

Pocatello Development Authority

Board of Commissioners Meeting
November 3, 2016 – 2:00 p.m.
Paradise Conference Room

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

An urban renewal agency for the City of Pocatello, Idaho

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

Action and Discussion Items:

Agenda Item No. 1: Review Appraisal Engagement Letter from Free and Associates for the VA Metals/Hoku Facility.

Agenda Item No. 2: Consideration of DeRive's Request Related to the Employment Benchmark within the Economic Development Grant Agreement.

Executive Session:

Matters exist for discussion in an executive session as per I.C. §74-206(1)(e)

Motion: "I move that we enter into an executive session as per Idaho Code §74-206(1)(e) to consider preliminary negotiations involving matters of trade or commerce in which the PDA may be in competition with other jurisdictions."

Adjourn.

City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three (3) days' advance notice by contacting Dave Hunt at dhunt@pocatello.us; 208.234.6248 or 5815 South 5th Avenue, Pocatello, ID

POCATELLO DEVELOPMENT AUTHORITY MEETING MINUTES
SPECIAL MEETING
November 3, 2016

Members present: Steve Brown (2:07pm), ~~Larry Fisher~~, Russ Meyers, Thomas Ottaway, Scott Smith (Chairman), and Scott Turner

Members excused: Devin Hillam

Members absent: Brian Blad, *Larry Fisher*

Staff present: Dean Tranmer and Tiffany Olsen, City Legal Dept.; Melanie Gygli, Interim Planning Director; Joyce Stroschein, PDA Treasurer; and John Regetz, Bannock Development Corporation (ex-officio)

Chairman Smith called the meeting to order at 2:04 pm.

Introductions and Conflicts: No conflicts pertaining to the Agenda were disclosed. There were no guests in attendance.

1. Action and Discussion Items:

Agenda Item No. 1: Review Appraisal and Engagement Letter from Free and Associates for the VA Metals/Hoku Facility. Chair Smith reminded the Board that the appraisal of the Hoku property is the responsibility of the PDA under the Assignment of Lease Agreement with VA Metals. **T. Olsen** outlined the fees for the appraisal per the engagement letter from Gary Free with Free and Associates at between \$4,800 and \$6,400 with \$2,000 due immediately as a deposit. **R. Meyers** researched the firm and relayed to the Board they appear to be well known commercial and corporate appraisers and he felt good about employing their service. The appraisal is anticipated to be complete within 30 days from commencement. It was **MSC (R. Meyers, T. Ottaway)** to authorize Chair Smith to execute the engagement letter and direct J. Stroschein to issue a check to Free and Associates in the amount of \$2,000 for the requested deposit.

Agenda Item No. 2: Consideration of DeRive's Request Related to the Employment Benchmark within the Economic Development Grant Agreement. On October 21, 2016, **T. Olsen** received an email from David Thawley with DeRive Systems explaining that upon giving their Aberdeen employees notice of the move to the Pocatello facility, a number of employees tendered their resignation. As it stood that day, DeRive had 42 full time employees to make the move to the Pocatello facility and not 50 full time employees as it previously committed to in the Economic Development Grant Agreement. Thawley requested consideration of a lower minimum employment number in the amount of 35 employees. **T. Olsen** presented DeRive's request to the Board at which time the Board requested T. Olsen contact Thawley to find out how many months before DeRive will reach a staffing level of 50 full time employees. DeRive also provided the average wage per position within the company. The Board requested one average wage for all employees. **T. Olsen** will contact Thawley and provide more information at the next meeting on November 16, 2016.

2. Update on Other Items: The Board requested an update on The Bridge Restaurant relocation to the Yellowstone Hotel and the status of the bond claim on Quik & Kleen's surety bond for the Positron facility repair.

3. Adjournment:

There being no additional business on the Agenda, the meeting adjourned at 2:35 p.m.

By: 
Tiffany G. Olsen, Secretary

AGENDA ITEM

NO. 1



1100 East 6600 South | Suite 201
Salt Lake City, Utah 84121
801-262-3388 phone
800-747-0552 toll-free
801-262-7893 fax
valbridge.com

Free and Associates
REAL ESTATE APPRAISERS | CONSULTANTS
Independently Owned And Operated

October 19, 2016

Scott W. Marotz
ANDERSON, JULIAN, & HULL, LLP
C.W. Moore Plaza
250 South Fifth Street, Ste. 700
P.O. Box 7426
Boise, ID 83707-7426
208-344-5800
smarotz@ajhlaw.com

**RE: Authorization & Engagement
VA Metals or Hoku Facility
Pocatello, Idaho**

Dear Mr. Marotz:

Pursuant to our conversation, I herewith submit my fee estimate for an appraisal of the above captioned property for the purpose of estimating its current market value with the following scenarios:

- Appraisal the property with a Hypothetical condition that the site is vacant.
- Appraise the property considering the requirement that the improvement must be removed by the purchaser of the property.
- Appraise the property with both values indicated above.

We have performed no services, as an appraiser or in any other capacity, regarding the subject property within the three-year period immediately preceding the date of this letter.

The appraisal will be a narrative report with full support for its value conclusions. It will be made in conformity with and is subject to the requirements of the Code of Professional Ethics and Standards of Professional Conduct of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice.

The fee to complete this assignment will be approximately \$4,800 to \$6,400 (or \$185 per hour not to exceed \$6,400) of which \$2,000 is due as a retainer upon acceptance of this agreement. After analyzing the appraisal problem regarding potential demolition costs, additional subcontracting fees may be required for demolition cost analysis. These fees are currently not known but an attempt will be made to

Mr. Marotz
October 19, 2016
Page 2

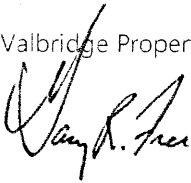
find a competitive bid for the appraisal report. The balance is due upon completion. Deposition or court time will be billed at \$350 per hour. Unless otherwise instructed, we will furnish you two (2) hardcopies and a pdf of the final appraisal report. The estimated completion date is 30 days from our receipt of your authorization to proceed and receipt of the any requested information.

The appraisal will not take into consideration the possibility that the property may be contaminated with PCB's, or any other hazardous, or radioactive substances. The value reported will be exclusive of the costs to discover, remove, or render harmless such environmental impairments. If you have any concern such substances may exist in the property, you should hire a qualified independent engineer or contractor to investigate. We cannot assume any responsibility for the discovery, analysis, or treatment of such substances on the subject or its surroundings.

I trust the above is satisfactory to your needs. Attached to and incorporated in this engagement letter are Valbridge Property Advisors | Free and Associates, Inc. Terms and Conditions of Agreement. These Terms and Conditions are a substantive part of our engagement and govern the work to be performed for you. The appraisal will be completed in a timely fashion.

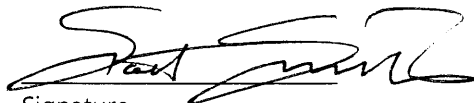
Respectfully submitted,

Valbridge Property Advisors | Free and Associates, Inc.



Gary R. Free, MAI, SRA
Senior Managing Director
Certified General Real Estate Appraiser
Idaho State License #CGA-125
gfree@valbridge.com
801-262-3388

AGREED AND ACCEPTED
Property owner



Signature

Scott Smith
Name (type or print)

Chairman
Title Pocatello Development Authority

November 3, 2016
Date

**TERMS AND CONDITIONS OF AGREEMENT
APPRAISAL**

1. These Terms and Conditions, when attached to any agreement for appraisal services between Client and Appraiser ("Agreement"), shall be deemed a part of such Agreement as though set forth in full therein.
2. Appraiser shall exercise independent judgment and complete the appraisal assignment called for by the Agreement ("Assignment") in accordance with sound appraisal practice and the Code of Professional Ethics and Standards of Professional Conduct of the Appraisal Institute.
3. All statements of fact in the appraisal report which are used as the basis of Appraiser's analyses, opinions, and conclusions will be true and correct to the best of Appraiser's knowledge and belief. Appraiser may rely upon the accuracy of information and material furnished to Appraiser by Client.
4. Appraiser shall have no responsibility for legal matters, questions of survey or title, soil or subsoil conditions, engineering, or other similar technical matters. The appraisal report will not constitute a survey of the property appraised.
5. Any party who is not the client or intended user identified in the appraisal or engagement letter is not entitled to rely upon the contents of the appraisal without express written consent of Free and Associates, Inc. and Client. Distribution of the report is at the sole discretion of the client. We assume no responsibility for unauthorized use of the appraisal by a third-party.
6. Client shall, in a timely manner, provide Appraiser with such materials with respect to the Assignment as are requested by Appraiser and in the possession or under the control of Client. Client shall provide Appraiser with sufficient access to the real property to be appraised, and hereby grants permission for entry, at reasonable times during business hours. A delay in receipt of information may delay completion of the assignment.
7. Each of the parties will indemnify and hold the other party harmless from and against any liability, cost or expense (including attorney fees) arising out of any claim or legal proceedings brought by a third party where such claim or legal proceedings is based on the negligent act or omission, or misconduct of the party against whom indemnification is sought.
8. Unless expressly specified in the Agreement, the fee quoted does not include the attendance or giving of testimony by Appraiser at any court, regulatory, or other proceedings, or any conferences or other work in preparation for such proceeding. If any partner or employee of Valbridge Property Advisors or Free and Associates, Inc. is asked or required to appear and/or testify at any deposition, trial, or other proceeding about the preparation, conclusions or any other aspect of this assignment, Client shall compensate Appraiser for the time spent by the partner or employee in appearing and/or testifying and in preparing to testify according to the Appraiser's then current hourly rate plus reimbursement of expenses.

9. In the event Client requests additional consultation or work beyond the scope of this assignment or following completion of the initial assignment or in the event that the appraiser is deposed or called as a witness to testify at a trial or other proceeding, Client shall pay an additional charge for this work, at the Appraiser's standard hourly rate, whether or not the completed appraisal report has been delivered to Client at the time of the request. Often the Appraiser will be called upon as a witness to testify about the appraisal report or the Appraiser's conclusions or methodology. Any additional work for this purpose will be charged at Appraiser's standard hourly rate.
10. Client agrees that the appraisal report shall not be quoted or referred to in any financial statement of Client or in any documents filed with any governmental agency, if it is anticipated that such statement or documents will be relied upon by a member of the public in making an investment in property that is the subject of the appraisal, without the prior written consent of Appraiser. Neither all nor any part of the content of the appraisal report including, without limitation, the conclusions as to value, the identity of Appraiser, references to the Appraisal Institute or references to the MAI or SRA designations shall be disseminated to the public through advertising or other mass media without the prior written consent of Appraiser.
11. The data gathered in the course of the Assignment (except data furnished by Client) shall remain the property of the Appraiser. The appraisal report prepared pursuant to the Agreement shall remain the property of Client. With respect to data provided by Client, Appraiser shall not violate the confidential nature of the appraiser-client relationship by improperly disclosing any confidential information furnished to Appraiser. Notwithstanding the foregoing, Appraiser is authorized by Client to disclose all or any portion of the appraisal report and the related appraisal data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable Appraiser to comply with the Bylaws and Regulations of such Institute as now or hereafter in effect.
12. The fee for this appraisal is not contingent upon the valuation of the property, the funding of any loan, or the outcome of litigation. Should the assignment be terminated prior to completion, Client agrees to pay for time and costs incurred prior to our receipt of written notice of cancellation.
13. In the event Client fails to make payment when due and payable, then from that date until payment in full is received, the amount due and payable shall bear interest at the rate of 18% per annum. If collection of any past due amounts are sent to a lawyer, regardless of whether a lawsuit is filed, the Client is responsible for all costs of collection, including attorneys' fees.
14. Valbridge Property Advisors | Free and Associates, Inc. reserves the right to approve or disapprove (the approval not to be unreasonably withheld), in writing and in advance of any filing with the SEC or other governmental agency, all uses of Valbridge Property Advisors and/or Free and Associates, Inc.'s name or references to the services provided hereunder by Valbridge Property Advisors and/or Free and Associates, Inc., provided however that such approval shall not be necessary in the event the appraisal report, the appraisers name, or the services provided hereunder are required to be disclosed as part of any SEC or other governmental filing.



15. We will not make a specific compliance survey and analysis of the property to determine if it is in conformity with the various requirements of the Americans with Disabilities Act ("ADA") which became effective January 26, 1992. It is possible that a compliance survey of the property, together with an analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this could have a negative effect on the value of the property. Since we have no direct evidence relating to this issue, we will not consider possible non-compliance with the requirements of ADA in estimating the value of the property.
16. The appraisal does not guarantee compliance with building code and life safety code requirements of the local jurisdiction. Nor does it certify that tenants have complied with all requirements necessary to obtain use and occupancy permits. It is assumed that all required licenses, consents, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusion contained in this report is based unless specifically stated to the contrary.
17. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by Free and Associates, Inc.. Valbridge Property Advisors, Inc. has not been engaged to provide this report, does not provide valuation services, and has taken no part in the preparation of this report.
18. If any claim is filed against any of Valbridge Property Advisors, Inc. a Florida Corporation, its affiliates, officers or employees, or the firm providing this report, in connection with, or in any way arising out of, or relating to, this report, or the engagement of the firm providing this report, then (1) under no circumstances shall such claimant be entitled to consequential, special or other damages, except only for direct compensatory damages and (2) the maximum amount of such compensatory damages recoverable by such claimant shall be the amount actually received by the firm engaged to provide this report.
19. This report and any associated work files are subject to evaluation by Valbridge Property Advisors, Inc. for quality control purposes. If Client is unwilling to waive confidentiality for this purpose, client must inform Free and Associates, Inc. upon acceptance of this assignment.
20. All disputes shall be settled by binding arbitration in accordance with then then-existing commercial arbitration rules of the American Arbitration Association (the "AAA").
21. This document contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this agreement will be binding on the parties. This agreement may only be modified by subsequent written agreement of the parties.

AGENDA ITEM

NO. 2

Olsen, Tiffany

From: David Thawley <david.thawley@derivesystems.com>
Sent: Friday, October 21, 2016 4:40 PM
To: Olsen, Tiffany; Stephanie Palagi
Cc: Amy Bagwell; Adrian Croot
Subject: Pocatello employee numbers

Hi Stephanie, Tiffany,

Apologies for the delay in getting you back the paperwork. We've been working through various elements of the construction and move planning.

Following the announcement of the planned move to Pocatello, we've had a number of employees tender their resignation. As things stand today, it looks like 42 employees will make the move with our company.

During the initial conversations with the city, we estimated 30-50 as the starting point, with planned growth for the office. Based on the current paperwork, we'll lose incentives if employment numbers drop below 50.

Can we please start with a lower floor, such as 35, to ensure that we're not out of compliance on day 1? This would be greatly appreciated.

Thanks

David

David Thawley

CEO

Office: 866.688.3048



4150 W Church St | Ste 1024 | Sanford, FL 32771

Visit us at SEMA! Inside Booth 21339,
and Outside Booth 61018

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ECONOMIC DEVELOPMENT GRANT AGREEMENT

NOT
FINAL

This Agreement made this _____ day of November, 2016, by and between DERIVE POWER, LLC, an Idaho Limited Liability Company, doing business as Bullydog, (hereinafter referred to as “Bullydog”), and the Pocatello Development Authority, an urban renewal agency formed in accordance with the laws of the State of Idaho (hereinafter referred to as “PDA”).

1. Recitals

1.1 Bullydog was founded in 1988 and is known for innovation and creativity among truck owners and enthusiasts. In 2014, SCT (a similar performance company) and Bullydog merged to create Derive Systems (the parent company to Derive Power, LLC). This merger combined market leading technologies and resources for custom performance software and allowing Derive to become the leading automotive software company that offers solutions to customize a vehicle’s performance, connecting customers to a more optimized vehicle. Bullydog has a marketing and production facility located at 2839 Highway 39, American Falls, Idaho 83211. With the expansion of their business, Bullydog wishes to create a centralized production and marketing office in Pocatello which would include technical professionals such as electrical and software engineers, a sales and marketing division, a finance and administration division, customer service representatives, a distribution center, shipping and transportation services department as well as the construction of a testing equipment facility specifically at the Kinport Junction building located at 815 South 1st Avenue, Pocatello, Idaho. In order to accommodate the needs of Bullydog at this Pocatello location, remodeling the facility and other office needs are required and monetary assistance has been requested and said monetary assistance has been offered by the PDA to expedite the process and assist in the retention and creation of jobs and tax revenue for the City.

1.2 PDA is a public body created as an urban renewal agency pursuant to Idaho Code §50-2006, part of the Idaho Urban Renewal Law of 1965. As an urban renewal agency, PDA is charged with aiding and assisting economic development in Pocatello, Idaho (hereinafter at times “the community”), including assisting developments that will retain and increase available jobs in the community; and is further charged with encouraging such development by private enterprise; all as more specifically provided in Idaho Code §§50-2002 and 50-2003, being part of the Idaho Urban Renewal Law, and Idaho Code §50-2902, being part of the Local Economic Development Act.

1.3 In fulfillment of its statutory duties with respect to development and job retention and creation in the Pocatello, Idaho area, PDA has the power to make funds available to assist businesses that will retain and/or create jobs in the community and enhance the economic viability of the community.

1.4 PDA has determined that the creation of Bullydog’s marketing office and expansion of services represents the type of urban area development to which it may apply revenue allocation funds (tax increment financing) under the applicable statutes; and that the same will promote economic development in the area and the creation of jobs and increased tax base consistent with the applicable urban renewal law. For that reason, PDA has committed to grant the sum of \$100,000.00 to Bullydog to assist with its remodeling and office needs.

1.5 By this Agreement, PDA and Bullydog wish to memorialize their mutual undertaking and commitments with respect to the economic development grant described herein.

2. Provisions for the Economic Development Funds

2.1 To further the proposed development of the construction/remodel currently being undertaken by Bullydog, and the job retention and creation expected therefrom, PDA agrees to grant Bullydog the sum of \$100,000.00.

2.2 In return for PDA's agreement to grant said funds, Bullydog agrees to locate a centralized marketing and production facility at the Kinport Junction building located at 815 South 1st Avenue in Pocatello, Idaho for a continuous period of not less than five (5) years, subject to the following conditions:

A. The minimum number of full-time employment positions continuously provided and filled by Bullydog during the five (5) year period shall not be less than thirty-five (35) positions at any one time.

B. The wage paid to qualifying full time employment positions during the five year period shall be no less than the following:

1. Technical Support: average wage of \$14.20 per hour
2. Sales: average wage of \$50,000 per year
3. Engineering: average wage of \$70,000 per year
4. Administrative/Marketing: average of \$50,000 per year

C. The term of the continuous five (5) year period of relocation shall begin on the first day that Bullydog achieves the threshold of employing thirty-five (35) employees with a minimum wage as described in paragraph B above.

D. Bullydog agrees to submit to an employee verification study to be conducted by or at the direction of PDA upon reasonable notice. Bullydog and PDA agree to cooperate in the exchange of information for said study which may be conducted as frequently as every six months, but no less than once per year, so

long as Bullydog is in compliance with the employment requirements provided in paragraphs A and B above. In the event Bullydog fails or refuses to meet any of the requirements of paragraphs A and B above, PDA reserves the right to conduct an employee verification study as frequently as every three months until Bullydog is in compliance for two consecutive verification studies. For the purpose of this section, a “year” shall begin on the date described in paragraph C above.

E. In the event Bullydog fails or refuses to operate and maintain its marketing and production facility in Pocatello, Idaho for a continuous period of five years from the date described in paragraph C above, then PDA’s grant of \$100,000 shall convert to a loan, accruing interest at prime plus 1%, beginning with the conversion date of the loan, with the terms of payment to be agreed upon by the parties.

F. In the event Bullydog fails or refuses to maintain a minimum work force of thirty-five (35) qualifying full time employment positions as described in paragraphs A and B above, for any continuous six month period, Bullydog agrees to repay the funds provided by the PDA with accruing interest at prime plus 1%, beginning with the conversation date of the loan, with the terms of payment to be agreed upon by the parties.

3. Effect of Agreement

3.1 It is understood by the parties to this Agreement that the amounts paid by PDA to Bullydog for the benefit of Bullydog are not to be construed as compensation for specific services by Bullydog for PDA. Rather, the intent of the parties is that the payment assists Bullydog in its need for relocation of its marketing and production facility and their ability to continue to operate.

3.2 The parties acknowledge that the effect of the payments by PDA required hereunder will inure to the benefit of Bullydog, while having the corresponding benefit to the public purposes of PDA as described above.

4. Miscellaneous

4.1 This Agreement shall be governed by and construed under the laws of the State of Idaho; venue shall be the Sixth Judicial District for the County of Bannock.

4.2 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.

4.3 This Agreement shall be binding upon and inure to the benefit of the respective parties and their legal successors. Bullydog may assign this Agreement with the express written consent of the PDA, which consent shall not be unreasonably withheld.

4.4 Each party represents to the other that it has full legal authority to enter into and execute this Agreement and that the persons signing on behalf of each party have full legal authority to execute this Agreement.

4.5 Notices by either party to the other shall be made in writing and delivered by first class mail, postage prepaid, to the parties as follows:

DERIVE: DERIVE POWER, LLC
Attn: Ted Klassen
4150 Church Street, Suite 1024
Sanford, FL 32771

PDA: Pocatello Development Authority
Attn: Attorney for the PDA
911 North 7th Avenue
Pocatello, ID 83201

ACKNOWLEDGEMENTS

FOR THE POCA TELLO DEVELOPMENT AUTHORITY:

STATE OF IDAHO)
)
) ss:
)
County of Bannock)

On this _____ day of November, 2016, before me, the undersigned, a Notary Public in and for the State, personally appeared Scott Smith, known to me to be the Chairman of the "PDA", of the City of Pocatello, and acknowledged to me that he executed the foregoing instrument for and on behalf of said agency and that said agency executed the same.

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

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing in Pocatello
My commission expires: _____

DERIVE POWER, LLC, AN IDAHO LIMITED LIABILITY COMPANY

STATE OF _____)
)
) ss:
)
County of _____)

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State, personally appeared Ted Klassen known to me or proved to me to be the Controller of Derive Power, LLC, an Idaho Limited Liability Company, whose name is subscribed to the foregoing instrument on behalf of said company, and acknowledged to me that she executed the same for and on behalf of said limited liability company by authority of the company.

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

(SEAL)

NOTARY PUBLIC FOR _____
Residing in _____
My commission expires: _____

NOTICE OF SPECIAL MEETING
POCATELLO DEVELOPMENT AUTHORITY
November 3, 2016

The Board of Commissioners of the Pocatello Development Authority will hold a special meeting at 2:00 p.m. on Thursday, November 3, 2016, in the Paradise Conference Room at City Hall, 911 North 7th, Pocatello, Idaho. An Executive Session of the Board of Commissioners will also be held pursuant to Idaho Code §74-206(1)(e) to consider preliminary negotiations involving matters of trade or commerce in which the Development Authority is in competition with governing bodies in other states or nations.

Dated this 27th day of October, 2016.



Tiffany G. Olsen, Secretary

City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three (3) days' advance notice by contacting Dave Hunt at dhunt@pocatello.us; 208.234.6248 or 5815 South 5th Avenue, Pocatello, ID.