

POCATELLO DEVELOPMENT AUTHORITY
Board of Commissioners Meeting
April 15, 2020 – 11:00 a.m.
Council Chambers – Pocatello City Hall

**DUE to the COVID-19 pandemic guidelines,
no on-site public access is permitted for this meeting.**

**The regular Pocatello Development Authority Meeting will be live-streamed at:
<http://streaming.pocatello.us/>**

City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three days' advance notice by contacting Skyler Beebe at sbeebe@pocatello.us, 208.234.6248, or 5815 South 5th Avenue, Pocatello, Idaho.

In the event this meeting is still in progress at 12:00 p.m., a ten-minute recess may be called.

- 1. CALL TO ORDER, DISCLOSURE OF CONFLICT OF INTEREST, AND ACKNOWLEDGMENT OF GUESTS.**
- 2. ACTION ITEM – Approval of the Agenda.**
- 3. ACTION ITEM – Minutes.** The Board may wish to waive the oral reading of the minutes and approve the minutes from the Board of Commissioners Regular Meeting held March 18, 2020. *See attached document*
- 4. ACTION ITEM – Financial Report.** A financial report for the PDA will be provided by PDA Treasurer. The Board may wish to approve the financial report. *To be supplemented.*
- 5. ACTION ITEM – Expense Payments & Reimbursements.** The Board may wish to approve the payment or reimbursement of the following PDA expenses:
 - a. \$107.50 from General Fund to Elam & Burke for legal fees for the month of February re: potential TIF base
 - b. \$5,760.00 re: Northgate TIF District and \$838.50 re: special council general from General Fund to Elam & Burke for legal fees for the month of March
 - c. \$202.50 from North Portneuf District Fund to Stacey & Parks for legal services re: North Portneuf TIF District
- 6. ACTION ITEM –** The Board may wish to authorize payment to the City of Pocatello for staff services for the period 01/1/2020 through 03/31/2020. *To be supplemented.*
- 7. ACTION ITEM – Airport TIF District.** The Board may wish to: 1) review the terms of and authorize the Chair's signature on an owner participation agreement with Frigitek with the revisions proposed by the applicant; 2) Review the request for use of additional funds within the Airport TIF District. *See attached document. Additional items may be supplemented at the meeting.*
- 8. CALENDAR REVIEW –** The Board may wish to take this opportunity to inform other Board members of upcoming meetings and events that should be called to their attention.
- 9. ADJOURN.**

AGENDA ITEM
NO. 3

**POCATELLO DEVELOPMENT AUTHORITY
MEETING MINUTES
March 18, 2020**

Members present: Heidi Adamson, Chad Carr, Rob Lion, Scott Smith, Terrel Tovey, Scott Turner, David Villareal (Conference Call)

Members absent/excused: Mayor Brian Blad, Thomas Ottaway

Others present: Carl Anderson, Pocatello Senior Planner; Ashley Linton-Welsh, Treasurer (Conference Call); Jared Johnson, Pocatello City Attorney; Merril Quayle, Pocatello Public Works Development Engineer; Jeff Mansfield, Pocatello Public Works Director; John Regetz, Bannock Development Corporation; other members of the public

Agenda Item No. 1: Call to Order and Disclosure of Conflicts of Interest. Chair Scott Smith called the meeting to order at approximately 11:06 a.m. No conflicts were disclosed at this time.

Agenda Item No. 2: Approval of the Agenda. It was announced that due to staff illness agenda items # 5 & 6 would be pulled from the agenda and postponed to the next available meeting. Upon **MSC (T. Tovey, R. Lion)** the agenda was approved with the modifications to agenda items # 5 & 6.

Agenda Item No. 3: Minutes. The minutes from the Board of Commissioners Regular Meeting held February 19, 2020, and the special meeting held on March 4, 2020, were considered. It was then **MSC (T. Tovey, C. Carr)** to approve the minutes as presented.

Agenda Item No. 4: ACTION ITEM – Appointment of Interim Executive Director. Smith introduced the agenda item to appoint Carl Anderson as the Interim Executive Director until such time that a permanent Executive Director is named. Discussion ensued regarding the Board's current configuration of PDA staff support and whether the Board should consider permanent or part-time staff support. With there being no further discussion, it was then **MSC (T. Tovey, H. Adamson)** as presented.

Agenda Item No. 5: Fiscal Year 2019 Audit Report. Due to illness, staff was unavailable to present this item. The agenda item was pulled from the agenda.

Agenda Item No. 6: Financial Report. Due to illness, staff was unavailable to present this item. The agenda item was pulled from the agenda.

Agenda Item No. 7 ACTION ITEM – North Portneuf District. Anderson reviewed the agenda item to pay off the amount owing by the Pocatello Development Authority to the City of Pocatello in the amount of \$224,247.51 for the "Hoku" property. Linton-Welsh confirmed that the funds would be from the North Portneuf District. With no further discussion, it was then **MSC (C. Carr, S. Turner)** to authorize the payment of the amount owing by the PDA to the City of Pocatello in the amount of \$224,427.51, from the North Portneuf District.

Agenda Item No. 8 ACTION ITEM – North Portneuf District. Anderson introduced the request from Portneuf Capital, LLC, for reimbursement of infrastructure improvements under the North Portneuf Urban Renewal Area Improvement Plan. LD Barthlome, representing Portneuf Capital, presented the request for reimbursement. The applicant addressed the difficulty of retaining potential business within the project area due to the infrastructure requirements not being complete. The applicant summarized the project cost, and stated that they are considering the table submitted as part of the application packet to be considered as a new Table 1 schedule to the North Portneuf Plan. Discussion ensued surrounding the amount of funding available for reimbursement in the District, and the timeline of the applicant. The applicant indicated that one potential business may provide 80-100 jobs with a projected average wage of \$65,000.

The Board reviewed the projects proposed for reimbursement and the current Table 1 schedule of the North Portneuf TIF plan. Pending legal review, an amendment to the plan may be required. It was then **MSC (Tovey, C. Carr)** to approve up

to \$1,727,649.00 as requested as funds are deemed available, as itemized & verified receipts are provided and inspections complete, and upon board approval to reimburse, pending legal review of proposed projects to projects listed in Table 1 schedule of the plan, finding that that the proposal is consistent with the plan. Discussion ensued that the amount of funding may decrease upon legal review.

Agenda Item No. 9 Action Item – North Portneuf District/ Request for grants or loans. Anderson introduced the request for an amendment to the grant previously approved and provided to Inergy Holdings, LLC. Regetz presented the request and stated that the request is to reallocate funds to the new location from the previously approved grant in the amount of \$25,000.

Discussion ensued as to the location of the amended request and where the funds from the request would be allocated from.

A representative from Inergy was present to and reviewed the scope of the project and indicated that the request would be to facilitate the first phase of the project to establish a light assembly use. The applicant indicated that they would like to locate their operations in the North Portneuf District. It was clarified that the first phase would require the configuration of internal work space. The applicant indicated that the expansion may allow for up the creation of additional jobs.

After discussion, the Board indicated that legal review of the proposed request needs to be done before the Board considers the proposal for action.

Agenda Item No 10: Executive Session – Potential Economic Development Opportunity. To provide an update on a potential economic development opportunity, at approximately 12:02 p.m., **it was moved and seconded (T. Tovey, C. Carr)** to adjourn to executive session pursuant to Idaho Code §74-206(1)(e). **The motion passed by roll call vote (Ayes: Tovey, Carr, Adamson, Lion, Smith, Turner, Villareal. Nays: None.)** At approximately 12:25 p.m., by **MSC (T. Tovey, S. Turner)** the Board reconvened to regular session.

Agenda Item No. 11: ACTION ITEM – Northgate District/Letter of support. The Board considered a request for a Letter of Support for development within the Northgate Urban Renewal Area. Discussion ensued regarding the proposed request and corrections were discussed. It was then **MSC (T. Tovey, H. Adamson)** with corrections.

Agenda Item No. 12: Report/legislative update – urban renewal law. Meghan Sullivan Conrad, P.A. Elam & Burke, was present via conference call and provided the Board an update on current legislative matters.

Agenda Item No. 13: Calendar Review: No new updates were provided regarding upcoming meetings or events.

Agenda Item No. 14 Adjournment: There being no further business, the meeting adjourned at approximately 12:30 p.m.

By:



Carl Anderson
Interim Executive Director

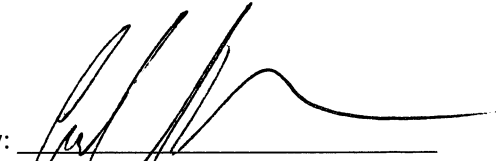
POCATELLO DEVELOPMENT AUTHORITY MEETING MINUTES
EXECUTIVE SESSION
March 18, 2020

Members present: Heidi Adamson, Chad Carr, Rob Lion, Scott Smith, Terrel Tovey, Scott Turner, David Villareal (Conference Call)

Members absent/excused: Mayor Brian Blad, Thomas Ottaway

Others present: Carl Anderson, Senior Planner; Jeff Mansfield, Pocatello Public Works Director; Merrill Quayle, Pocatello Public Works Development Engineer; Don Zebe Colliers International; Representative from Bannock County

The Board of Commissioners adjourned from regular session into executive session pursuant to I.C. §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. At approximately 12:02 p.m., **it was moved and seconded (T. Tovey, C. Carr)** to adjourn to executive session pursuant to Idaho Code §74-206(1)(e). **The motion passed by roll call vote (Ayes: Tovey, Carr, Adamson, Lion, Smith, Turner, Villareal. Nays: None.)** At approximately 12:25 p.m., by **MSC (. Tovey, S. Turner)** the Board reconvened to regular session.

By: 
Carl Anderson
Senior Planner

**AGENDA ITEM
NO. 7**

OWNER PARTICIPATION AGREEMENT

By and Between

The Pocatello Urban Renewal Agency

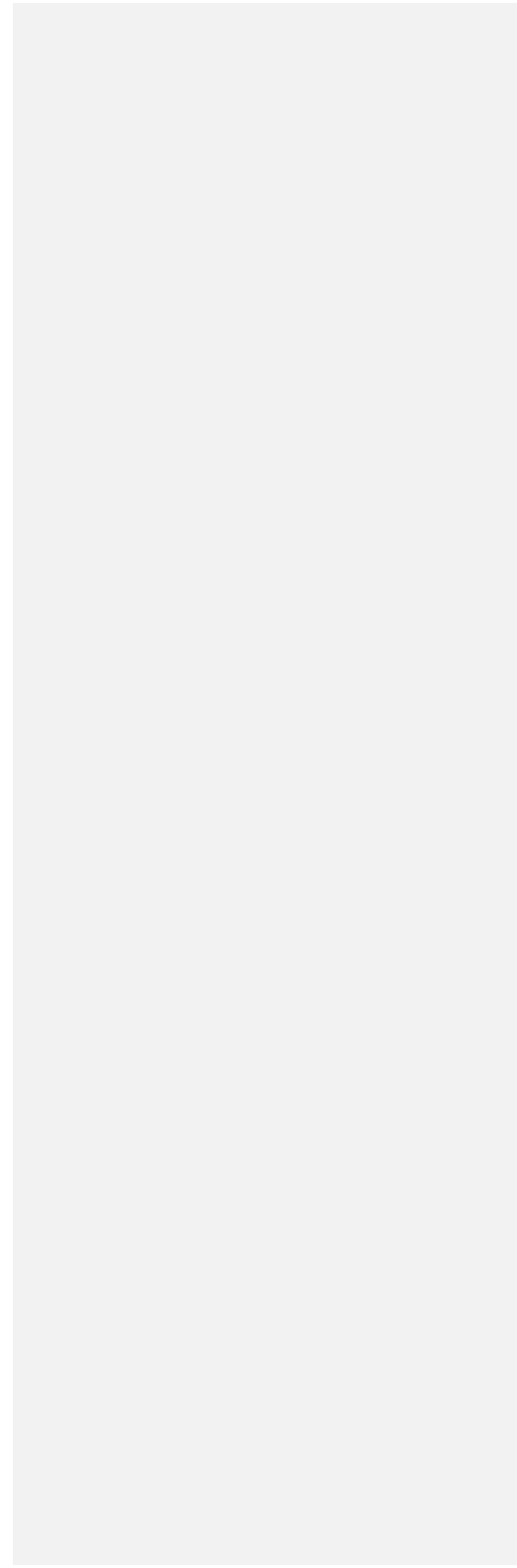
and

FRIGITEK INDUSTRIAL PARKS, INC.

for the

POCATELLO REGIONAL AIRPORT PROJECT

DRAFT



OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT (hereinafter "Agreement") is entered into by and between the Pocatello Urban Renewal Agency, commonly known as the Pocatello Development Authority, an independent public body, corporate and politic (hereinafter "Agency"), organized pursuant to the Idaho Urban Renewal Law, Title 50, Chapter 20, Idaho Code, as amended (hereinafter the "Law"), and undertaking projects under the authority of the Local Economic Development Act, Title 50, Chapter 29, Idaho Code, as amended (hereinafter the "Act"), and Frigitek Industrial Parks, Inc., a Texas corporation ~~authorized to do business in the State of Idaho~~ (hereinafter "Participant"), collectively referred to as the "Parties" and each individually as "Party," on the terms and provisions set forth below.

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RECITALS

WHEREAS, Agency, an independent public body, corporate and politic, is an urban renewal agency created by and existing under the authority of the Law and the Act;

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WHEREAS, the Pocatello City Council adopted its Ordinance No. 2889 on November 4, 2010, approving the Urban Renewal Plan for the Pocatello Regional Airport Urban Renewal Area and Revenue Allocation Area District Plan (hereinafter the "Urban Renewal Plan");

WHEREAS, Participant controls by lease real property located within Pocatello Regional Airport non-aviation lands in Pocatello, Idaho (hereinafter referred to as the "Site" as defined below);

WHEREAS, Participant intends on constructing railroad track and spurs, water, sewer, stormwater, street, and electrical infrastructure, outdoor lighting, and excavation/site grading on the Site and adjacent public rights of way in conjunction with the development of new high-tech, temperature-controlled warehouse facilities on the Site (the "Project");

WHEREAS, the Urban Renewal Plan authorizes Agency to use revenue allocation financing to fund specific projects and improvements to implement the Urban Renewal Plan;

WHEREAS, Agency and Participant have negotiated the major terms of Agency's participation in the funding of certain improvements to the public infrastructure, and other eligible expenses (collectively the "Agency Funded Public Improvements");

WHEREAS, the Agency Funded Public Improvements implement several objectives outlined in the Urban Renewal Plan;

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WHEREAS, the Urban Renewal Plan authorizes Agency to enter into agreements to implement the Urban Renewal Plan;

WHEREAS, as a result of Participant's agreement to construct the Agency Funded Public Improvements, Participant's commitment to comply with the terms of the Urban Renewal Plan, and Agency's commitment to reimburse Participant in compliance with the Urban Renewal Plan, the Parties deem it necessary to enter into this Owner Participation Agreement to define their respective obligations;

WHEREAS, Participant and the City of Pocatello entered into that certain lease (the "City Lease"), dated _____, March 13, 2020, setting forth certain obligations by the Participant concerning the Participant's project;

NOW, THEREFORE, in consideration of the above recitals, which are incorporated into this Agreement, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. EFFECTIVE DATE

The Effective Date of this Agreement shall be the date when this Agreement has been signed by the Parties (last date signed) and shall continue until all obligations of each Party are complete.

II. SUBJECT OF AGREEMENT

A. Recitals, Purpose of This Agreement, and Interest

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The Parties agree that the foregoing recitals are not mere recitations but are covenants of the Parties, binding upon them as may be appropriate and a portion of the consideration for the agreements contained herein. The mutual consideration and covenants contained herein are intended to achieve the objectives and obligations of both Parties. The Agency's commitment herein is intended to comply with the Agency's authority under the Law, the Act, and the Urban Renewal Plan and is not a gift or donation of public funds.

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The purpose of this Agreement is to effectuate the Urban Renewal Plan by providing for the construction of public improvements on or adjacent to the Site.

The construction of said public improvements on the Site and the fulfillment, generally, of this Agreement are in the vital and best interests of the City of Pocatello

(the “City”) and the health, safety, and welfare of its residents and are in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements. Implementation of this Agreement will further the goals and objectives of the Urban Renewal Plan.

B. The Plan

This Agreement is subject to the provisions of the Urban Renewal Plan.

C. The Project Area

The Urban Renewal Project Area (“Project Area”) is located in the City, and the boundaries of the site are within the Project Area.

D. The Site

The Site is shown on the “Map of the Site,” attached to this Agreement as Attachment 1 which is incorporated herein by reference, and as more particularly described in the “Legal Description” of the Site, attached hereto as Attachment 2 which is incorporated herein by reference.

E. Agency Participation Policy

Generally, the Agency will agree to financially participate with a private developer when such participation achieves the objectives of the Urban Renewal Plan, is not duplicative of other public entity funding, and does not replace or substitute for the obligations imposed by other governmental agencies on the Participant. The specific participation by the Agency for this Site is as set forth herein.

F. Parties to This Agreement

1. Agency

The Agency is an independent public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Law and the Act. The office of the Agency is located at City of Pocatello, 911 North 7th Avenue, Pocatello, Idaho 83201. “Agency,” as used in this Agreement, includes the Urban Renewal Agency and any assignee of or successor to its rights, powers, and responsibilities.

2. Participant

The Participant is Frigitek Industrial Parks, Inc., a Texas corporation. The principal address of the Participant is 6565 North MacArthur Blvd. Suite 225, Irving, Dallas, Texas 75039.

Commented [LM1]: Is this still the address we should use?

Whenever the term "Participant" is used herein, such term shall include any assignee or successor in interest approved or consented to by the Agency, which consent should not be unreasonably withheld. The Participant qualifies as an "owner participant" as that term is used in the Urban Renewal Plan.

G. The Private Development

The Private Development shall mean the development undertaken by Participant or the approved successors or assigns upon the Site. The Private Development consists of the construction of new high-tech, temperature-controlled warehouse facilities. The Private Development and any further development upon the Site or any portion of the Site shall comply with all the provisions of the Urban Renewal Plan and all applicable City codes and ordinances.

III. IMPROVEMENT OF THE SITE AND AGENCY'S PARTICIPATION

A. Development Design

Participant agrees that the Private Development will be in full compliance with the Urban Renewal Plan and the approved building permit and City Lease.

B. Cost of Construction

The cost of the Private Development and the Agency Funded Improvements, defined below, shall be borne by the Participant except as otherwise set forth herein.

C. Agency, City, and Other Governmental Agency Permits

Participant has or shall, at Participant's own expense, secure or cause to be secured any and all permits or approvals which may be required by Agency, City, or any other governmental agency relative to Project construction and operation.

D. Agency Funded Public Improvements

The Agency Funded Public Improvements are directly related to public infrastructure and excavation/site grading and are: (a) critical to the redevelopment of the Site and (b) provide a higher quality of development that should assist Agency in achieving redevelopment of other properties adjacent to the Site and meeting the

objectives of the Urban Renewal Plan. Because of the Private Development, which achieves several of the objectives contained within the Urban Renewal Plan, Agency finds that a portion of the public improvements may be reimbursed by the Agency. Agency finds that the Agency Funded Public Improvements are in the best public interest and provide for enhanced development of the Site within the Project Area.

In consideration of the terms of this Agreement and subject to certain conditions as contained in this Agreement, Agency agrees to pay the costs of certain approved Agency Funded Public Improvements, inclusive of design, consulting, project management and engineering costs which may be accessed immediately after lease signing, as verified by the Agency. Approved Agency Funded Public Improvements shall include those improvements listed on Attachment 3.

E. Agency Review of Construction Documents

Upon Agency's request, Agency shall have the right and the opportunity to review Participant's construction plans, budgets, and bids for the Agency Funded Public Improvements (collectively the "Agency Funded Public Improvement Construction Documents"). Participant will utilize commercially reasonable contracting, budgeting, and bidding practices to ensure that the Agency Funded Public Improvements are constructed consistent with the Agency Funded Public Improvement Construction Documents and are undertaken in a reasonable manner. For purposes of this Section and Section F, below, Participant shall be presumed to have utilized commercially reasonable contracting, budgeting and bidding practices if its general contractor solicits or solicited competitive bids for the Agency Funded Public Improvements and such work is not performed by an affiliate or subsidiary of Participant.

F. Reimbursement Obligation

1. Amount of Reimbursement

In consideration of Participant's construction of the Agency Funded Public Improvements, Agency, subject to the terms of this Agreement, agrees to reimburse Participant an amount equal to the Actual Eligible Costs, as defined below, of the Agency Funded Public Improvements, not to exceed Four Million, ~~One~~Five Hundred ~~Thirty-one~~Seventy-Nine Thousand and 00/100 dollars (\$4,~~131~~579,000.00), with no interest accruing on the Reimbursement Obligation (defined below). Five Hundred Thousand and 00/100 dollars (\$500,000.00) will be available for reimbursement upon lease signing for eligible costs incurred.

2. Notification, Inspection, Approval

Upon completion of construction of any category of the Agency Funded Public Improvements associated with the Project and on not less than a quarterly basis during construction, Participant shall notify Agency in writing to request a meeting with the Agency to determine if the completed Agency Funded Public Improvements meet the requirements of this Agreement. Agency shall provide Participant with written confirmation that the completed Public Improvements are eligible for reimbursement as follows:

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(a) With respect to each Notification of Completion, Participant is responsible for submitting invoices or receipts for work performed as part of the Project (the "Cost Documentation") which will permit Agency to determine the Actual Eligible Costs, which shall be the actual costs to construct the Agency Funded Public Improvements, including costs incurred prior to the Effective Date of this Agreement, as approved by the Agency. Cost Documentation shall include the following:

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- i. An accounting of the costs associated with the completed Agency Funded Public Improvements and evidence of payment of such costs by Participant. Participant shall include invoices from Participant's design professionals, general contractor, subcontractor(s), and material suppliers for each type of eligible cost item, which shall specify quantities and unit costs of installed materials.
- ii. Explanation of any significant deviation between the initial cost estimates in Attachment 3 and the actual costs in the Cost Documentation.

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(b) The Agency shall have the right to review the Cost Documentation, to inspect the completed Agency Funded Public Improvements, and to obtain independent verification that the quantities of work claimed, and the costs associated therewith are accurate, commercially reasonable, and appropriate for the Agency Funded Public Improvements completed. The Agency's approval shall not be unreasonably delayed or withheld.

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(c) Within thirty (30) days of Agency's receipt of the Cost Documentation, the Agency shall notify Participant in writing of Agency's acceptance of the Cost Documentation and Agency's determination of the Actual Eligible Costs. Agency shall notify Participant of any disputes with the Cost Documentation and provide Participant a reasonable time to explain any discrepancy. If the Agency and the Participant cannot agree on any disputed costs, the Parties agree to submit the dispute to the Agency Board of Commissioners for final determination.

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3. Allocation of Costs

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Agency and Participant agree Participant shall be able to allocate expenses among the various items listed on Attachment 3 so long as the total amount of those items shall not exceed Four Million ~~One, Five~~ Hundred ~~Thirty-one~~ Seventy-Nine Thousand and 00/100 ~~Dollars~~ dollars (\$4, ~~131~~ 579,000.00). Participant shall notify Agency of the allocation of costs among the items listed on Attachment 3.

4. Reimbursement

Participant shall initially pay for all of the costs of construction for the Agency Funded Public Improvements associated with the Project. By approval of this Agreement by Agency's Board of Commissioners, Agency has authorized reimbursement for the Actual Eligible Costs of the Agency Funded Public Improvements (the "Reimbursement Obligation") as set forth in Section F, Section G and the other provisions of this Agreement.

G. Reimbursement Procedure

1. Agency's Reimbursement Obligation shall not commence until the first Certificate of Occupancy, or the equivalent thereof, is issued for the Private Development, or upon the City's acceptance of the improvements required to be constructed as described in the lease and approved building permit. ~~A Certificate of Occupancy, or equivalent thereof, will not be required for the initial Five Hundred Thousand and 00/100 dollars (\$500,000.00) payment. The initial payment may be accessed after lease signing.~~

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2. In conjunction with its receipt of revenue allocation proceeds on a biannual basis, the Agency will retain ten percent (10%) of the revenue allocation proceeds per year for Project Area operating and administrative expenses and agrees to make payment to Participant of the remaining tax increment revenue allocation proceeds actually received and arising from the Project Area commencing from the first date the Agency receives tax increment monies arising from the Project Area subsequent to the satisfaction of the conditions set forth in Section G(1) and until such time as the Reimbursement Obligation has been paid in full or the termination of the revenue allocation authority under the Urban Renewal Plan, whichever occurs first. **PARTICIPANT ACKNOWLEDGES THE TAX REVENUE ALLOCATION PROCEEDS MAY NOT BE SUFFICIENT TO PAY OFF THE REIMBURSEMENT OBLIGATION ON OR BEFORE THE TERMINATION OF THE REVENUE ALLOCATION AUTHORITY UNDER THE URBAN RENEWAL PLAN AND ASSUMES THAT RISK.**

3. The biannual payments are due to Participant within sixty (60) days of receipt of revenue allocation proceeds from the Project Area by Agency.

4. Agency shall have no obligation to make payments to the Participant for taxes collected and paid to Agency beyond the term described herein.

5. Agency may pay, at any time, in whole or in part, without penalty, the then remaining outstanding balance of the Reimbursement Obligation.

6. All payment due hereunder shall be paid to the Participant, it's assignees, affiliates or successors, and future owners of units created on the Site as part of the Project shall have no claim or entitlement to such payments as a result of such ownership.

7. Non-general Obligation

As provided by Idaho Code Section 50-2910, the obligations of Agency hereunder shall not constitute a general obligation or debt of the Agency, the State of Idaho, or any of its political subdivisions, or give rise to a charge against their general credit or taxing powers to be payable out of any funds or properties other than the monies deposited in the special fund or funds provided for herein and pledged hereby to the payment of principal and interest on this Reimbursement Obligation.

H. Taxes

The Act provides that Agency will be paid tax increment funds contingent on the amount of assessed value as determined by the Power County Assessor each year and the rate of tax levy or the percentage of assessment levied by each of the taxing agencies. Agency is not a guarantor of the assessment determination made by Power County Assessor or guarantor of collection of taxes by the Power County Treasurer.

Participant shall pay, when due, all real estate and personal property taxes and assessments assessed and levied on Participant's ownership interest of the Site. This provision or covenant shall run with the land and be binding upon Participant's successors. Except as set forth herein, nothing herein contained shall be deemed to prohibit Participant from contesting the validity or amounts of any tax, assessment, encumbrance, or lien or to limit the remedies available to Participant with respect thereto; provided, such contest does not subject the Site or any portion thereof to forfeiture or sale.

The increment tax revenues on the Site by Participant (as determined from the assessment records of the Power County Assessor and the payment records

of the Power County Treasurer) shall be paid to Participant if and only as they are paid to Agency by Power County, the entity which has the legal responsibility to collect property taxes.

Participant recognizes Agency has no authority or involvement in the assessment, tax, or collection process for ad valorem taxes, including real property and personal property taxes. Participant also recognizes the ability of Agency to reimburse Participant for the Reimbursement Obligation is dependent on the ad valorem assessment and collection process. Therefore, in the event insufficient taxes are received by Agency because of reduction of the tax levy rate or assessed values less than assumed by Agency and Participant or in the event of any tax delinquency by any owner of parcels within the Project Area or by any tenant related to personal property, Participant must elect to either pay the delinquent taxes or in-lieu-of taxes reflecting higher assessments or levy rate on behalf of those taxpayers or receive less reimbursement from Agency to pay the Reimbursement Obligation.

Participant shall not apply for or otherwise request any exemption or reduction in property taxes on the Site pursuant to Idaho Code §§ 63-602NN, 63-4404, 63-602II, or Idaho Code §§ 63-606A or 63-602W, or similar exemptions, during the term of the Urban Renewal Plan.

Commented [LM2]: NOTE: Property taxes cannot be appealed during the term of the agreement.

I. Liens/Payment of General Contractor

Participant hereby certifies that as of the Effective Date no mechanic's or materialman's liens have been placed on the Site, as defined above, and that the general contractor and all subcontractors have been or will be paid in full for all work performed on the Private Development. In the event any materialman's liens are placed on the Site, Participant agrees Agency may suspend any payments required under this Agreement until any liens or claims related to the Project and made by any contractor, subcontractor, or material supplier that performed work on the Private Development have been satisfied.

J. Agency Contribution Assignable

Agency and Participant agree that Agency's obligations run only to Participant or its assignee and that Agency is under no obligation to grant any additional consideration or greater participation than set forth herein. Participant shall have the absolute right to assign its right to receive any payments to its lender, its successor, or other entity designated by Participant.

K. Indemnification

Participant shall indemnify and hold Agency and its respective officers, agents, and employees (collectively referred to in this Section K as "Agency") harmless from

and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect and attorney fees (collectively referred to in this Section K as "Claim"), which may be imposed upon or incurred by or asserted against Agency and for which Agency may be legally liable under applicable law (excluding any liability or obligation Agency assumes by contract) by reason of any of the following occurrences, provided Participant shall have no obligation to indemnify and hold Agency harmless from and against any Claim to the extent it arises from the negligence or willful act or omission of Agency or Agency's contractors and associated subcontractors:

1. Any work done in, on, or about the Site, including the Agency Funded Public Improvements, or work related to the Agency Funded Public Improvements; or
2. Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of the Site or any part thereof; or
3. Any negligent or intentional wrongful act or omission on the part of Participant or any of its agents, contractors, servants, employees, subtenants, operators, licensees, or invitees; or
4. Any accident, injury, or damage to any person or property occurring in, on, or about the Site or any part thereof, during construction; or
5. Any failure on the part of Participant to perform or comply with any of the terms, provisions, covenants, and conditions contained in this Agreement to be performed or complied with on its part.
6. Funding, by Agency, of the Agency Funded Public Improvements.

In case any such Claim is brought against Agency, Participant, upon written notice from Agency, shall, at Participant's expense, resist or defend such Claim.

L. Insurance

Participant shall, or through its contractor constructing the Agency Funded Public Improvements, shall, at Participant's sole cost, obtain and maintain in force for the duration of the Agreement (including the warranty period) insurance of the following types, with limits not less than those set forth below, and in a form acceptable to Agency:

1. Commercial General Liability Insurance ("Occurrence Form") with a minimum combined single limit liability of \$1,000,000 each occurrence for bodily injury and property damage, with a minimum limit of liability of

\$1,000,000 each person for personal and advertising injury liability. Such policy shall have a general aggregate limit of not less than \$2,000,000, which general aggregate limit will be provided on a per project basis. The policy shall be endorsed to name Agency, including its respective affiliates, and City as additional insureds.

2. Workers' Compensation Insurance, if Participant has employees, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory, or province having jurisdiction over Participant's employees, and Employer's Liability Insurance. If Participant has employees, Participant shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.

3. Automobile Liability Insurance covering use of all owned, non-owned, and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence. This policy shall be endorsed to name Agency, including its respective affiliates, directors, and employees, as additional insureds.

4. All insurance provided by Participant under this Agreement shall include a waiver of subrogation by the insurers in favor of Agency. Participant hereby releases Agency, including its respective affiliates, directors, and employees, for losses or claims for bodily injury or property damage covered by Participant's insurance or other insured claims arising out of Participant's performance under this Agreement or construction of the Project.

5. Certificates of insurance, reasonably satisfactory in form to Agency (ACORD form or equivalent), shall be supplied to Agency evidencing that the insurance required above is in force, and that notice will be given to Agency prior to any cancellation of the policies in accordance with the policies. Participant shall also provide, with its certificate of insurance, executed copies of the additional insured endorsements and dedicated limits endorsements required in this Agreement. At Agency's request, Participant shall provide a certified copy of each insurance policy required under this Agreement.

6. Except as otherwise stated above, the obligations set forth in this Section shall remain in effect only until the date City accepts the dedication of the Agency Funded Public Improvements.

7. All policies of insurance required by this Agreement shall be issued by insurance companies qualified to do business in the State of Idaho.

8. The foregoing insurance coverage shall be primary and noncontributing with respect to any other insurance or self-insurance that may be maintained by Agency. Participant's General and Automobile Liability Insurance policies shall contain a Cross-Liability or Severability of Interest clause. The fact that Participant has obtained the insurance required in this Section shall in no manner lessen or affect Participant's other obligations or liabilities set forth in the Agreement.

M. Warranty

Participant warrants that the materials and workmanship employed in the construction of the Agency Funded Public Improvements shall be good quality and shall conform to generally accepted standards within the construction industry and agrees to repair any non-conforming improvements during the warranty period upon receipt of notice from Agency of such non-conforming improvements. Such warranty and repair obligation shall extend for a period of one (1) year after acceptance of the Agency Funded Public Improvements by the City or for the period described in the City Lease or approved building permit. Provided, nothing herein shall limit the time within which Agency may bring an action against Participant on account of Participant's failure to otherwise construct such improvements in accordance with this Agreement.

N. Maintenance

Participant recognizes Agency has no specific authority to accept maintenance responsibility of the Agency Funded Public Improvements. Participant anticipates that the City and or various public utilities may accept ownership and maintenance obligations of some or all of the Agency Funded Public Improvements; however, such acceptance is not a condition precedent to the obligations of the Parties hereto.

IV. USE AND MAINTENANCE OF THE SITE AND ADJACENT AREA

A. Use of the Site

Participant agrees and covenants to comply with all other provisions and conditions of the Urban Renewal Plan for the period of time the Urban Renewal Plan is in force and effect.

B. Effect and Duration of Covenants

Covenants contained in this Agreement shall remain in effect until sooner of December 31, 2033, or the date on which the Urban Renewal Plan terminates, whichever is sooner. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the

Commented [LM3]: Is there a termination date scheduled?

Participant and any successors and assigns to the Site, or any part thereof, for the benefit of and in favor of Agency, its successors and assigns.

C. Local, State and Federal Laws

Participant covenants that it will carry out the construction of the Agency Funded Public Improvements in conformity with all applicable laws, including all applicable federal and state labor standards and anti-discrimination laws.

V. DEFAULTS, DISPUTE RESOLUTION, REMEDIES, AND TERMINATION

A. Defaults in General

Neither Party shall be deemed to be in default of this Agreement except upon the expiration of forty-five (45) days from receipt of written notice from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement unless such Party, prior to expiration of said forty-five (45) day period, has rectified the particulars specified in said notice of default, provided that in the case where rectifying the matters specified in the notice of default requires more than forty-five (45) days, such notified Party shall not be in default so long as they commence prior to the expiration of the forty-five (45) days and diligently pursue actions needed to rectify such matters. In the event of a default, the ~~nondefaulting~~non-defaulting Party may do the following:

1. The ~~nondefaulting~~non-defaulting Party may terminate this Agreement upon written notice to the defaulting Party and recover from the defaulting Party all direct damages incurred by the ~~nondefaulting~~non-defaulting Party.
2. The ~~nondefaulting~~non-defaulting Party may seek specific performance of this Agreement and, in addition, recover all damages incurred by the ~~nondefaulting~~non-defaulting Party. The Parties declare it to be their intent that this Agreement may be specifically enforced.
3. The ~~nondefaulting~~non-defaulting Party may perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting Party or recover said monies from the defaulting Party.
4. The ~~nondefaulting~~non-defaulting Party may pursue all other remedies available at law, it being the intent of the Parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the ~~nondefaulting~~non-defaulting Party.

5. In the event Participant defaults under this Agreement, Agency (the ~~nondefaulting~~non-defaulting Party) shall have the right to suspend or terminate its payment under this Agreement, as more specifically defined in this Agreement, for so long as the default continues and if not cured, Agency's obligation for payment shall be deemed extinguished. In addition, if Agency funds shall have been paid, Agency may seek reimbursement of any amounts paid to Participant up to the amount of damages incurred by Agency for Participant's default.

Commented [LM4]: Do we need to build in a tiered or pro rata repayment schedule?

Any default by Participant under the approved building permit or City Lease shall be deemed a default under this Agreement.

B. Dispute Resolution

In the event that a dispute arises between Agency and Participant regarding the application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement of the dispute within ten (10) days after such dispute arises. If the Parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the Parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise, as the Parties may mutually agree before resorting to litigation. Should the Parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation or other process of structured negotiation, ~~each Party shall have the right~~Parties agree to pursue any rights or remedies it may have ~~at law or in equity~~in Arbitration under the Commercial Rules of Arbitration of the American Arbitration Association.

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C. Legal Actions

In addition to any other rights or remedies, any Party may institute legal action to cure, correct, or remedy any default; to recover damages for any default; or to obtain any other remedy consistent with the purpose of this Agreement. ~~The nondefaulting Party may also, at its option, cure the default and sue to collect reasonable attorney's fees and costs incurred by virtue of curing or correcting the Party's breach.~~The non-defaulting Party may also, at its option, cure the default by binding arbitration. The Parties also agree that any other claim or dispute between them or against any agent, employee, successor, or assign of the other, whether related to this Agreement or otherwise, and any claim or dispute related to this Agreement or the relationship or duties contemplated under this Agreement, including the validity of this arbitration clause, shall be resolved by binding

arbitration by the American Arbitration Association under the relevant Arbitration Rules in effect.

The Parties agree, and the arbitrator shall issue an order providing, that all pleadings, motions, discovery responses, depositions, testimony, and documents exchanged or filed in relation to the arbitration be kept strictly confidential. The Parties agree, and the arbitrator shall issue an order providing, that any award issued by the arbitrator shall be entered under seal in a court of competent jurisdiction. The Parties agree that any Party may seek a separate order from a court of competent jurisdiction enforcing the arbitrator's order protecting the disclosure of pleadings, motions, discovery responses, depositions, testimony, and documents exchanged or filed in the arbitration, provided that such motion and responses thereto shall be filed under seal. The provisions of this section shall not apply with respect to matters in this Agreement that the parties have agreed to have resolved by an independent accounting firm.

The laws of the State of Idaho shall govern the interpretation and enforcement of this Agreement.

D. Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other Party.

VI. GENERAL PROVISIONS

A. Notices, Demands, and Communications Between the Parties

Formal notices, demands, and communications between Agency and Participant shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of Agency and Participant as set forth in this Agreement. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail.

B. Conflicts of Interest

No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his/her personal

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interests or the interests of any corporation, partnership, or association in which he/she is directly or indirectly interested.

Participant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

C. Non-liability of Agency Officials and Employees

No member, official, or employee of Agency shall be personally liable to Participant in the event of any default or breach by Agency or for any amount which may become due to Participant or on any obligations under the terms of this Agreement.

D. Successors and Assigns

This Agreement shall, except as otherwise provided herein, be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

E. Attorney Fees and Costs

In the event that either party to this Agreement shall enforce any of the provisions hereof in any action at law or in equity, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorney fees incurred therein by the prevailing party, and such may be included to the judgment entered in such action.

F. Severability

If any provisions of this Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

G. Headings

The section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

H. Counterparts

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This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

I. Forced Delay; Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, acts of another party, environmental analysis or removal of hazardous or toxic substances, acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of Agency shall not excuse performance by Agency), or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the forced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by Agency and Participant.

J. Inspection of Books and Records

Agency has the right, upon not less than ~~seventy-two (72) hours~~² weeks' notice, at all reasonable times to inspect the books and records of Participant pertaining to the Agency Funded Public Improvements.

K. Attachments and Exhibits Made a Part

All attachments and exhibits which are attached to this Owner Participation Agreement are made a part hereof by this reference.

VII. AMENDMENTS TO THIS AGREEMENT

Agency and Participant agree to mutually consider reasonable requests for amendments to this Agreement and any attachments hereto which may be made by any of the Parties hereto, lending institutions, bond counsel, financial consultants, or underwriters to Agency, provided said requests are consistent with this Agreement and would not alter the basic business purposes included herein or therein. Any such amendments shall be in writing and agreed to by the Parties.

VIII. ENTIRE AGREEMENT, WAIVERS, AND AMENDMENTS

This Agreement, including **Attachments 1 through 3**, inclusive, incorporated herein by reference, constitutes the entire understanding and agreement of the Parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter thereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency and Participant, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Participant.

[signatures on following page]

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IN WITNESS WHEREOF, the Parties hereto have signed this Agreement the day and year below written to be effective the day and year above written.

**POCATELLO URBAN RENEWAL AGENCY,
THE POCATELLO DEVELOPMENT AUTHORITY**

By: _____
Scott Smith, Chair
Date: _____

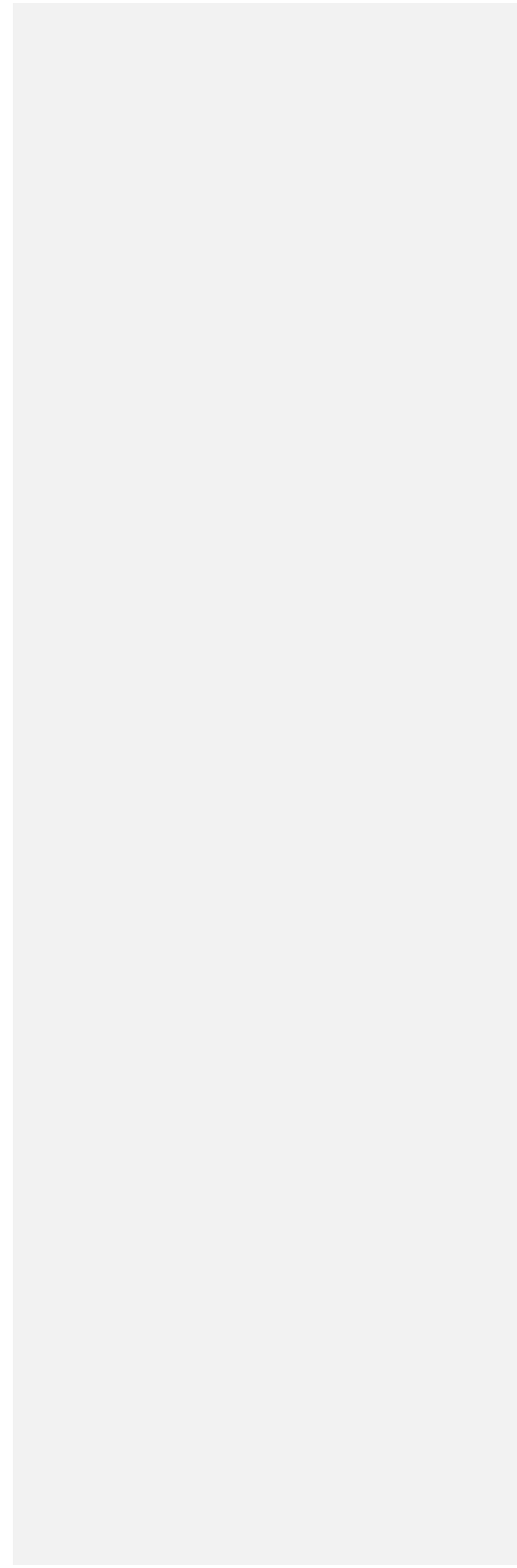
ATTEST:

By: _____
_____,
Secretary

**PARTICIPANT
FRIGITEK INDUSTRIAL PARKS, INC.**

By: _____
Elden Charles, ~~_____~~ Executive Vice President
Date: _____

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ACKNOWLEDGMENTS

STATE OF IDAHO)
) ss.
County of Power)

On this ____ day of _____, ~~2019~~2020, before me, _____, the undersigned notary public in and for said county and state, personally appeared Scott Smith, known or identified to me to be the Chair of the Pocatello Urban Renewal Agency, the public body corporate and politic, that executed the within instrument, and known to me to be the person that executed the within instrument on behalf of said Agency and acknowledged to me that such Agency executed the same for the purposes herein contained.

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
Commission Expires _____

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STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, ~~2019~~2020, before me, _____, the undersigned notary public in and for said county and state, personally appeared Elden Charles, known or identified to me to be the _____ of Frigitek Industrial Parks, Inc., and the person who signed the within instrument, and acknowledged to me that he has authority to execute and executed the foregoing instrument for the purposes therein contained on behalf of Frigitek Industrial Parks, Inc.

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 _____
Commission Expires _____

Attachment 1



Map of the Site

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Attachment 2

Legal Description

Legal Description of Site

An area consisting of approximately 20 acres as more particularly described as follows:

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Approximately 20-acre parcel located within the S1/2, NW/14, of Section 15, T6S, R33E, BM, Pocatello, Idaho

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Attachment 3

Agency Funded Public Improvements

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Item	Estimated Cost
Railroad Track 01-05500 - Civil Engineering	\$1,326,109.000
Sewer 01-10160 - Construction Manager	\$1,478,000,111.800
Aggregates and Asphalt 01-15526 - Traffic Control	\$476,12,000
01-17113 - Mobilization/Demobilization	\$204,269
01-18000 - Contingency	\$555,919
02-05400 - Aggregate Subbase	\$375,055
02-21419 - Water Main Piping	\$343,000,277.860
Electrical 02-21420 - Water Main Valves	\$100,36,000
Stormwater 02-21421 - Hydrants	\$112,72,000
Earthwork 02-21422 - Sewer Piping	\$34,000,39,600
02-21423 - Sewer Concrete Manholes	\$22,25,000
02-21424 - Sanitary Sewer Lift Station	\$850,000
02-21425 - Sewer Cleanout	\$17,200
02-23150 - Engineered Fill	\$122,780
02-24500 - Railroad Construction	\$1,044,214
02-25150 - Asphalt Paving	\$363,625
02-29000 - Landscaping	\$75,150
02-31500 - Excavation	\$62,773
02-37000 - Erosion and Sedimentation Control	\$35,000
02-77000 - Curb and Gutters	\$71,550
01-10400 - Staging Area	\$2,000
02-20505 - Street Demolition	\$18,375
02-23100 - Clear and Grub	\$46,420
10-10460 - Traffic Signage	\$2,500
Outdoor 16-20050 - Street Lighting	\$406,000
Infrastructure Design & Project Management	\$200,000
TOTAL	\$4,131,000,578,117

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Supplemental Material

POCATELLO DEVELOPMENT AUTHORITY

MEETING MINUTES

September 18, 2019

Members present: Mayor Brian Blad, Chad Carr, Jim Johnston, Rob Lion, Scott Smith, Terrel Tovey, and Scott Turner

Members excused/absent: Thomas Ottaway

Others present: Melanie Gygli, Interim Executive Director; Ashley Linton-Welsh, Pocatello Deputy CFO; Jared Johnson, Pocatello City Attorney; Merrill Quayle, Pocatello Public Works Development Engineer; Jeff Mansfield, Pocatello Public Works/City Engineer; Carl Anderson, Pocatello Senior Planner; John Regetz, Bannock Development Corporation; Tiffany Olsen, Bannock County; Matt Parks, Stacey & Parks (by phone from approximately 12:25 p.m. to 12:40 p.m.); Darren Miller and L. D. Barthlome, Portneuf Capital; Sterling Davie, Hunter Rodriguez, Steve Wright, Off The Rails Brewery; Dane Simmons, Simmons Surgical; Heidi Adamson, Pocatello City Council; Ken Brown, Matt Lowell, Allea Newbold, Frigitek

Agenda Item No. 1: Call to Order and Disclosure of Conflicts of Interest. Chairman Scott Smith called the meeting to order to 11:04 a.m. No conflicts were disclosed.

Agenda Item No. 2: Approval of the Agenda. Upon MSC (B. Blad, R. Lion) the agenda was approved.

Agenda Item No. 3: Minutes. The minutes of the Regular Meeting of August 21, 2019 were considered. It was then MSC (B. Blad, T. Tovey) to approve the minutes as presented.

Agenda Item No. 4: Financial Report. A. Linton-Welsh presented the financial report for the month of August 2019. At the end of the reporting period, the Authority had cash on hand of \$2,755,051.16. The checking account balance was \$2,755,026.16 and the savings account was \$25.00. The Authority recognized financial activity as follows: revenue totaled \$178,599.51, of which \$2,227.28 was interest earnings on cash invested and property tax interest, and miscellaneous reimbursement, \$750.00 in rental income from the Positron facility, and \$160,781.00 was the administrative transfer to the general fund. Property tax revenues totaled \$14,833.56 from the North Yellowstone District and \$7.67 from the North Portneuf District. Expenses totaled \$1,632,555.21, including administrative and professional service expenses of \$6,416.46. Economic development loans of \$10,350.00 were issued, the \$160,781.00 administrative transfer to the general fund, and \$1,455,007.75 surplus from the North Yellowstone district was paid to Bannock County. Linton-Welsh explained any additional revenue from the North Yellowstone district will be returned to the County.

Following discussion, it was then MSC (T. Tovey, J. Johnston) to approve the August 2019 financial report as presented.

Agenda Item No. 5: Engagement of Auditor. With fiscal year 2019 almost complete, Deaton & Company has submitted their proposal to complete the yearend audit. This is the same company that has performed the audit for many years and that does the audit for the City, as well. The anticipated cost is \$4,150.00. Following discussion, it was MSC (B. Blad, T. Tovey) to engage Deaton & Company to complete the FY2019 audit.

Agenda Item No. 6: Payment Requests/Reimbursements. The following invoices were reviewed for payment:

- a. \$238.31 from General Fund to Melanie Gygli for reimbursement of lunch items, BDC symposium registration, presentation check

Agenda Item No. 8: Airport TIF District. Gygli briefly introduced the discussion. John Regetz introduced Ken Brown, Allea Newbold, and Matt Lowell, representing the Frigitek project proposed within the Airport District. Ken Brown presented an overview of the proposed cold storage project. He stated Pocatello is in an ideal place for such development, with two interstates, and this is an excellent economic development opportunity for the community. In response to questions from Board members, he explained the perishables that could be stored in this kind of facility include fruits and vegetables, meat, pharmaceuticals, and flowers. The project will be on airport property.

Allea Newbold explained they are working with national and international companies on the financing side of the project, while Brown is working on leasing the proposed building. The total investment is anticipated to be \$54 million, with over \$4 million in infrastructure that will benefit the entire business park. The request is for an estimated project total of \$4,131,000, beginning with \$500,000 from existing revenues and 90 percent of each year's revenue, until the project is complete.

In response to questions from Board members, Brown explained they are talking with the Savage group that is working on a proposed transload project that would be near the Frigitek development, and would be a good development providing access to export markets. Frigitek will build the rail spur from UPRR's line. Newbold stated they need flexibility on what the first funding will be used for (whether design or build), because exact steps are not yet determined. It is important that there is no delay in financing plans and the PDA's participation is one of the first steps.

Discussion among Board members about the need to update the feasibility study within the Airport Urban Renewal Area plan to know that sufficient funding is available, as part of this Board's due diligence; making sure that the entire project is within the TIF boundaries; concerns about restricting the ability to help other businesses that might locate within the district; need for assurance that Frigitek is working with Savage to avoid duplication; increased increment funds would start flowing in 2020 or 2021, depending on when the project is completed. A very rough estimate of the increment is \$1 million annually.

Brown and Newbold explained the State is interested in this project and may have some assistance available on infrastructure, but they cannot apply for assistance through State until the PDA makes a commitment. The request is for reimbursement of expenses, so all risk is assumed by the developer. They are negotiating a lease with the City for the land and working on leases for tenants of the building. Brown stated his concern that any reticence on the part of the Board could cause difficulty in the public domain.

Board members expressed support for the project, but with the need to complete due diligence in the form of an updated feasibility study. Following lengthy discussion, it was **MSC (B. Blad, J. Johnston)** to approve payment of \$500,000.00 from existing district funds, upon presentation of invoices and inspection of completed work, and submission of a letter of support for the total request currently estimated at \$4,131,000.00, subject to due diligence and sufficient increment being generated. It was further **MSC (B. Blad, T. Tovey)** to complete an updated feasibility study for the Airport URA with the inclusion of this proposed project, authorizing the Chairman and Secretary to hire the necessary consultants.

Agenda Item No. 9: North Portneuf TIF District. Matt Parks joined the meeting by phone. Smith provided a brief update and stated no executive session will be needed. Parks explained the termination letter was sent to Solargise. Portneuf Capital paid the 2015 tax bill, and recorded bills from sale on the improvements from VA Metals to Celtic Life, and then from Celtic life to Portneuf Capital, so at this point there are three entities (VA Metals, Celtic Life, and Solargise) who may have ownership claims. He has confirmed with VA Metals and Portneuf Capital that the site is being maintained and that the PDA is not conducting any oversight of the

POCATELLO DEVELOPMENT AUTHORITY
MEETING MINUTES
November 20, 2019

Members present: Chad Carr, Jim Johnston, Rob Lion, Terrel Tovey, Scott Turner, and David Villarreal

Members excused/absent: Brian Blad, Thomas Ottaway, Scott Smith

Others present: Melanie Gygli, Interim Executive Director; Ashley Linton-Welsh, Treasurer; Jared Johnson, Pocatello City Attorney; Merrill Quayle, Pocatello Public Works Development Engineer; Jeff Mansfield, Pocatello Public Works/City Engineer; Carl Anderson, Pocatello Senior Planner; John Regetz, Bannock Development Corporation; Matt Parks, Stacey & Parks (by phone from approximately 11:25 a.m. to 12:10 p.m.); Heidi Adamson, Pocatello City Council; Tiffany Olsen, Bannock County; L. D. Bartholome and Darren Miller, Portneuf Capital; Denis Clijsters; Ken Brown, Elden Charles, Allea Newbold, Frigitek (by phone from approximately 12:10 p.m. to 12:15 p.m.); other members of the public

Agenda Item No. 1: Call to Order and Disclosure of Conflicts of Interest. Vice Chair Chad Carr called the meeting to order to 11:06 a.m. No conflicts were disclosed at this time.

Agenda Item No. 2: Approval of the Agenda. Upon MSC (J. Johnston, T. Tovey) the agenda was approved.

Agenda Item No. 3: Minutes. The minutes of the Regular Meeting of October 16, 2019 were considered. It was then MSC (J. Johnston, T. Tovey) to approve the minutes as presented.

Agenda Item No. 4: Financial Report. Linton-Welsh presented the financial report for the month of October 2019. At the end of the reporting period, the Authority had cash on hand of \$2,705,356.02, with checking account balance of \$2,705,331.02 and savings account was \$25.00. The Authority recognized financial activity as follows: revenue totaled \$1,789.81, of which \$1,039.81 was interest earnings on cash invested and \$750.00 was rental income from the Positron facility. Expenses totaled \$70,800.88, including administrative and professional service expenses of \$13,935.76. Economic development loans of \$18,727.12 and grants of \$38,138.00 were issued. Gygli noted the Positron sale closed, and net to the PDA of a little over \$124,000.00 will show in next month's report.

Following discussion and review of outstanding commitments from the general fund, it was then MSC (J. Johnston, R. Lion) to approve the October 2019 financial report as presented.

Agenda Item No. 5: Payment Requests/Reimbursements. The following invoices were reviewed for payment:

- a. \$43.00 from North Portneuf District Fund to Elam & Burke for legal fees re: North Portneuf TIF District.
- b. \$1,447.50 from General Fund to Elam & Burke for legal fees re: Special Counsel General
- c. \$760.00 from North Portneuf District Fund to Stacey & Parks for legal services re: North Portneuf TIF District.

Gygli reviewed the payment requests, stating the invoices accurately reflect work performed or goods and services provided, and are appropriate for payment. It was then MSC (J. Johnston, R. Lion) to approve the payment requests.

Agenda Item No. 6: Administrative Fee Transfer. Linton-Welsh presented information on the annual administrative transfer from active districts to the general fund. For FY2019, the transfer for the North Yellowstone district was completed. No transfer will be made from the Airport District, as that was not within the FY2019 budget. A transfer of \$26,865.70 from the Naval Ordnance district and \$8,378.41 from the North Portneuf district represents the budgeted 10 percent. Following discussion, it was MSC (J. Johnston, R. Lion) to authorize the transfer as proposed.

Agenda Item No. 7: Disbursements under Previously approved Grants & Loans.

Simmons Surgical: Gygli reviewed the request, explaining that this completes the total request for the loan and all but a small amount of the grant, though Simmons has indicated he will not be requesting those last funds. Work completed has been permitted and inspected, as required. She explained the Historic Preservation Commission approved a Certificate of Appropriateness for the window change, but with the condition that the aluminum be painted or wrapped

to match the wood trim. Simmons appealed that condition to the City Council, which granted the appeal. Payment was then made for the amount of the windows. Following brief discussion, it was **MSC (S. Turner, J. Johnston)** to approve disbursement as requested.

Agenda Item No. 8: Amendment to Yellowstone Loan. Gygli described the request by Denis Clijsters to be relieved of responsibility for repayment of the \$26,000.00 loan outstanding to The Yellowstone partners. This loan was originally to The Bridge, to help with costs of moving from its location on 1st Avenue. The loan was then assumed by The Yellowstone partners. Clijsters has provided the Settlement Agreement and Mutual Release of Claims among those partners, releasing him from any participation or responsibility, and it is his request that his name be removed from the documents related to the PDA's loan to The Yellowstone.

Board members discussed the specific situation, noting that it is not usual banking practice to relieve a party to a loan. Following discussion and consideration, it was **MSC (R. Lion, D. Villarreal)** to grant Clijsters' request, and to have the appropriate documents drawn for the remaining partners' signatures.

Agenda Item No. 9: North Portneuf TIF District. Carr provided a brief update of the process to date, explaining that only one response to the RFP was received, from Portneuf Capital. Barthlome went over their proposal, including creation of a business park. They are getting bids for cleanup of the property and already have parties interested in rental space. They are working with Great Western Malting on a potential expansion. They hope to do some preliminary work before spring. In response to questions, he explained that remaining legal issues with previously-interested parties can be resolved after closing; they are working with Idaho Power on the easement issues; taxes and fees will be paid in full at closing; they plan a utility easement for items such as fiber; they have the necessary funds for closing. Further, Great Western feels it will be possible to negotiate an at-grade railroad crossing at Philbin as a private, gated, access.

Parks reviewed the draft disposition agreement and resolution. He explained the PDA can dispose of this property if the proposed price is at least fair reuse value. Though that amount was not determined at the time of appraisal, the Board can consider the appraised fair market value of \$1.25 million to be at or, likely in this case, above fair reuse value. Items to consider in making that determination are the conditions that the development is subject to within an urban renewal area, the high cost of redevelopment, and the significant amount of back taxes and fees that are owed. At the time of appraisal, the land value, if vacant, was set at \$1.04 million, and the cost of removal of the existing structures could be as much as \$1 million. The offer of \$1.25 million exceeds the land-only value.

Following lengthy discussion regarding the value of the property, the difficulty of its redevelopment, the merits of Portneuf Capital's proposal, and the benefit to the community of having the property redeveloped and back on the tax roles, it was **MSC (J. Johnston, T. Tovey)** to: 1) accept the proposal made by Portneuf Capital; 2) acknowledge that the purchase price of \$1.25 million is greater than the fair reuse value of the property, given the significant cost of the redevelopment proposal, which includes a large sum to clear back taxes and associated fees; and 3) adopt Resolution 2019-6 authorizing signature on all appropriate documents to complete the property disposition.

Parks stated escrow remains open at First American Title, so as soon as the disposition agreement is complete and the resolution has been signed, closing can move forward.

Agenda Item No. 10: Airport TIF District. Gygli presented the updated feasibility study. Using information from the applicants on the estimated taxable value of the project, as well as updated tax levy rates, it appears that sufficient increment will be generated to cover the cost of the improvements within the URA plan proposed to be completed for the Frigitek project. **Charles** and **Newbold** stated the estimated value they provided is a conservative figure for the building itself, with equipment largely owned by tenants. **Regetz** stated initial design work is underway now, with construction possible spring of 2020. Board members reviewed the feasibility study and draft Owner Participation Agreement (OPA), noting the great potential this project, together with the potential transload project, has for the area.

It was then **MSC (J. Johnston, S. Turner)** to accept the updated feasibility study, and authorize the appropriate signatures on the OPA, subject to any necessary legal review.

Tovey expressed his desire to have a press release issued outlining the PDA's support of this business as an appropriate use of TIF funds. He feels this is very important in light of the anticipated action by the Idaho legislature on a variety of tax issues, including urban renewal areas and tax increment financing. Discussion among those present, including Frigitek representatives on the phone, regarding upcoming action on a request by Frigitek to the Idaho Department of Commerce, and the need to consider the timing of any press release.

Board members discussed the need to educate the public about urban renewal and the use of tax increment financing funds.

Agenda Item No. 11: Potential TIF District. In Tanner Hernandez's absence, **Gygli** briefly described the proposal to create district along South 5th, near the I-15 interchange. Further discussion was postponed until the December meeting with Hernandez present.

Agenda Item No. 12: Calendar Review.

--Educational Information: Board members discussed the need to educate the public about TIF districts and their use in economic development and urban renewal. **Lion and Villarreal** agreed to work on this topic.

--Northgate Interchange: The ribbon cutting and opening of the new interchange will be 12/6/19 at 11 a.m.

Adjournment: There being no further business, the meeting adjourned at approximately 12:21 p.m.

By: 
Melanie Gygli, Interim Executive Director/Secretary

POCATELLO DEVELOPMENT AUTHORITY
Board of Commissioners Meeting
November 20, 2019 – 11:00 a.m.
Paradise Conference Room – Pocatello City Hall

City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three days' advance notice by contacting Skyler Beebe at sbeebe@pocatello.us, 208.234.6248, or 5815 South 5th Avenue, Pocatello, Idaho.

In the event this meeting is still in progress at 12:00 p.m., a ten-minute recess may be called.

- 1. CALL TO ORDER, DISCLOSURE OF CONFLICT OF INTEREST, AND ACKNOWLEDGMENT OF GUESTS.**
- 2. ACTION ITEM – Approval of the Agenda.**
- 3. ACTION ITEM – Minutes.** The Board may wish to waive the oral reading of the minutes and approve the minutes from the Board of Commissioners Regular Meeting held October 16, 2019. *See attached document.*
- 4. ACTION ITEM – Financial Report.** A financial report for the PDA will be provided by PDA Treasurer. The Board may wish to approve the financial report. *See attached documents.*
- 5. ACTION ITEM – Expense Payments & Reimbursements.** The Board may wish to approve the payment or reimbursement of the following PDA expenses:
 - a. \$43.00 from North Portneuf District Fund to Elam & Burke for legal fees re: North Portneuf TIF District.
 - b. \$1,447.50 from General Fund to Elam & Burke for legal fees re: Special Counsel General
 - c. \$760.00 from North Portneuf District Fund to Stacey & Parks for legal services re: North Portneuf TIF District.
- 6. ACTION ITEM – Administrative Fee Transfer.** The Board may wish to authorize transfer of administrative fees from existing, active urban renewal areas. *See attached document.*
- 7. ACTION ITEM – Disbursements under Previously Approved Grants & Loans.** The Board may wish to approve the following requested disbursements of funds under grants and loans previously approved by the Board. *See attached documents.*
 - a. Simmons Surgical LLC is requesting disbursements of \$4,500.00 under the loan approved by the Board on 1/16/19 and \$4,003.00 under the grant approved by the Board on 12/19/18.
- 8. ACTION ITEM – Amendment to Yellowstone Loan.** The Board may wish to consider a request by Denis Clijsters to remove his name and responsibility for the loan made to The Yellowstone, based on agreement with the other partners. *See attached documents.*
- 9. ACTION ITEM – North Portneuf TIF District.** The Board may wish to review responses to the Request for Proposals, make an award to the chosen developer, and authorize the Board officers to sign the necessary documents to further the disposition and closing process. *See attached document; supplemental documents may also be available.*
- 10. ACTION ITEM – Airport TIF District.** The Board may wish to: 1) review and approve the updated feasibility study; 2) define and approve the terms of and authorize the Chair's signature on an owner participation agreement with Frigitek. *See attached documents.*
- 11. ACTION ITEM – Potential TIF District.** Tanner Hernandez will present a proposal for a potential urban renewal area/revenue allocation district in the South 5th area. *See attached documents.*
- 12. CALENDAR REVIEW –** The Board may wish to take this opportunity to inform other Board members of upcoming meetings and events that should be called to their attention.
- 13. ADJOURN.**

POCATELLO DEVELOPMENT AUTHORITY (PDA)
Preliminary Application for use of Tax Increment Financing

Application:

Name: Elden Charles

Date: 8/29/2019

Mailing Address: 6565 North MacArthur Blvd. Suite 225 Irving, TX 75039

Work Phone: 469.325.1616

E-Mail: ec@frigitek.com

Project Description: Frigitek Industrial Parks proposes to build two hi-tech, temperature-controlled warehouse facilities (200,000 SF and 280,000 SF) at the Pocatello Regional Airport. Frigitek facilities are capable of blast freezing, dry storage, refrigeration, or freezing, as well as pre-cooling, processing, and packaging depending on the tenants needs. The first phase of the project would include a \$53M investment and approximately 40 jobs at an average wage of about \$40,000. The project requires an estimated \$4M in public infrastructure including rail, sewer, water, stormwater, earthwork, aggregates and asphalt, traffic signals and street lighting.

Project Location: Pocatello Regional Airport

Is this project currently in an urban renewal area? **Yes (Pocatello Regional Airport)**

Is the project currently in a revenue allocation area? **Yes (Pocatello Regional Airport)**

Current Assessed Value of Project Location: **No ground is owned by the City. \$0**

Estimated Construction Value of Project: **\$50,000,000**

Number of jobs created by this project: **40** Wage range of jobs: **\$33,280 - \$80,000**

Employee Benefits? **Yes** If yes, please describe: **The company expects to contribute 50% toward health and dental. Life insurance and profit sharing would be available for executives.**

Time frame for job creation: **Year 1: 10 jobs Year 2: 10 jobs Year 3: 20 jobs**

Construction start date for project: **03/2020** Anticipated completion date: **03/2021**

Briefly describe other public benefit(s) associated with this project: **With the 40 good paying jobs and significant investment Frigitek brings, they will be able to help fill the demand for cold storage in an under-served market. Cold storage is in high demand in the Pocatello region and this facility will allow local tenants to take advantage of a quality, temperature-controlled warehouse with food safety and energy management features located conveniently at the airport. This quick and easy access to air transport is a huge benefit to the local food processing industry.**

Does this project compete with other, already established businesses? How? **With no other cold storage facilities in the immediate Pocatello region, the project would fill an unmet gap and provide an opportunity for local industry to take advantage of such a facility as well as attract additional industry to the Pocatello region.**

Is this project currently subject to a competitive bid process? Please explain: **The project will not be subject to a competitive bid process due to an existing relationship with a design-build firm that has experience with cold storage facilities. The general contractor will have subcontracts that will need to be awarded for which local subs will have an opportunity to competitively bid.**

Are there other applicants that may be interesting in applying for PDA assistance for this same project?
Please explain: **No**

Relationship of named applicant to the project: **Executive Vice President of Frigitek Industrial Parks**

Type of Assistance Requested

(check all that apply):

- Public Infrastructure (water, sewer, street, etc.).
- Public Facility (building, park, parking lot, etc.).
- Match for other funding.
- Inspections, tests, surveys, appraisals, etc.
- Property Acquisition.
- Structure Demolition and Clearance.
- Other? Please Specify _____

Amount of Assistance Requested: \$4,131,000

Form of Assistance Requested:

- Grant of Funds.
- Loan of Funds.
- Reimbursement for Approved Expenditures.
- Pay-As-You Go.
- Bonding.
- Other? Please specify _____

Other helpful information? **Please see attached support including detailed infrastructure cost estimates, property tax schedule and TIF reimbursement schedule.**

Return completed application to:

PDA Executive Director
City of Pocatello
P O Box 4169
Pocatello ID 83205

Pocatello Development Authority TIF Application Other Helpful Info

Public Infrastructure Requirements	
Spend Category	Estimated Costs
Railroad Track	\$ 1,326,000
Sewer	\$ 1,478,000
Aggregates and Asphalt	\$ 476,000
Water	\$ 343,000
Electrical	\$ 100,000
Stormwater	\$ 112,000
Earthwork	\$ 34,000
Concrete	\$ 22,000
Outdoor lighting	\$ 40,000
Infrastructure Design and Project Management	\$ 200,000
Total Estimated Costs:	\$ 4,131,000

Pocatello, Idaho TIF Reimbursement Request Schedule

	Year 1-2020	Year 2-2021	Year 3-2022	Year 4-2023	Year 5-2024	Total
Real Property Investment		\$ 50,000,000.00	\$ 50,000,000.00	\$ 50,000,000.00	\$ 50,000,000.00	
Assessment Ratio		100%	100%	100%	100%	
Code 16 Area Rate		2.519%	2.519%	2.519%	2.519%	
Property Tax Generated		\$ 1,259,352.55	\$ 1,259,352.55	\$ 1,259,352.55	\$ 1,259,352.55	\$ 5,037,410.20
TIF Reimbursement Request	\$ 500,000.00	\$ 1,133,417.30	\$ 1,133,417.30	\$ 1,133,417.30	\$ 230,748.12	\$ 4,131,000.00

*Year 1 request from existing funds

**Request \$500,000 in the first year once work is complete and 90% of incremental tax generated each year until paid off in year 5.

**POCATELLO REGIONAL AIRPORT
URBAN RENEWAL AREA PLAN
ECONOMIC FEASIBILITY STUDY**
(updated October, 2019)

With the proposal by Frigitek Industrial Parks to build two new high-tech, temperature-controlled warehouse facilities, the Pocatello Development Authority Board of Commissioners authorized completion of an updated feasibility study as part of their due diligence before entering into agreements to fund infrastructure development for the warehouse facilities.

Frigitek proposes to build two warehouse facilities within the Pocatello Regional Airport Urban Renewal and Revenue Allocation Area. The initial phase of the project anticipates an investment of \$50 million, with 40 jobs averaging \$40,000 annually. Infrastructure improvements include rail spur and track; water, sewer, stormwater, and electrical infrastructure; and related expenses for aggregates and asphalt, earthwork, concrete, outdoor lighting, and design and project management. Total anticipated cost for the infrastructure improvements is \$4,131,000.

The following tables were taken from the original feasibility study within the plan. They provide a breakdown of base-assessment valuations for the revenue allocation district. This analysis of the tax levy rates applied in calculating tax collection for taxing entities and the Pocatello Airport Revenue Allocation District was completed at the time of the plan's creation and is shown below. The 2009 tax levies for each of the taxing jurisdictions was supplied by the Power County Assessor's Office, as follows:

<u>Taxing Jurisdictions</u>	<u>Tax levy</u>
City of Pocatello	.009577781
Power County	.004321735
School District #381	.004300170
Power County Highway District	.002876996
A.F. Library	.000600302
County Hospital	.000951690
Ambulance	.000258694
East Po. Co. Fire	.000557434
Mosquito Abatement	.000368596
Total	.023813398

TABLE 3 – 2009 Levy Rates and Valuation

Taxing Entity	Tax Levy	Valuation	Revenue
City of Pocatello	.009577781	\$995,883	\$ 9,538
Power County	.004321735	\$995,883	\$ 4,304
School District #381	.004300170	\$995,883	\$ 4,282
Power County Highway District	.002876996	\$995,883	\$ 2,865
A.F. Library	.000600302	\$995,883	\$ 598
County Hospital	.000951690	\$995,883	\$ 948
Ambulance	.000258694	\$995,883	\$ 258

East Po. Co. Fire	.000557434	\$995,883	\$ 555
Mosquito Abatement	.000368596	\$995,883	\$ 367
Total	.023813398	---	\$23,715

Table 3 shows the amount of revenue anticipated in the original plan that the taxing jurisdictions would continue to be allocated calculated on the base year value of the revenue allocation district for the Pocatello Regional Airport Urban Renewal Plan.

In the years since creation of the plan, levies have changed. Certified levy amounts for 2018 are as follows:

<u>Taxing Jurisdictions</u>	<u>Tax levy</u>
City of Pocatello	.011426736
Power County	.004015827
School District #381	.003766811
Power County Highway District	.002683045
A.F. Library	.000402505
County Hospital	.000891659
Ambulance	.000200000
East Po. Co. Fire	.000502471
Mosquito Abatement	.000200000*
Total	.024089054

*The Mosquito Abatement levy was not in effect for tax year 2018, but will be included again in 2019, according to information from the Power County Commissioner's office. The 2019 levy amount has been included as though collected each year.

Table 4. provides an analysis of the total tax increment financing value anticipated within the Pocatello Regional Airport Revenue Allocation District with the addition of the proposed Frigitek development. The levy rate has been updated to the 2018 tax year. The base value is not included in these numbers, and the School District levy is subtracted from the total levy rate. Therefore, the entire revenue stream shown here would be allocated to the Authority. This analysis assumes completion of the project in 2020; if completed later or with a lesser value, revenues would be reduced or delayed.

Table 4 – Revenue Projection

Year	Estimated Increment Value	Levy Rate	Annual Revenue	Cumulative Annual Revenue*	Admin Expenses (10%)*	Available for Projects (90%)*
2019	\$5,301,487	.020322243	\$107,738		\$10,774	\$96,994
2020	\$5,301,487	.020322243	\$107,738	\$215,476	\$10,744	\$204,702
2021	\$55,301,487	.020322243	\$1,123,850	\$1,339,326	\$112,385	\$1,226,941
2022	\$55,301,487	.020322243	\$1,123,850	\$2,463,176	\$112,385	\$2,350,791
2023	\$55,301,487	.020322243	\$1,123,850	\$3,587,026	\$112,385	\$3,474,641
2024	\$55,301,487	.020322243	\$1,123,850	\$4,710,876	\$112,385	\$4,598,491
2025	\$55,301,487	.020322243	\$1,123,850	\$5,834,726	\$112,385	\$5,722,341

2026	\$55,301,487	.020322243	\$1,123,850	\$6,958,576	\$112,385	\$6,846,191
2027	\$55,301,487	.020322243	\$1,123,850	\$8,082,426	\$112,385	\$7,970,041
2028	\$55,301,487	.020322243	\$1,123,850	\$9,206,276	\$112,385	\$9,093,891
2029	\$55,301,487	.020322243	\$1,123,850	\$10,330,126	\$112,385	\$10,217,741
2030	\$55,301,487	.020322243	\$1,123,850	\$11,453,976	\$112,385	\$11,341,591
2031	\$55,301,487	.020322243	\$1,123,850	\$12,577,826	\$112,385	\$12,465,441
2032	\$55,301,487	.020322243	\$1,123,850	\$13,701,676	\$112,385	\$13,589,291
2033	\$55,301,487	.020322243	\$1,123,850	\$14,825,526	\$112,385	\$14,713,141
Total			\$14,825,526	\$14,825,526	\$1,482,493	\$14,713,141

*Does not include revenues currently on hand.

Estimated taxable value was provided by representatives of Frigitek and added to the existing increment amount supplied by the Power County Assessor. Costs of the required infrastructure improvements, as developed by Frigitek, are shown below in Table 5:

Table 5 – Estimated Frigitek Project Costs

Project	Estimated Cost
Railroad Track Infrastructure	\$1,326,000
Sewer Infrastructure	\$1,478,000
Aggregates and Asphalt	\$ 476,000
Water Infrastructure	\$ 343,000
Electrical Infrastructure	\$ 100,000
Stormwater Infrastructure	\$ 112,000
Earthwork	\$ 34,000
Concrete	\$ 22,000
Outdoor Lighting	\$ 40,000
Design & Project Management	\$ 200,000
Total	\$4,131,000

The total dollar amount that may be collected by the PDA through the remaining life of the district is approximately \$14,835,526. This amount can be used to finance the proposed Frigitek project, as well as other planned improvement projects within the Pocatello Regional Airport Urban Renewal Area Plan. If all projects are completed prior to scheduled closure, surplus funds may be returned to Power County for distribution to the various taxing districts.

OWNER PARTICIPATION AGREEMENT

By and Between

The Pocatello Urban Renewal Agency

and

FRIGITEK INDUSTRIAL PARKS, INC.

for the

POCATELLO REGIONAL AIRPORT PROJECT

OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT (hereinafter "Agreement") is entered into by and between the Pocatello Urban Renewal Agency, commonly known as the Pocatello Development Authority, an independent public body, corporate and politic (hereinafter "Agency"), organized pursuant to the Idaho Urban Renewal Law, Title 50, Chapter 20, Idaho Code, as amended (hereinafter the "Law"), and undertaking projects under the authority of the Local Economic Development Act, Title 50, Chapter 29, Idaho Code, as amended (hereinafter the "Act"), and Frigitek Industrial Parks, Inc., a Texas corporation authorized to do business in the State of Idaho (hereinafter "Participant"), collectively referred to as the "Parties" and each individually as "Party," on the terms and provisions set forth below.

RECITALS

WHEREAS, Agency, an independent public body, corporate and politic, is an urban renewal agency created by and existing under the authority of the Law and the Act;

WHEREAS, the Pocatello City Council adopted its Ordinance No. 2889 on November 4, 2010, approving the Urban Renewal Plan for the Pocatello Regional Airport Urban Renewal Area and Revenue Allocation Area District Plan (hereinafter the "Urban Renewal Plan");

WHEREAS, Participant controls by lease real property located within Pocatello Regional Airport non-aviation lands in Pocatello, Idaho (hereinafter referred to as the "Site" as defined below);

WHEREAS, Participant intends on constructing railroad track and spurs, water, sewer, stormwater, street, and electrical infrastructure, outdoor lighting, and excavation/site grading on the Site and adjacent public rights of way in conjunction with the development of new high-tech, temperature-controlled warehouse facilities on the Site (the "Project");

WHEREAS, the Urban Renewal Plan authorizes Agency to use revenue allocation financing to fund specific projects and improvements to implement the Urban Renewal Plan;

WHEREAS, Agency and Participant have negotiated the major terms of Agency's participation in the funding of certain improvements to the public infrastructure, and other eligible expenses (collectively the "Agency Funded Public Improvements");

WHEREAS, the Agency Funded Public Improvements implement several objectives outlined in the Urban Renewal Plan;

WHEREAS, the Urban Renewal Plan authorizes Agency to enter into agreements to implement the Urban Renewal Plan;

WHEREAS, as a result of Participant's agreement to construct the Agency Funded Public Improvements, Participant's commitment to comply with the terms of the Urban Renewal Plan, and Agency's commitment to reimburse Participant in compliance with the Urban Renewal Plan, the Parties deem it necessary to enter into this Owner Participation Agreement to define their respective obligations;

WHEREAS, Participant and the City of Pocatello entered into that certain lease (the "City Lease"), dated _____, setting forth certain obligations by the Participant concerning the Participant's project;

NOW, THEREFORE, in consideration of the above recitals, which are incorporated into this Agreement, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. EFFECTIVE DATE

The Effective Date of this Agreement shall be the date when this Agreement has been signed by the Parties (last date signed) and shall continue until all obligations of each Party are complete.

II. SUBJECT OF AGREEMENT

A. Recitals, Purpose of This Agreement, and Interest

The Parties agree that the foregoing recitals are not mere recitations but are covenants of the Parties, binding upon them as may be appropriate and a portion of the consideration for the agreements contained herein. The mutual consideration and covenants contained herein are intended to achieve the objectives and obligations of both Parties. The Agency's commitment herein is intended to comply with the Agency's authority under the Law, the Act, and the Urban Renewal Plan and is not a gift or donation of public funds.

The purpose of this Agreement is to effectuate the Urban Renewal Plan by providing for the construction of public improvements on or adjacent to the Site.

The construction of said public improvements on the Site and the fulfillment, generally, of this Agreement are in the vital and best interests of the City of Pocatello (the “City”) and the health, safety, and welfare of its residents and are in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements. Implementation of this Agreement will further the goals and objectives of the Urban Renewal Plan.

B. The Plan

This Agreement is subject to the provisions of the Urban Renewal Plan.

C. The Project Area

The Urban Renewal Project Area (“Project Area”) is located in the City, and the boundaries of the site are within the Project Area.

D. The Site

The Site is shown on the “Map of the Site,” attached to this Agreement as Attachment 1 which is incorporated herein by reference, and as more particularly described in the “Legal Description” of the Site, attached hereto as Attachment 2 which is incorporated herein by reference.

E. Agency Participation Policy

Generally, the Agency will agree to financially participate with a private developer when such participation achieves the objectives of the Urban Renewal Plan, is not duplicative of other public entity funding, and does not replace or substitute for the obligations imposed by other governmental agencies on the Participant. The specific participation by the Agency for this Site is as set forth herein.

F. Parties to This Agreement

1. Agency

The Agency is an independent public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Law and the Act. The office of the Agency is located at City of Pocatello, 911 North 7th Avenue, Pocatello, Idaho 83201. “Agency,” as used in this Agreement, includes the Urban Renewal Agency and any assignee of or successor to its rights, powers, and responsibilities.

2. Participant

The Participant is Frigitek Industrial Parks, Inc., a Texas corporation. The principal address of the Participant is 6565 North MacArthur Blvd. Suite 225, Irving, Texas 75039.

Whenever the term "Participant" is used herein, such term shall include any assignee or successor in interest approved or consented to by the Agency, which consent should not be unreasonably withheld. The Participant qualifies as an "owner participant" as that term is used in the Urban Renewal Plan.

G. The Private Development

The Private Development shall mean the development undertaken by Participant or the approved successors or assigns upon the Site. The Private Development consists of the construction of new high-tech, temperature-controlled warehouse facilities. The Private Development and any further development upon the Site or any portion of the Site shall comply with all the provisions of the Urban Renewal Plan and all applicable City codes and ordinances.

III. IMPROVEMENT OF THE SITE AND AGENCY'S PARTICIPATION

A. Development Design

Participant agrees that the Private Development will be in full compliance with the Urban Renewal Plan and the approved building permit and City Lease.

B. Cost of Construction

The cost of the Private Development and the Agency Funded Improvements, defined below, shall be borne by the Participant except as otherwise set forth herein.

C. Agency, City, and Other Governmental Agency Permits

Participant has or shall, at Participant's own expense, secure or cause to be secured any and all permits or approvals which may be required by Agency, City, or any other governmental agency relative to Project construction and operation.

D. Agency Funded Public Improvements

The Agency Funded Public Improvements are directly related to public infrastructure and excavation/site grading and are: (a) critical to the redevelopment of the Site and (b) provide a higher quality of development that should assist

Agency in achieving redevelopment of other properties adjacent to the Site and meeting the objectives of the Urban Renewal Plan. Because of the Private Development, which achieves several of the objectives contained within the Urban Renewal Plan, Agency finds that a portion of the public improvements may be reimbursed by the Agency. Agency finds that the Agency Funded Public Improvements are in the best public interest and provide for enhanced development of the Site within the Project Area.

In consideration of the terms of this Agreement and subject to certain conditions as contained in this Agreement, Agency agrees to pay the costs of certain approved Agency Funded Public Improvements, inclusive of design and engineering costs, as verified by the Agency. Approved Agency Funded Public Improvements shall include those improvements listed on Attachment 3.

E. Agency Review of Construction Documents

Upon Agency's request, Agency shall have the right and the opportunity to review Participant's construction plans, budgets, and bids for the Agency Funded Public Improvements (collectively the "Agency Funded Public Improvement Construction Documents"). Participant will utilize commercially reasonable contracting, budgeting, and bidding practices to ensure that the Agency Funded Public Improvements are constructed consistent with the Agency Funded Public Improvement Construction Documents and are undertaken in a reasonable manner. For purposes of this Section and Section F, below, Participant shall be presumed to have utilized commercially reasonable contracting, budgeting and bidding practices if its general contractor solicits or solicited competitive bids for the Agency Funded Public Improvements and such work is not performed by an affiliate or subsidiary of Participant.

F. Reimbursement Obligation

1. Amount of Reimbursement

In consideration of Participant's construction of the Agency Funded Public Improvements, Agency, subject to the terms of this Agreement, agrees to reimburse Participant an amount equal to the Actual Eligible Costs, as defined below, of the Agency Funded Public Improvements, not to exceed Four Million, One Hundred Thirty-one Thousand and 00/100 dollars (\$4,131,000.00), with no interest accruing on the Reimbursement Obligation (defined below).

2. Notification, Inspection, Approval

Upon completion of construction of any category of the Agency Funded Public Improvements associated with the Project and on not less than a quarterly

basis during construction, Participant shall notify Agency in writing to request a meeting with the Agency to determine if the completed Agency Funded Public Improvements meet the requirements of this Agreement. Agency shall provide Participant with written confirmation that the completed Public Improvements are eligible for reimbursement as follows:

(a) With respect to each Notification of Completion, Participant is responsible for submitting invoices or receipts for work performed as part of the Project (the "Cost Documentation") which will permit Agency to determine the Actual Eligible Costs, which shall be the actual costs to construct the Agency Funded Public Improvements, including costs incurred prior to the Effective Date of this Agreement, as approved by the Agency. Cost Documentation shall include the following:

- i. An accounting of the costs associated with the completed Agency Funded Public Improvements and evidence of payment of such costs by Participant. Participant shall include invoices from Participant's design professionals, general contractor, subcontractor(s), and material suppliers for each type of eligible cost item, which shall specify quantities and unit costs of installed materials.
- ii. Explanation of any significant deviation between the initial cost estimates in Attachment 3 and the actual costs in the Cost Documentation.

(b) The Agency shall have the right to review the Cost Documentation, to inspect the completed Agency Funded Public Improvements, and to obtain independent verification that the quantities of work claimed and the costs associated therewith are accurate, commercially reasonable, and appropriate for the Agency Funded Public Improvements completed. The Agency's approval shall not be unreasonably delayed or withheld.

(c) Within thirty (30) days of Agency's receipt of the Cost Documentation, the Agency shall notify Participant in writing of Agency's acceptance of the Cost Documentation and Agency's determination of the Actual Eligible Costs. Agency shall notify Participant of any disputes with the Cost Documentation and provide Participant a reasonable time to explain any discrepancy. If the Agency and the Participant cannot agree on any disputed costs, the Parties agree to submit the dispute to the Agency Board of Commissioners for final determination.

3. Allocation of Costs

Agency and Participant agree Participant shall be able to allocate expenses among the various items listed on Attachment 3 so long as the total amount of those items shall not exceed Four Million One Hundred Thirty-one Thousand and 00/100 Dollars (\$4,131,000.00). Participant shall notify Agency of the allocation of costs among the items listed on Attachment 3.

4. Reimbursement

Participant shall initially pay for all of the costs of construction for the Agency Funded Public Improvements associated with the Project. By approval of this Agreement by Agency's Board of Commissioners, Agency has authorized reimbursement for the Actual Eligible Costs of the Agency Funded Public Improvements (the "Reimbursement Obligation") as set forth in Section F, Section G and the other provisions of this Agreement.

G. Reimbursement Procedure

1. Agency's Reimbursement Obligation shall not commence until the first Certificate of Occupancy, or the equivalent thereof, is issued for the Private Development, or upon the City's acceptance of the improvements required to be constructed as described in the lease and approved building permit.

2. In conjunction with its receipt of revenue allocation proceeds on a biannual basis, the Agency will retain ten percent (10%) of the revenue allocation proceeds per year for Project Area operating and administrative expenses and agrees to make payment to Participant of the remaining tax increment revenue allocation proceeds actually received and arising from the Project Area commencing from the first date the Agency receives tax increment monies arising from the Project Area subsequent to the satisfaction of the conditions set forth in Section G(1) and until such time as the Reimbursement Obligation has been paid in full or the termination of the revenue allocation authority under the Urban Renewal Plan, whichever occurs first. **PARTICIPANT ACKNOWLEDGES THE TAX REVENUE ALLOCATION PROCEEDS MAY NOT BE SUFFICIENT TO PAY OFF THE REIMBURSEMENT OBLIGATION ON OR BEFORE THE TERMINATION OF THE REVENUE ALLOCATION AUTHORITY UNDER THE URBAN RENEWAL PLAN AND ASSUMES THAT RISK.**

3. The biannual payments are due to Participant within sixty (60) days of receipt of revenue allocation proceeds from the Project Area by Agency.

4. Agency shall have no obligation to make payments to the Participant for taxes collected and paid to Agency beyond the term described herein.

5. Agency may pay, at any time, in whole or in part, without penalty, the then remaining outstanding balance of the Reimbursement Obligation.

6. All payment due hereunder shall be paid to the Participant, and future owners of units created on the Site as part of the Project shall have no claim or entitlement to such payments as a result of such ownership.

7. Non-general Obligation

As provided by Idaho Code Section 50-2910, the obligations of Agency hereunder shall not constitute a general obligation or debt of the Agency, the State of Idaho, or any of its political subdivisions, or give rise to a charge against their general credit or taxing powers to be payable out of any funds or properties other than the monies deposited in the special fund or funds provided for herein and pledged hereby to the payment of principal and interest on this Reimbursement Obligation.

H. Taxes

The Act provides that Agency will be paid tax increment funds contingent on the amount of assessed value as determined by the Power County Assessor each year and the rate of tax levy or the percentage of assessment levied by each of the taxing agencies. Agency is not a guarantor of the assessment determination made by Power County Assessor or guarantor of collection of taxes by the Power County Treasurer.

Participant shall pay, when due, all real estate and personal property taxes and assessments assessed and levied on Participant's ownership interest of the Site. This provision or covenant shall run with the land and be binding upon Participant's successors. Except as set forth herein, nothing herein contained shall be deemed to prohibit Participant from contesting the validity or amounts of any tax, assessment, encumbrance, or lien or to limit the remedies available to Participant with respect thereto; provided, such contest does not subject the Site or any portion thereof to forfeiture or sale.

The increment tax revenues on the Site by Participant (as determined from the assessment records of the Power County Assessor and the payment records of the Power County Treasurer) shall be paid to Participant if and only as they are paid to Agency by Power County, the entity which has the legal responsibility to collect property taxes.

Participant recognizes Agency has no authority or involvement in the assessment, tax, or collection process for ad valorem taxes, including real property

and personal property taxes. Participant also recognizes the ability of Agency to reimburse Participant for the Reimbursement Obligation is dependent on the ad valorem assessment and collection process. Therefore, in the event insufficient taxes are received by Agency because of reduction of the tax levy rate or assessed values less than assumed by Agency and Participant or in the event of any tax delinquency by any owner of parcels within the Project Area or by any tenant related to personal property, Participant must elect to either pay the delinquent taxes or in-lieu-of taxes reflecting higher assessments or levy rate on behalf of those taxpayers or receive less reimbursement from Agency to pay the Reimbursement Obligation.

Participant shall not apply for or otherwise request any exemption or reduction in property taxes on the Site pursuant to Idaho Code §§ 63-602NN, 63-4404, 63-602II, or Idaho Code §§ 63-606A or 63-602W, or similar exemptions, during the term of the Urban Renewal Plan.

I. Liens/Payment of General Contractor

Participant hereby certifies that as of the Effective Date no mechanic's or materialman's liens have been placed on the Site, as defined above, and that the general contractor and all subcontractors have been or will be paid in full for all work performed on the Private Development. In the event any materialman's liens are placed on the Site, Participant agrees Agency may suspend any payments required under this Agreement until any liens or claims related to the Project and made by any contractor, subcontractor, or material supplier that performed work on the Private Development have been satisfied.

J. Agency Contribution Assignable

Agency and Participant agree that Agency's obligations run only to Participant or its assignee and that Agency is under no obligation to grant any additional consideration or greater participation than set forth herein. Participant shall have the absolute right to assign its right to receive any payments to its lender, its successor, or other entity designated by Participant.

K. Indemnification

Participant shall indemnify and hold Agency and its respective officers, agents, and employees (collectively referred to in this Section K as "Agency") harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect and attorney fees (collectively referred to in this Section K as "Claim"), which may be imposed upon or incurred by or asserted against Agency and for which Agency may be legally liable under applicable law (excluding any liability or obligation Agency assumes by

contract) by reason of any of the following occurrences, provided Participant shall have no obligation to indemnify and hold Agency harmless from and against any Claim to the extent it arises from the negligence or willful act or omission of Agency or Agency's contractors and associated subcontractors:

1. Any work done in, on, or about the Site, including the Agency Funded Public Improvements, or work related to the Agency Funded Public Improvements; or
2. Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of the Site or any part thereof; or
3. Any negligent or intentional wrongful act or omission on the part of Participant or any of its agents, contractors, servants, employees, subtenants, operators, licensees, or invitees; or
4. Any accident, injury, or damage to any person or property occurring in, on, or about the Site or any part thereof, during construction; or
5. Any failure on the part of Participant to perform or comply with any of the terms, provisions, covenants, and conditions contained in this Agreement to be performed or complied with on its part.
6. Funding, by Agency, of the Agency Funded Public Improvements.

In case any such Claim is brought against Agency, Participant, upon written notice from Agency, shall, at Participant's expense, resist or defend such Claim.

L. Insurance

Participant shall, or through its contractor constructing the Agency Funded Public Improvements, shall, at Participant's sole cost, obtain and maintain in force for the duration of the Agreement (including the warranty period) insurance of the following types, with limits not less than those set forth below, and in a form acceptable to Agency:

1. Commercial General Liability Insurance ("Occurrence Form") with a minimum combined single limit liability of \$1,000,000 each occurrence for bodily injury and property damage, with a minimum limit of liability of \$1,000,000 each person for personal and advertising injury liability. Such policy shall have a general aggregate limit of not less than \$2,000,000, which general aggregate limit will be provided on a per project basis. The policy shall be endorsed to name Agency, including its respective affiliates, and City as additional insureds.

2. Workers' Compensation Insurance, if Participant has employees, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory, or province having jurisdiction over Participant's employees, and Employer's Liability Insurance. If Participant has employees, Participant shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.

3. Automobile Liability Insurance covering use of all owned, non-owned, and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence. This policy shall be endorsed to name Agency, including its respective affiliates, directors, and employees, as additional insureds.

4. All insurance provided by Participant under this Agreement shall include a waiver of subrogation by the insurers in favor of Agency. Participant hereby releases Agency, including its respective affiliates, directors, and employees, for losses or claims for bodily injury or property damage covered by Participant's insurance or other insured claims arising out of Participant's performance under this Agreement or construction of the Project.

5. Certificates of insurance, reasonably satisfactory in form to Agency (ACORD form or equivalent), shall be supplied to Agency evidencing that the insurance required above is in force, and that notice will be given to Agency prior to any cancellation of the policies in accordance with the policies. Participant shall also provide, with its certificate of insurance, executed copies of the additional insured endorsements and dedicated limits endorsements required in this Agreement. At Agency's request, Participant shall provide a certified copy of each insurance policy required under this Agreement.

6. Except as otherwise stated above, the obligations set forth in this Section shall remain in effect only until the date City accepts the dedication of the Agency Funded Public Improvements.

7. All policies of insurance required by this Agreement shall be issued by insurance companies qualified to do business in the State of Idaho.

8. The foregoing insurance coverage shall be primary and noncontributing with respect to any other insurance or self-insurance that may be maintained by Agency. Participant's General and Automobile

Liability Insurance policies shall contain a Cross-Liability or Severability of Interest clause. The fact that Participant has obtained the insurance required in this Section shall in no manner lessen or affect Participant's other obligations or liabilities set forth in the Agreement.

M. Warranty

Participant warrants that the materials and workmanship employed in the construction of the Agency Funded Public Improvements shall be good quality and shall conform to generally accepted standards within the construction industry and agrees to repair any non-conforming improvements during the warranty period upon receipt of notice from Agency of such non-conforming improvements. Such warranty and repair obligation shall extend for a period of one (1) year after acceptance of the Agency Funded Public Improvements by the City or for the period described in the City Lease or approved building permit. Provided, nothing herein shall limit the time within which Agency may bring an action against Participant on account of Participant's failure to otherwise construct such improvements in accordance with this Agreement.

N. Maintenance

Participant recognizes Agency has no specific authority to accept maintenance responsibility of the Agency Funded Public Improvements. Participant anticipates that the City and or various public utilities may accept ownership and maintenance obligations of some or all of the Agency Funded Public Improvements; however, such acceptance is not a condition precedent to the obligations of the Parties hereto.

IV. USE AND MAINTENANCE OF THE SITE AND ADJACENT AREA

A. Use of the Site

Participant agrees and covenants to comply with all other provisions and conditions of the Urban Renewal Plan for the period of time the Urban Renewal Plan is in force and effect.

B. Effect and Duration of Covenants

Covenants contained in this Agreement shall remain in effect until sooner of December 31, 2033, or the date on which the Urban Renewal Plan terminates, whichever is sooner. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Participant and any successors and assigns to the Site, or any part thereof, for the benefit of and in favor of Agency, its successors and assigns.

C. Local, State and Federal Laws

Participant covenants that it will carry out the construction of the Agency Funded Public Improvements in conformity with all applicable laws, including all applicable federal and state labor standards and anti-discrimination laws.

V. DEFAULTS, DISPUTE RESOLUTION, REMEDIES, AND TERMINATION

A. Defaults in General

Neither Party shall be deemed to be in default of this Agreement except upon the expiration of forty-five (45) days from receipt of written notice from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement unless such Party, prior to expiration of said forty-five (45) day period, has rectified the particulars specified in said notice of default, provided that in the case where rectifying the matters specified in the notice of default requires more than forty-five (45) days, such notified Party shall not be in default so long as they commence prior to the expiration of the forty-five (45) days and diligently pursue actions needed to rectify such matters. In the event of a default, the nondefaulting Party may do the following:

1. The nondefaulting Party may terminate this Agreement upon written notice to the defaulting Party and recover from the defaulting Party all direct damages incurred by the nondefaulting Party.
2. The nondefaulting Party may seek specific performance of this Agreement and, in addition, recover all damages incurred by the nondefaulting Party. The Parties declare it to be their intent that this Agreement may be specifically enforced.
3. The nondefaulting Party may perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting Party or recover said monies from the defaulting Party.

4. The nondefaulting Party may pursue all other remedies available at law, it being the intent of the Parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting Party.

5. In the event Participant defaults under this Agreement, Agency (the nondefaulting Party) shall have the right to suspend or terminate its payment under this Agreement, as more specifically defined in this Agreement, for so long as the default continues and if not cured, Agency's obligation for payment shall be deemed extinguished. In addition, if Agency funds shall have been paid, Agency may seek reimbursement of any amounts paid to Participant up to the amount of damages incurred by Agency for Participant's default.

Any default by Participant under the approved building permit or City Lease shall be deemed a default under this Agreement.

B. Dispute Resolution

In the event that a dispute arises between Agency and Participant regarding the application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement of the dispute within ten (10) days after such dispute arises. If the Parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the Parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise, as the Parties may mutually agree before resorting to litigation. Should the Parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation or other process of structured negotiation, each Party shall have the right to pursue any rights or remedies it may have at law or in equity.

C. Legal Actions

In addition to any other rights or remedies, any Party may institute legal action to cure, correct, or remedy any default; to recover damages for any default; or to obtain any other remedy consistent with the purpose of this Agreement. The nondefaulting Party may also, at its option, cure the default and sue to collect reasonable attorney's fees and costs incurred by virtue of curing or correcting the Party's breach.

The laws of the State of Idaho shall govern the interpretation and enforcement of this Agreement.

D. Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other Party.

VI. GENERAL PROVISIONS

A. Notices, Demands, and Communications Between the Parties

Formal notices, demands, and communications between Agency and Participant shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of Agency and Participant as set forth in this Agreement. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail.

B. Conflicts of Interest

No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership, or association in which he/she is directly or indirectly interested.

Participant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

C. Non-liability of Agency Officials and Employees

No member, official, or employee of Agency shall be personally liable to Participant in the event of any default or breach by Agency or for any amount which may become due to Participant or on any obligations under the terms of this Agreement.

D. Successors and Assigns

This Agreement shall, except as otherwise provided herein, be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

E. Attorney Fees and Costs

In the event that either party to this Agreement shall enforce any of the provisions hereof in any action at law or in equity, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorney fees incurred therein by the prevailing party, and such may be included to the judgment entered in such action.

F. Severability

If any provisions of this Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

G. Headings

The section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

H. Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

I. Forced Delay; Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, acts of another party, environmental analysis or removal of hazardous or toxic substances, acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of Agency shall not excuse performance by Agency), or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the forced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by Agency and Participant.

J. Inspection of Books and Records

Agency has the right, upon not less than seventy-two (72) hours' notice, at all reasonable times to inspect the books and records of Participant pertaining to the Agency Funded Public Improvements.

K. Attachments and Exhibits Made a Part

All attachments and exhibits which are attached to this Owner Participation Agreement are made a part hereof by this reference.

VII. AMENDMENTS TO THIS AGREEMENT

Agency and Participant agree to mutually consider reasonable requests for amendments to this Agreement and any attachments hereto which may be made by any of the Parties hereto, lending institutions, bond counsel, financial consultants, or underwriters to Agency, provided said requests are consistent with this Agreement and would not alter the basic business purposes included herein or therein. Any such amendments shall be in writing and agreed to by the Parties.

VIII. ENTIRE AGREEMENT, WAIVERS, AND AMENDMENTS

This Agreement, including Attachments 1 through 3, inclusive, incorporated herein by reference, constitutes the entire understanding and agreement of the Parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter thereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency and Participant, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Participant.

[signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement the day and year below written to be effective the day and year above written.

**POCATELLO URBAN RENEWAL AGENCY,
THE POCATELLO DEVELOPMENT AUTHORITY**

By: _____

Scott Smith, Chair

Date: _____

ATTEST:

By: _____

_____,

Secretary

**PARTICIPANT
FRIGITEK INDUSTRIAL PARKS, INC.**

By: _____

Elden Charles, _____

Date: _____

ACKNOWLEDGMENTS

STATE OF IDAHO)
) ss.
County of Power)

On this _____ day of _____, 2019, before me,
_____, the undersigned notary public in and for said county
and state, personally appeared Scott Smith, known or identified to me to be the
Chair of the Pocatello Urban Renewal Agency, the public body corporate and politic,
that executed the within instrument, and known to me to be the person that
executed the within instrument on behalf of said Agency and acknowledged to me
that such Agency executed the same for the purposes herein contained.

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
Commission Expires _____

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 2019, before me, _____, the undersigned notary public in and for said county and state, personally appeared Elden Charles, known or identified to me to be the _____ of Frigitek Industrial Parks, Inc., and the person who signed the within instrument, and acknowledged to me that he has authority to execute and executed the foregoing instrument for the purposes therein contained on behalf of Frigitek Industrial Parks, Inc.

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 _____
Commission Expires _____

Attachment 1

Map of the Site

Attachment 2

Legal Description

Legal Description of Site

An area consisting of approximately 20 acres as more particularly described as follows:

Attachment 3

Agency Funded Public Improvements

Item	Estimated Cost
Railroad Track	\$1,326,000
Sewer	\$1,478,000
Aggregates and Asphalt	\$476,000
Water	\$343,000
Electrical	\$100,000
Stormwater	\$112,000
Earthwork	\$34,000
Concrete	\$22,000
Outdoor Lighting	\$40,000
Infrastructure Design & Project Management	\$200,000
TOTAL	\$4,131,000