Use all Loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in writing.

Taxes, Charges and Liens. Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits. Provided however, Borrower will not be required to pay and discharge any such assessment, tax, charge, levy, lien or claim so long as (1) the legality of the same shall be contested in good faith by appropriate proceedings, and (2) Borrower shall have established on Borrower's books adequate reserves with respect to such contested assessment, tax, charge, levy, lien, or claim in accordance with GAAP.

Performance. Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

Operations. Maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel; provide written notice to Lender of any change in executive and management personnel; conduct its business affairs in a reasonable and prudent manner.

Compliance with Governmental Requirements. Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Borrower's properties, businesses and operations, and to the use or occupancy of the Collateral, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Collateral are not jeopardized. Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Inspection. Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate on any Collateral and paying all costs for insuring, maintaining and preserving any Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity.

NEGATIVE COVENANTS. Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

Continuity of Operations. (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer or sell Collateral out of the ordinary course of business, or (3) make any distribution with respect to any capital account, whether by reduction of capital or otherwise.

Agreements. Enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or in connection herewith.

CESSATION OF ADVANCES. If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan advances or to disburse Loan proceeds if: (A) Borrower or any guarantor is in default under the terms of this Agreement or any other agreement that Borrower or any guarantor has with Lender; (B) Borrower or any guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any guarantor, or in the value of any collateral securing any Loan; or (D) any guarantor seeks, claims or otherwise attempts to limit, modify or revoke such guarantor's guaranty of the Loan or any other loan with Lender; or (E) Lender in good faith deems itself insecure, even though no Event of Default shall have occurred.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the debt against any and all such accounts.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the Loan.

Other Default. Borrower fails to comply with any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents.

False Statements. Any representation or statement made by Borrower to Lender is false in any material respect.

Death or Insolvency. The death of Borrower or the dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, or the assignment for the benefit of creditors for any part of Borrower's property, any assignment for the benefit of creditors, any type of

**BUSINESS LOAN AGREEMENT
(Continued)**

Loan No: 180272932

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creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Loan.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Insecurity. Lender in good faith believes itself insecure.

EFFECT OF AN EVENT OF DEFAULT. If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of Lender under this Agreement immediately will terminate (including any obligation to make further Loan Advances or disbursements), and, at Lender's option, all Indebtedness immediately will become due and payable, all without notice of any kind to Borrower, except that in the case of an Event of Default of the type described in the "Insolvency" subsection above, such acceleration shall be automatic and not optional. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower or of any Grantor shall not affect Lender's right to declare a default and to exercise its rights and remedies.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement:

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Agreement.

Agreement. The word "Agreement" means this Business Loan Agreement, as this Business Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Business Loan Agreement from time to time.

Borrower. The word "Borrower" means POCATELLO DEVELOPMENT AUTHORITY and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

GAAP. The word "GAAP" means generally accepted accounting principles.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means CITIZENS COMMUNITY BANK, Division of Glacier Bank, its successors and assigns.

Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

Note. The word "Note" means the Note dated December 22, 2014 and executed by POCATELLO DEVELOPMENT AUTHORITY in the principal amount of \$5,750,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS BUSINESS LOAN AGREEMENT IS DATED DECEMBER 22, 2014.

BORROWER:

POCATELLO DEVELOPMENT AUTHORITY

By:

MICHAEL L ORR, CHAIRMAN of POCATELLO
DEVELOPMENT AUTHORITY



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PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,750,000.00	12-22-2014	01-15-2034	180272932	8 / 700		0105	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.

Borrower: POCATELLO DEVELOPMENT AUTHORITY
P O BOX 4169
POCATELLO, ID 83205

Lender: CITIZENS COMMUNITY BANK, Division of Glacier Bank
S. ARTHUR BRANCH
P. O. BOX 1689
280 S. ARTHUR
POCATELLO, ID 83204

Principal Amount: \$5,750,000.00

Date of Note: December 22, 2014

PROMISE TO PAY. POCATELLO DEVELOPMENT AUTHORITY ("Borrower") promises to pay to CITIZENS COMMUNITY BANK, Division of Glacier Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Five Million Seven Hundred Fifty Thousand & 00/100 Dollars (\$5,750,000.00), together with interest on the unpaid principal balance from December 15, 2014, until paid in full.

PAYMENT. Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in accordance with the following payment schedule, which calculates interest on the unpaid principal balances as described in the "INTEREST CALCULATION METHOD" paragraph using the interest rates described in this paragraph: 2 annual consecutive interest payments, beginning January 15, 2016, with interest calculated on the unpaid principal balances using an interest rate of 3.250% per annum; 16 annual consecutive principal and interest payments of \$445,630.43 each, beginning January 15, 2018, with interest calculated on the unpaid principal balances using an interest rate of 3.250% per annum; and one principal and interest payment of \$445,630.37 on January 15, 2034, with interest calculated on the unpaid principal balances using an interest rate of 3.250% per annum. This estimated final payment is based on the assumption that all payments will be made exactly as scheduled; the actual final payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts under this Note. Unless otherwise agreed or required by applicable law, payments will be applied to Accrued Interest, then to Principal, then to Escrow Payments (if applicable), then to Other Charges, then to Late Charges. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

INTEREST CALCULATION METHOD. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the interest rate over the number of days in a year, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

PREPAYMENT; MINIMUM INTEREST CHARGE. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. In any event, even upon full prepayment of this Note, Borrower understands that Lender is entitled to a minimum interest charge of \$7.50. Other than Borrower's obligation to pay any minimum interest charge, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: CITIZENS COMMUNITY BANK, Division of Glacier Bank; S. ARTHUR BRANCH; P. O. BOX 1689; 280 S. ARTHUR; POCATELLO, ID 83204.

LATE CHARGE. If a payment is 15 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$10.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the total sum due under this Note will continue to accrue interest at the interest rate under this Note, with the final interest rate described in this Note applying after maturity, or after maturity would have occurred had there been no default. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The death of Borrower or the dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

PROMISSORY NOTE
(Continued)

Loan No: 180272932

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Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after Lender sends written notice to Borrower demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's reasonable attorneys' fees and legal expenses, whether or not there is a lawsuit, including without limitation all reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Idaho without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Idaho.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of BANNOCK County, State of Idaho.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the debt against any and all such accounts.

COLLATERAL. This loan is unsecured.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Borrower may notify Lender if Lender reports any inaccurate information about Borrower's account(s) to a consumer reporting agency. Borrower's written notice describing the specific inaccuracy(ies) should be sent to Lender at the following address: CITIZENS COMMUNITY BANK, Division of Glacier Bank, S. ARTHUR BRANCH, P. O. BOX 1689, 280 S. ARTHUR, POCATELLO, ID 83204.

GENERAL PROVISIONS. This Note is payable on demand. The inclusion of specific default provisions or rights of Lender shall not preclude Lender's right to declare payment of this Note on its demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

POCATELLO DEVELOPMENT AUTHORITY

By: _____
MICHAEL L ORR, CHAIRMAN of POCATELLO
DEVELOPMENT AUTHORITY



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DISBURSEMENT REQUEST AND AUTHORIZATION

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,750,000.00	12-22-2014	01-15-2034	180272932	8 / 700		0105	

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Borrower: POCATELLO DEVELOPMENT AUTHORITY
P O BOX 4169
POCATELLO, ID 83205

Lender: CITIZENS COMMUNITY BANK, Division of Glacier Bank
S. ARTHUR BRANCH
P. O. BOX 1689
280 S. ARTHUR
POCATELLO, ID 83204

LOAN TYPE. This is a Fixed Rate (3.250% initial rate) Nondisclosable Loan to a Government Entity for \$5,750,000.00 due on January 15, 2034.

PRIMARY PURPOSE OF LOAN. The primary purpose of this loan is for:

- Personal, Family, or Household Purposes or Personal Investment.
- Business (Including Real Estate Investment). *JK*

SPECIFIC PURPOSE. The specific purpose of this loan is: COMMERCIAL-ESTABLISH AN SLOC.

DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$5,750,000.00 as follows:

Other Disbursements:	\$5,750,000.00
\$5,750,000.00 SLOC-UNDISBURSED	

Note Principal:	\$5,750,000.00
-----------------	----------------

CHARGES PAID IN CASH. Borrower has paid or will pay in cash as agreed the following charges:

Prepaid Finance Charges Paid in Cash:	\$43,125.00
\$43,125.00 Points (%)	

Total Charges Paid in Cash:	\$43,125.00
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FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED DECEMBER 22, 2014.

BORROWER:

POCATELLO DEVELOPMENT AUTHORITY

By: MICHAEL L ORR, CHAIRMAN of POCATELLO DEVELOPMENT AUTHORITY



00000000180272932%0060%12222014%00000000000000

AMORTIZATION SCHEDULE

Principal \$5,750,000.00	Loan Date 12-22-2014	Maturity 01-15-2034	Loan No 180272932	Call / Coll 8 / 700	Account	Officer 0105	Initials
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References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.

Borrower: POCATELLO DEVELOPMENT AUTHORITY
P O BOX 4169
POCATELLO, ID 83205

Lender: CITIZENS COMMUNITY BANK, Division of Glacier Bank
S. ARTHUR BRANCH
P. O. BOX 1689
280 S. ARTHUR
POCATELLO, ID 83204

Disbursement Date: December 15, 2014
Interest Rate: 3.250

Repayment Schedule: Irregular
Calculation Method: 365/365 U.S. Rule

Payment Number	Payment Date	Payment Amount	Interest Paid	Principal Paid	Remaining Balance
1	01-15-2016	202,746.58	202,746.58	0.00	5,750,000.00
2016 TOTALS:		202,746.58	202,746.58	0.00	
2	01-15-2017	187,386.99	187,386.99	0.00	5,750,000.00
2017 TOTALS:		187,386.99	187,386.99	0.00	
3	01-15-2018	445,630.43	186,875.00	258,755.43	5,491,244.57
2018 TOTALS:		445,630.43	186,875.00	258,755.43	
4	01-15-2019	445,630.43	178,465.45	267,164.98	5,224,079.59
2019 TOTALS:		445,630.43	178,465.45	267,164.98	
5	01-15-2020	445,630.43	169,782.59	275,847.84	4,948,231.75
2020 TOTALS:		445,630.43	169,782.59	275,847.84	
6	01-15-2021	445,630.43	161,258.13	284,372.30	4,663,859.45
2021 TOTALS:		445,630.43	161,258.13	284,372.30	
7	01-15-2022	445,630.43	151,575.43	294,055.00	4,369,804.45
2022 TOTALS:		445,630.43	151,575.43	294,055.00	
8	01-15-2023	445,630.43	142,018.64	303,611.79	4,066,192.66
2023 TOTALS:		445,630.43	142,018.64	303,611.79	
9	01-15-2024	445,630.43	132,151.26	313,479.17	3,752,713.49
2024 TOTALS:		445,630.43	132,151.26	313,479.17	
10	01-15-2025	445,630.43	122,297.33	323,333.10	3,429,380.39
2025 TOTALS:		445,630.43	122,297.33	323,333.10	
11	01-15-2026	445,630.43	111,454.86	334,175.57	3,095,204.82
2026 TOTALS:		445,630.43	111,454.86	334,175.57	
12	01-15-2027	445,630.43	100,594.16	345,036.27	2,750,168.55
2027 TOTALS:		445,630.43	100,594.16	345,036.27	
13	01-15-2028	445,630.43	89,380.48	356,249.95	2,393,918.60
2028 TOTALS:		445,630.43	89,380.48	356,249.95	
	01-15-2029	445,630.43	78,015.51	367,614.92	2,026,303.68
2029 TOTALS:		445,630.43	78,015.51	367,614.92	
15	01-15-2030	445,630.43	65,854.87	379,775.56	1,646,528.12
2030 TOTALS:		445,630.43	65,854.87	379,775.56	
16	01-15-2031	445,630.43	53,512.16	392,118.27	1,254,409.85

**AMORTIZATION SCHEDULE
(Continued)**

Loan No: 180272932

2031 TOTALS:		445,630.43	53,512.16	392,118.27	
17	01-15-2032	445,630.43	40,768.32	404,862.11	849,547.74
2032 TOTALS:		445,630.43	40,768.32	404,862.11	
18	01-15-2033	445,630.43	27,685.95	417,944.48	431,603.26
2033 TOTALS:		445,630.43	27,685.95	417,944.48	
19	01-15-2034	445,630.37	14,027.11	431,603.26	0.00
2034 TOTALS:		445,630.37	14,027.11	431,603.26	

TOTALS: **7,965,850.82** **2,215,850.82** **5,750,000.00**

NOTICE: This is an estimated loan amortization schedule. Actual amounts may vary if payments are made on different dates or in different amounts.

AGENDA ITEM

NO. 8

December 1, 2014

Michael Orr
Board Chairman
Pocatello Development Authority
P.O. Box 4169
Pocatello, Idaho 83205-4169

Subject: Project Pipe – Electrical Facilities Construction Agreement

Dear Mr. Orr:

Idaho Power Company is excited to participate with your plans to develop the Pocatello Business Park. Enclosed is a draft Construction Agreement covering the substation and transmission line work. In order to meet the desired in-service date, this agreement needs to be executed and funded by December 15, 2014.

Public utility regulations require the distribution line construction be completed in accordance with Rule H of Idaho Power's tariff (titled New Service Attachments and Distribution Line Installations or Alterations). As such, the distribution line construction is specifically excluded from the Construction Agreement and not included in the Cost Estimate contained therein. Instead, upon completion of the distribution scoping and design work, Idaho Power will present the Pocatello Development Authority with a formal Cost Quote for the Rule H distribution work which will be binding in accordance with its own terms.

CAPACITY UPGRADES

This project provides significant electrical system upgrades at locations near the Business Park. Idaho Power will install a new 20 MVA transformer at Kinport Substation. From the substation, Idaho Power will construct a 1.5 mile distribution line of 10 MVA capacity to a location south of Interstate 86. Although Idaho Power will only construct one distribution line as part of the current project, the wood poles will be of sufficient height and strength to carry another future 10 MVA circuit (as requested by the Pocatello Development Authority). Idaho Power will also use an existing distribution line with an electrical rating of 6.2 MVA to cross the freeway; keeping in mind that if future load(s) in excess of 3.9 MVA is added to the Business Park (in addition to the 2.3 MW load of the current project), this line will require a rebuild. Costs associated with a second 10 MVA circuit and possible rebuild to cross the freeway are not included in the scope of the current project.

FUTURE UPGRADES

Idaho Power will not know the Idaho Department of Transportation's ("ITD") requirements for the freeway crossing until Idaho Power applies for the freeway crossing permit. If ITD requires the line to be placed underground (bore under the freeway) it will add approximately \$200,000 to \$250,000 to the line rebuild.

OTHER UNKNOWNNS

Idaho Power does not anticipate delays to acquire easements and line crossing permits (canal, railway, highway, etc.) necessary to construct the distribution line. Idaho Power will work expeditiously to obtain the rights-of-way. However, please note final approval of these items is out of Idaho Power's control and may delay the project. In addition, the planned location of the line is within the Fort Hall Indian Reservation of the Shoshone-Bannock Tribes ("Tribes"). Based on information known to Idaho Power, this type of project should not require a right-of-way permit from the Bureau of Indian Affairs ("BIA") or Tribes; however, Idaho Power cannot guarantee the BIA and Tribes will not attempt to require permits for the project, which could lead to additional costs and schedule delays.

Please let me know if you have any questions regarding the above information or the enclosed Construction Agreement. Idaho Power Company looks forward to hearing from you and moving forward with the project.

Sincerely,

Buzz Pfeiffer
Major Customer Representative

cc: Bo Hanchey, Regional Manager, Idaho Power
Steven Muse, Regional Customer Relations Manager, Idaho Power
Ed Helms, Customer Operations E&C Manager, Idaho Power
Rick Sullivan, Customer Operations E&C Leader, Idaho Power

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT APPROVALS. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, SIGNED, DELIVERED AND APPROVED BY ALL REQUIRED PARTIES, NO PARTY SHALL HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS.

This document contains information confidential and proprietary to Idaho Power. Neither this document nor any information obtained from this document is to be published, reproduced, transmitted, distributed, disclosed or used otherwise in whole or in part without the written consent of Idaho Power.

AGREEMENT FOR CONSTRUCTION

This Agreement for Construction ("*Agreement*") is entered into as of the ___ day of December, 2014, by and between Idaho Power Company, an Idaho corporation with its principal offices located at 1221 West Idaho Street, Boise, ID 83702 ("*Idaho Power*") and the Pocatello Development Authority ("*Customer*") with its principal offices located at 911 North 7th Avenue, Pocatello, ID 83201. Idaho Power and Customer may be referred to herein individually as a "Party" or, collectively, as the "Parties."

Recitals:

WHEREAS, Idaho Power is an investor-owned electric utility engaged in the generation, transmission, and distribution of electricity to its customers in southern Idaho and eastern Oregon;

WHEREAS, Customer is the Pocatello Development Authority, an entity created by the City of Pocatello (pursuant to resolution 1988-13 in accordance with the Urban Renewal law of 1965 and the local Economic Development Act) to undertake urban renewal projects in areas designated by the City of Pocatello;

WHEREAS, Customer requests Idaho Power: (a) provide 2.3 MW of electrical capacity to the Pocatello Regional Airport and Business Park ("*Business Park*"), which includes 1 MW of capacity transferred from the Siphon to Kinport Substation to serve the existing load at the Business Park; and, (b) install infrastructure to support 20 MVA of electrical capacity (including the 2.3 MW load) to the Business Park (the "*Project*"). Attached as Exhibit A and incorporated herein by this reference is a map depicting the Business Park boundaries;

WHEREAS, Customer requests Idaho Power proceed with the construction and associated equipment necessary to complete the Project, defined below as the "*Work*";

Agreement:

NOW, THEREFORE, in consideration of the mutual obligations and undertakings set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Idaho Power and Customer agree as follows:

1) **Recitals.** The above-stated Recitals are incorporated by this reference and made a part of this Agreement.

2) **Scope of Work.** Idaho Power shall install at its Kinport Substation a new 20 MVA 138kV to 12.5kV transformer, a 138kV circuit breaker, two 15kV bays with circuit breakers, air break switches, an interrupter, electrical bus, associated concrete foundations and support structures, control and protection equipment, wiring and all other associated equipment; and perform all other work deemed necessary by Idaho Power to complete the Project (the "Work"). Idaho Power, at its discretion, may subcontract any portion or all of the Work. Idaho Power shall perform the Work in accordance with Idaho Power's current specifications as deemed applicable by Idaho Power. The scope of Work under this Agreement excludes the distribution line work associated with the Project, which will be completed in accordance with Rule H of Idaho Power's Tariff, titled New Service Attachments and Distribution Line Installations or Alterations.

3) **Estimated Schedule.** Subject to the terms of this Agreement, including the additional provisions of this Section 3, Idaho Power will use commercially reasonable efforts as it deems in its sole discretion to be necessary to complete or cause to be completed the Work by the estimated date of December 31, 2015 ("**Estimated Completion Date**"). However, the Estimated Completion Date is an estimate only, and Customer acknowledges that completion of the Work by the Estimated Completion Date is subject to a number of conditions and uncertainties, some of which are outside of the control of Idaho Power. Accordingly, Idaho Power does not warrant or guarantee that Idaho Power will complete the Work by the Estimated Completion Date. Customer agrees that Idaho Power is not liable or responsible for any damages or losses that Customer may incur in the event Idaho Power fails to achieve the Estimated Completion Date. Idaho Power will commence the Work promptly following receipt of payment pursuant to Section 4(b).

Table 1 sets forth Idaho Power's estimated schedule milestones, which, as described herein, are not warranted or guaranteed:

Table 1

Task	Date
Select Transformer Manufacturer	December 15, 2014
Execute Construction Agreement and Provide Project Funding	December 15, 2014
Design Kickoff	January 5, 2015
Order Long Lead Material	January 5, 2015
Design Complete	May 1, 2015
Commence Station Construction	August 1, 2015
Estimated Completion Date	December 31, 2015

The Parties acknowledge: (i) the Work may involve stages not set forth in Table 1, including, but not limited to, execution of subcontracts, engineering and testing, all of which may impact the Estimated Completion Date; and (ii) Idaho Power shall control the means, methods, and scheduling of the Work.

If Idaho Power determines that a schedule milestone will not be or was not met, Idaho Power

shall notify Customer of the same in writing within a reasonable period of time (not to exceed 30 days from the date of such determination).

4) Estimated Project Cost.

a. The estimated cost for completion of the Work is \$3,055,496 ("*Cost Estimate*"). The Cost Estimate is an estimate only and is subject to a number of factors and uncertainties, some of which are outside of the control of Idaho Power. Customer shall pay Idaho Power all actual costs for completion of the Work incurred by Idaho Power, which will include, without limitation, direct costs, indirect costs, and all other committed costs related to the Work (collectively "*Actual Costs*"). The Actual Costs of the Work may be more or less than the Cost Estimate.

b. Customer shall pre-pay the full amount of the Cost Estimate for the Work to Idaho Power upon execution of this Agreement. Idaho Power will not commence Design Kickoff (scheduled for January 5, 2015 as set forth in Table 1 above) or any portion of the Work until receipt of the Cost Estimate in full.

c. Idaho Power shall provide a monthly accounting to Customer of Actual Costs incurred. In the event the Cost Estimate paid in advance by Customer does not fully cover the Actual Costs incurred by Idaho Power at any given time, Idaho Power may, at its discretion, invoice Customer for Actual Costs and Customer shall pay all invoices within 30 calendar days following receipt of the invoice from Idaho Power. All past due sums shall bear interest at a rate of 1 ½% per month (18% per annum). At the completion of the Work, Idaho Power will provide Customer with a statement showing the total Actual Costs.

d. Customer's payment under this Agreement shall not provide Customer with any ownership rights or interest in the Work or any real property interests acquired by or on behalf of Idaho Power to perform the Work. Ownership of the Work and real property interests shall be and remain with Idaho Power as set forth in Section 6 of this Agreement.

e. The Cost Estimate does not include the estimated costs Idaho Power may incur to acquire permits and/or additional rights of way and/or other real property interests necessary to locate, perform, access, construct, use, operate and maintain the Work, which Customer will be responsible for funding, as more particularly described in Sections 8 and 9 of this Agreement.

5) Additional Capacity. As part of the Work and associated Cost Estimate, Customer is paying for infrastructure to support 20 MVA of electrical capacity for the Business Park. Idaho Power shall make a total of 20 MVA of electrical capacity available for new electrical service to the Business Park (including the 2.3 MW Project load) for a period of five years from the date of completion of the Project.

6) Ownership, Operation, and Maintenance. Customer recognizes that the Work will become part of Idaho Power's integrated electrical transmission and distribution system and may be used by Idaho Power to provide electric service to other, existing and future customers, as Idaho Power deems necessary. IDAHO POWER SHALL IMMEDIATELY AND AUTOMATICALLY OWN, OPERATE, AND MAINTAIN THE RIGHT, TITLE AND INTEREST TO THE WORK DESIGNED, CONCEIVED, PERFORMED, AND CONSTRUCTED UNDER THIS AGREEMENT, NOTWITHSTANDING PAYMENT BY CUSTOMER FOR THE WORK.

7) **Termination and Suspension.**

a. If Customer breaches any term of this Agreement, Idaho Power may, in its discretion, suspend this Agreement and/or the Work following written notice to Customer. For the avoidance of doubt, Customer's failure to make timely payments in accordance with this Agreement shall be considered a breach of the Agreement. In addition, Idaho Power shall be entitled to suspend Work at any time during which Actual Costs exceed the then-current Cost Estimate following written notice to Customer.

b. If Customer fails to cure Customer's breach of the Agreement within 10 calendar days of receiving Idaho Power's written notice under Section 7(a), Idaho Power may, in its sole discretion, terminate this Agreement. If Idaho Power terminates this Agreement in accordance with this Section 7(b), Idaho Power will refund only the amounts received from Customer that exceed the Actual Cost of the Work then completed or committed at the effective date of termination, which such Actual Cost shall include, without limitation, all costs incurred by Idaho Power to restore the Idaho Power facilities to their original state. Idaho Power shall not be required to sell any materials purchased or acquired by Idaho Power on or prior to the date of termination. If Idaho Power suspends or terminates this Agreement in accordance with Section 7 and the Actual Cost of the Work exceeds the amount paid to Idaho Power at the effective date of termination, Customer shall pay Idaho Power the difference within 30 calendar days of receiving Idaho Power's invoice.

c. Customer may terminate this Agreement for its convenience by providing Idaho Power 45 days advance written notice. If Customer provides written notice of its desire to terminate pursuant to this Section 7(c), Idaho Power will refund only the amounts received from Customer that exceed the Actual Costs of the Work then completed or committed to date, which such Actual Costs shall include, without limitation, all costs incurred by Idaho Power to restore the Idaho Power facilities to their original state. Ownership and possession of any partially completed Work shall remain with Idaho Power. Idaho Power shall not be required to sell any materials purchased or acquired by Idaho Power on or prior to the date of termination. In the event the Actual Costs incurred by Idaho Power exceed the amount paid by Customer at the effective date of termination, Customer shall pay Idaho Power the difference within 30 calendar days of receiving Idaho Power's invoice.

8) **Permits.** Idaho Power will attempt to acquire, at Customer's expense, all necessary permits to perform the Work. Customer agrees that Idaho Power does not warrant or guarantee acquisition of such permits. Customer will cooperate with Idaho Power, at Customer's own expense, with the preparation of all applications and all proceedings relating to the acquisition or attempted acquisition of permits.

9) **Rights of Way, Easements, and Other Property Interests.** In the event Idaho Power must purchase or otherwise acquire additional rights-of-way (i.e. non-exclusive easements) and/or other land rights in order to locate, perform, access, construct, use, operate, and maintain the Work, Customer shall fully fund the acquisition or reimburse (in Idaho Power's discretion) Idaho Power for amounts spent to purchase or otherwise acquire such rights-of-way and/or land rights.

10) **Coordination Obligations; Cooperation.** Customer shall coordinate with Idaho Power personnel in all aspects associated with this Agreement and Idaho Power facility upgrades. Some outages may be necessary for Idaho Power to perform the Work. Idaho Power will use efforts to coordinate with Customer to minimize the impacts to both Parties. Customer shall on a timely basis provide all reasonably necessary support to Idaho Power in connection with Idaho Power's performance of the Work. Not in limitation of the foregoing, Customer shall perform or assist Idaho Power in conducting any start-

up, commissioning, or performance tests as may be requested by Idaho Power in connection with the Work. Customer shall be responsible for ensuring that conditions on and near the site where the Work will be performed and over which it has control are maintained in a safe condition at all times.

11) **Indemnification.** To the fullest extent of the law, Customer agrees to protect, defend, indemnify and hold harmless Idaho Power, its officers, directors, and employees for, from, and against any and all allegations, claims, liability, costs, and expenses of any nature (including court costs and attorney's fees) (collectively, "Damages") resulting from suits, allegations, damage claims, and other actions brought by third parties, even if such suits or claims are completely groundless, arising out of, or caused by, the negligence or willful misconduct of Customer relating to this Agreement or the Work performed hereunder, but only to the extent such Damages are not due to the sole negligence of Idaho Power; provided, however, that each Party shall be solely responsible for claims of and payment to its employees for injuries occurring in connection with their employment or arising out of any workers' compensation law.

12) **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO LOST OR ANTICIPATED PROFITS, REVENUE OR GOOD WILL OF CUSTOMER, INTEREST, AND/OR CLAIMS BY THIRD PARTIES, WHETHER SUCH LOSS IS BASED ON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE. IDAHO POWER TOTAL CUMULATIVE LIABILITY FOR DAMAGES OF ANY KIND RELATING TO THE WORK, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY), WARRANTY OR OTHERWISE, SHALL BE LIMITED TO 100% OF THE AMOUNT PAID BY CUSTOMER TO IDAHO POWER FOR THE WORK.

13) **No Warranty.** UNLESS EXPRESSLY STATED HEREIN, IDAHO POWER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE ACCURACY, VALIDITY, RELIABILITY, USABILITY, VALUE, OR OTHERWISE WITH RESPECT TO THE WORK. IDAHO POWER DISCLAIMS ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES AS TO ANY ASPECT OF THE WORK, SPECIFICALLY INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

14) **Representations and Warranties of Customer.** Customer represents and warrants to Idaho Power that: (a) Customer has all power, authority, and approvals necessary to execute this Agreement and to perform all of Customer's obligations under this Agreement; and, (b) Customer has disclosed to Idaho Power in writing all laws, rules, and regulations applicable to this Agreement based on any Customer affiliation with the City of Pocatello or the State of Idaho, or the sources of funding for this Agreement.

15) **Confidentiality.** Each Party will hold and will cause its officers, employees and other representatives to hold in strict confidence, unless compelled to disclose by judicial or administrative process (as to which it will give the other Party notice and an opportunity to contest disclosure), or, in the opinion of counsel, by other requirements of law, all documents and information concerning the other Party furnished to it and its representatives in connection with this Agreement (except to the extent that such information can be shown to have been (i) in the public domain through no fault of the disclosing Party or its representatives; or (ii) later lawfully acquired from other sources, which acquisition can be demonstrated in writing) and will not use such information or release or disclose such information to any other person, except as necessary in connection with the performance of this Agreement, provided that

such person will have first been advised of the confidentiality provisions of this Agreement.

16) **Waiver.** Waiver of any right, privilege, claim, obligation, condition, or default shall be in writing and signed by the waiving Party. No waiver by a Party of any breach of this Agreement shall be a waiver of any preceding or succeeding breach, and no waiver by a Party of any right under this Agreement shall be construed as a waiver of any other right.

17) **Severability.** If any provision of this Agreement is held to be void, voidable, contrary to public policy, or unenforceable, that provision will be deemed severable from the Agreement and the remainder of the Agreement will continue in full effect as if the severed provision had not been included.

18) **Regulatory Authority.** This Agreement is subject to valid laws and to the regulatory authority and orders, rules, and regulations of the Idaho Commission and such other administrative bodies having jurisdiction, as well as Idaho Power Company's Rules and Regulations as now or may be hereafter modified and approved by the Commission.

19) **Force Majeure.** Idaho Power will not be liable for failure to perform any obligation or delay in performance resulting from or contributed to by any cause beyond the reasonable control of Idaho Power or its subcontractors, including without limitation, any act of God; act of civil or military authority; an act of any governmental authority or Customer; fire; inclement weather conditions; earthquake; flood; strike; work stoppage or other labor difficulty; fuel or energy shortage; major equipment breakdown; or delay or accident in shipping or transportation. In the event of circumstances impeding performance excusable under this Section 11(g), Customer will reimburse Idaho Power for its additional costs and expenses resulting from said delay including mitigation of such and any special measures that Idaho Power agrees to take at Customer's request to overcome the effect or duration of the delay.

20) **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, and venue for any court proceeding arising out of this Agreement shall be in Boise, Idaho.

21) **Attorney's Fees.** In the event that legal action arises between the Parties relating to this Agreement, the prevailing party shall be entitled to recover attorney's fees and costs incurred in prosecution or defense of the legal action (including without limitation any fees on appeal).

22) **Entire Agreement, Modifications, and Counterparts.** This Agreement sets forth the entire understanding and agreement of Idaho Power and Customer with regard to the Work and supersedes all previous communications, negotiations, and agreements, whether oral or written, with respect to this Agreement. This Agreement may only be amended or modified by a writing signed by the duly authorized representatives of both Parties. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which, taken together, shall constitute one and the same Agreement.

23) **Independent Contractor.** All work provided by Idaho Power under this Agreement shall be as an independent contractor and not as a subcontractor, agent, partner, joint venture, or employee of Customer.

24) **Assignment.** This Agreement is binding upon the Parties hereto, their successors and assigns. Neither this Agreement, nor any part hereof, may be assigned by Customer, nor may Customer delegate any of its obligations, without the express written consent of Idaho Power.

25) **Notices.** All notices, requests, demands, and other communications which are required or may be given under this Agreement shall be in writing and shall be given to the intended recipient at the address specified below:

If to Idaho Power, to:

Dan Minor
Executive Vice President & Chief Operating Officer
Idaho Power Company
P.O. Box 70
Boise, Idaho 83707

With a copy to:

Rex Blackburn
Senior Vice President & General Counsel
Idaho Power Company
P.O. Box 70
Boise, Idaho 83707

and

If to Customer, to:

Michael Orr
Board Chairman
Pocatello Development Authority
P.O. Box 4169
Pocatello, Idaho 83205-4169

[Signature page follows]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date set forth above.

POCATELLO DEVELOPMENT AUTHORITY

By: _____

Name: _____

Title: _____

IDAHO POWER COMPANY

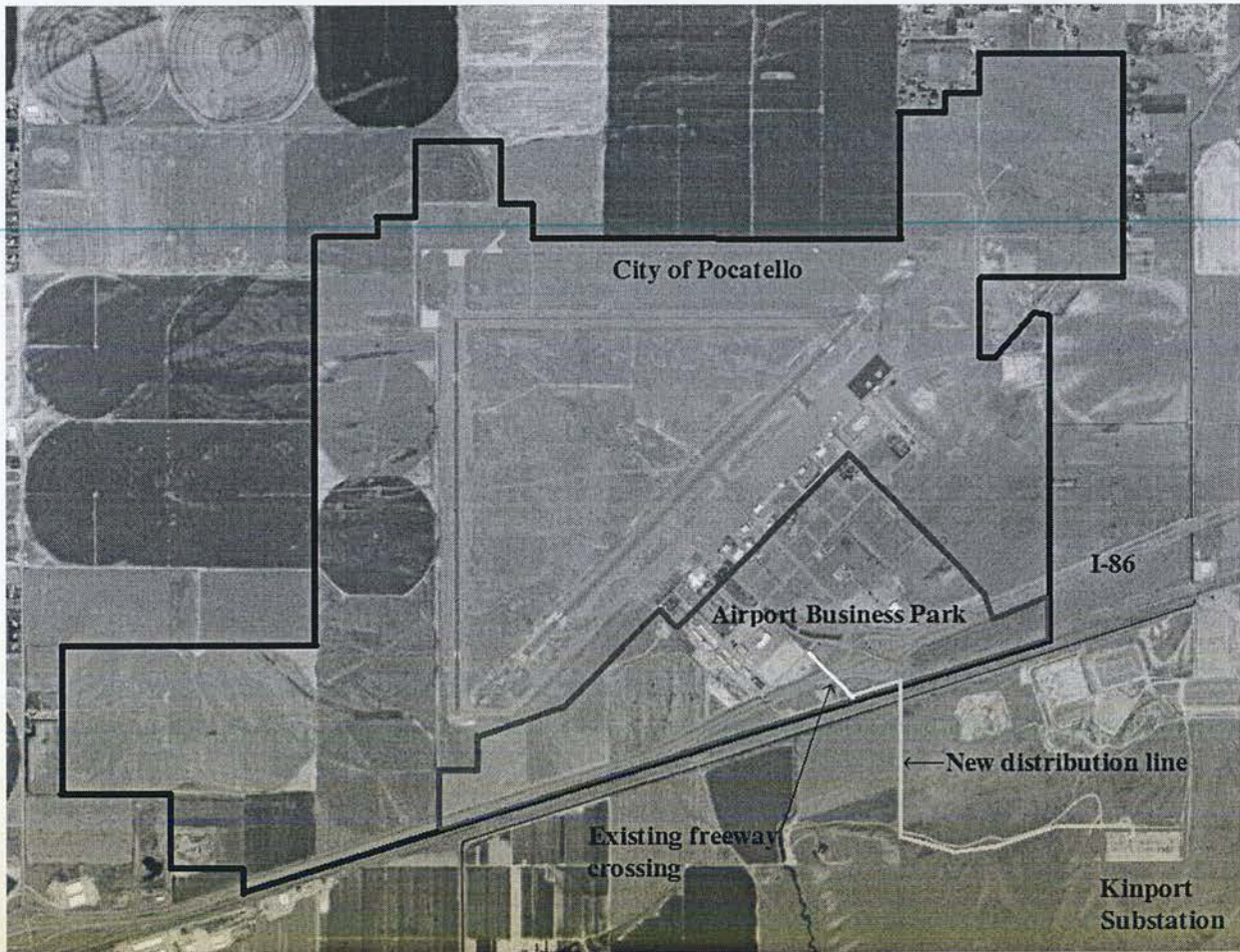
By: _____

Name: _____

Title: _____

DRAFT

Exhibit A



Olsen, Tiffany

From: Crowell, Lonnie
To: Olsen, Tiffany
Subject: FW: EDA Grant
Tuesday, January 06, 2015 4:33 PM

Tiffany,
See below. Can you place the "EDA Grant" on the next PDA agenda for me? Thank you so very much.

Thank You,

Lon Crowell, AICP
Director

Planning & Development Services

*Economic Development, Planning, Development Engineering,
CDBG/HUD, Pocatello Regional Airport*

City of Pocatello

911 North 7th Avenue | P.O. Box 4169

Pocatello, ID 83205-4169

☎ 208-234-6184 | Fax: 208-234-6586

lcrowell@pocatello.us | www.pocatello.us

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From: Michael Orr [mailto:spcllc@cableone.net]
Sent: Tuesday, January 06, 2015 4:31 PM
To: Crowell, Lonnie
Subject: Re: EDA Grant

That works.

Sent from my Verizon Wireless 4G LTE DROID

"Crowell, Lonnie" <lcrowell@pocatello.us> wrote:

Mike,

Sorry, yes that will work. Can I request Tiffany place it on the agenda as a placeholder until we speak on Wednesday 1/14? I am not sure when Tiffany will want to have the agenda pulled together. If necessary we pull it off last minute? Thank you Mike.

Have an excellent day,

Lon Crowell, AICP
Director

Planning & Development Services
Economic Development, Planning, Development Engineering,
CDBG/HUD, Pocatello Regional Airport

City of Pocatello
911 North 7th Avenue | P.O. Box 4169
Pocatello, ID 83205-4169
• 208-234-6184 | Fax: 208-234-6586

lcrowell@pocatello.us<mailto:lcrowell@pocatello.us> | www.pocatello.us<http://www.pocatello.us/>

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From: Michael Orr [<mailto:spellc@cableone.net>]
Sent: Tuesday, January 06, 2015 4:24 PM
To: Crowell, Lonnie
Subject: Re: EDA Grant

Can we discuss further Wednesday? I agree.

Sent from my Verizon Wireless 4G LTE DROID

"Crowell, Lonnie" <lcrowell@pocatello.us<mailto:lcrowell@pocatello.us>> wrote:

Mike,

Please see below. I would like to have SICOG on the next PDA agenda to discuss pulling the EDA grant if possible.

Thank You,

Lon Crowell, AICP
Director

Planning & Development Services
Economic Development, Planning, Development Engineering,
CDBG/HUD, Pocatello Regional Airport

City of Pocatello
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From: Susan Lorenz [<mailto:lorenz@sicog.org>]

Sent: Tuesday, January 06, 2015 4:09 PM

To: Crowell, Lonnie

Subject: RE: EDA Grant

OK

Let me know if any questions come up.

I want to help in any way I can.

Susan Lorenz

Southeast Idaho Council of Governments

233-4535 extension 1 or 208-251-4608

From: Crowell, Lonnie [<mailto:lcrowell@pocatello.us><mailto:lcrowell@pocatello.us>]

Sent: Tuesday, January 06, 2015 4:06 PM

To: 'Susan Lorenz'

Subject: RE: EDA Grant

I think I meant the 21st, sorry.

Yes, that is what I am thinking as well as another reason to pull the grant.

Thank You,

Lon Crowell, AICP

Director

Planning & Development Services

Economic Development, Planning, Development Engineering,

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From: Susan Lorenz [<mailto:lorenz@sicog.org>]
Sent: Tuesday, January 06, 2015 3:41 PM
To: Crowell, Lonnie
Subject: RE: EDA Grant

I will be there.

This may help you. (or support what you already know)

Pulling the "maintenance" out of the work that we were planning for the EDA grant would bring that down to \$600,000 of EDA work. (new)

Since the EDA grant is 50% grant and 50% match we would have a \$300,000 EDA grant. The requirements for Federal Funds are not reasonable for small amounts like this.

They are intended for large amounts so the grant would really no longer serve the project.

Does that help?

I understand you want me there on the 21st. Do you want me to join you on the 14th also?

Susan

From: Crowell, Lonnie [<mailto:lcrowell@pocatello.us><<mailto:lcrowell@pocatello.us>>]
Sent: Tuesday, January 06, 2015 3:32 PM
To: 'Susan Lorenz'
Subject: RE: EDA Grant

Susan,

I have an email partially written that agrees with your opinion below. I apologize for not being able to speak but I should have time later this afternoon or tomorrow. I would like you to visit with the PDA, we meet on January 14 at 11:00 in Paradise conference room. I need to run that by the PDA Chair. We can use both of those reasons and in addition, we separated the infrastructure between maintenance and new and it reduced the value to well below \$1 million. Another reason the EDA is no longer as feasible as before. I will speak with those I need to and get back with you as soon as I can, but plan on being at PDA if possible.

Thank You,

Lon Crowell, AICP
Director

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Economic Development, Planning, Development Engineering,
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From: Susan Lorenz [mailto:lorenz@sicog.org]

Sent: Tuesday, January 06, 2015 3:10 PM

To: Crowell, Lonnie

Cc: Kathleen Lewis

Subject: RE: EDA Grant

Hi Lon,

Looks like you don't have time to talk so here is a quick update.

I think I have overcome the barriers with the environmental as of this morning.

Still, we do have a couple of reasons that the City may want to pull the grant.

The first is that the stars are not lining up and that second business just isn't manifesting.

The second is a concern that the grant may slow the project down. Even if it isn't the environmental that slows the project down I am concerned that the grant will slow it down. The needs of the company are starting to make me think that we may not have the luxury of working with a Federal Agency that is often cumbersome and reliant on the congressional funding. I made a behind the scenes "feel it out" kind of call and I think when

we submit in March and (due to the congressional budgeting process right now) we can expect things to get dragged out until September. That is a long time to wait to have funds obligated or get a notice to proceed or permission to break ground. I'm not sure what term is meaningful to you. I know you are really busy but give me a call if you want to talk about this or I am happy to come to your office.

Thanks

Susan

PS I put the PDA meeting on the 21st on my calendar

From: Crowell, Lonnie [mailto:lcrowell@pocatello.us<mailto:lcrowell@pocatello.us>]

Sent: Tuesday, January 06, 2015 11:16 AM

To: 'Susan Lorenz'

Cc: Olsen, Tiffany

Subject: RE: EDA Grant

Susan,

It would be my recommendation as of yesterday that you stop working on the grant until otherwise instructed due to the EA and reduced financial obligation for the qualified infrastructure. Yes, I would like you to attend the PDA meeting and we can explain these two (2) factors as the primary reason why it no longer seems feasible to pursue the grant. From what I understand, we can only use water, sewer and road for the grant, we only have one company and we have less than \$1 million needed. Also from what I understand we cannot attach the EA to our maintenance infrastructure, specifically water, due to the time delay required by the EDA/FAA/EA strings. I will let the PDA decide what to do however from what I now understand, an EA for

the qualifying infrastructure at this point in time could very easily kill the project completely. I will need to verify. The meeting will be held on January 21 at 11:00 a.m. in the Paradise Conference room.

Thank You,

Lon Crowell, AICP
Director

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From: Susan Lorenz [<mailto:lorenz@sicog.org>]

Sent: Tuesday, January 06, 2015 10:21 AM

To: Crowell, Lonnie

Cc: Kathleen Lewis

Subject: EDA Grant

Good Morning Lon,

Should we talk about the EDA Grant?

I am wondering if SICOG should stop working on it for now or forge ahead for now.

I am also wondering if you want me to meet with the PDA this month.

Susan Lorenz

Southeast Idaho Council of Governments

233-4535 extension 1 or 208-251-4608

Olsen, Tiffany

From: Susan Lorenz <lorenz@sicog.org>
Sent: Wednesday, December 31, 2014 2:02 PM
To: Crowell, Lonnie; Allen, David
Cc: Nichols, Anne; Jaglowski, Michael; Olsen, Tiffany
Subject: RE: EDA Grant

We can do that Lon.
Have a nice New Year.
Susan

-----Original Message-----

From: Crowell, Lonnie [mailto:lcrowell@pocatello.us]
Sent: Wednesday, December 31, 2014 1:56 PM
To: Allen, David
Cc: Nichols, Anne; Jaglowski, Michael; Susan Lorenz; Olsen, Tiffany
Subject: Re: EDA Grant

We need to move asap on the EA if we are being required to complete it. I will get SICOG to explain to the PDA why the EDA grant is no longer feasible. We have to dump the EDA grant to get the maintenance portion of the utilities done with a CAT-X.

Have a wonderful day,
Lon Crowell

Sent from my iPhone

On Dec 31, 2014, at 1:23 PM, Allen, David <dallen@pocatello.us<mailto:dallen@pocatello.us>> wrote:

Lon,

Susan and I have been discussing the EDA grant while you and I resolved T-O Engineers' query on preserving grant eligibility. At this point it appears a grant is no longer feasible for the project. The remaining eligible AND IDENTIFIED work – expansion of the sewer (including lift station) and water lines – is estimated to cost a total of \$600,000. That means a \$300,000 grant and \$300,000 match. We could include the \$500,000 of road work and bring total eligible cost \$1.1M. This would provide a grant amount of \$550,000. According to Susan a grant for less than \$1M is typically not worth pursuing because the compliance requirements are more onerous than the funding is worth.

To be clear. The other work has been deemed ineligible as follows:

- The rail work is ineligible for the EDA grant because we cannot bid that work, having already hired a firm for a design/build.

- The work identified under "Infrastructure Maintenance" – replacing

existing sewer lines, water lines and the water well and adding a new water reservoir – is under a time constraint to bid in 30 days. This is possible only if we pursue a CAT EX, which the FAA has tentatively accepted. The EDA would require an EA. Even if the EDA accepted a CAT EX from the FAA (which I am told is possible) the grant application cycle would delay the work until April or May. Therefore unless other variables change it appears this work will be ineligible.

Finally, while there is no requirement to secure two tenants for the grant, the fact remains that with one tenant we will not be competitive.

As I said, we are proceeding under the assumption of performing a CAT EX for the infrastructure maintenance due to the time constraints and the initial acceptance by the FAA. Let me know if you want to change direction.

As background, the two NEPA triggers for an EA in the grant application are:

- New construction. Previously undisturbed land.
- A system capacity increase of 20% or more. While most of the infrastructure maintenance replaces existing lines the new water storage tank would seem an obvious qualifier. Also, the capacity requirement applies to increases in pipe size; replacing 4" pipe with 6" or 6" to 8" increases capacity through that pipe by 33% and 50% respectively.

I just looked again at FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures", and did not find any such system-capacity trigger for the FAA. I've reached out to T-O Engineers just in case but I'm sure Nathan is checking everything as he prepares the estimate and scope of work, which I expect soon, and would have brought the trigger to my attention.

I hope I have clarified this issue.

David Allen
Manager
Pocatello Regional Airport
PO Box 4169
Pocatello, ID 83205
208-234-6154

<image001.png>