



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 9, 2015

DATE: December 9, 2015

FROM: Judith M. Ure Administrative Services 541-330-4627

TITLE OF AGENDA ITEM:

Consideration of converting \$10,000 portion of a business loan made to Geo-Spatial Solutions, Inc. (currently doing business as FireWhat, Inc.) to a grant.

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:

The Deschutes County Business Development Forgivable Loan Program was initiated to encourage and assist companies seeking to relocate and/or create new jobs within Deschutes County. To receive a loan, companies must agree to create a specific number of jobs within a defined period, then maintain that level of employment for an additional set period of time. Geo-Spatial Solutions, Inc. (currently doing business as FireWhat, Inc.) received a business development loan in the amount of \$20,000 on July 22, 2011 with terms that included adding ten (10) full-time employees on or before July 22, 2013 and maintaining a level of fifteen (15) full-time employees through July 22, 2014. As certified by Economic Development for Central Oregon (EDCO), Geo-Spatial Solutions created and maintained five (5) new full-time jobs by the due dates and will repay a portion of the loan in the amount of \$10,000 that corresponds with principle and interest related to the five (5) full-time positions agreed to, but not created. In accordance with the Business Development Forgivable Loan Program, G.L. Solutions is eligible to have the remaining \$10,000 of the loan converted to a grant.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Authorize County Administrator to convert a \$10,000 portion of the business loan made to Geo-Spatial Solutions, Inc. to a grant and execute a repayment agreement for the remaining \$10,000.

ATTENDANCE: Judith Ure, Management Analyst

DISTRIBUTION OF DOCUMENTS:

N/A

DESCHUTES COUNTY
Business Development Forgivable Loan Program

Loan Recipient: Geo-Spatial Solutions, Inc. (currently doing business as FireWhat, Inc.)
PO Box 6005
Bend, OR 97708-6005
541-388-6570

Agreement No.: DC-2011-641

Date of Agreement: October 31, 2011

On behalf of Economic Development for Central Oregon, I hereby certify that Geo-Spatial Solutions, Inc. (currently doing business as FireWhat, Inc.) has complied with the conditions of the Deschutes County Business Development Forgivable Loan Program as specified in Agreement DC-2011-641 (attached).

I further attest that a representative of Economic Development for Central Oregon has reviewed employment, payroll, and accounting records furnished by Geo-Spatial Solutions, Inc. and that such records confirm that Geo-Spatial Solutions, Inc.:

- a) Employed a baseline of five (5) full-time employees on July 22, 2011, and
- b) Agreed to increase the number of full-time employees by ten (10) for a total of fifteen full-time employees on or before July 22, 2013, and
- b) Actually, increased the number of full-time employees by five (5) for a total of ten (10) full-time employees on or before July 22, 2013, and
- c) Maintained a total of ten (10) full-time employees over any 12-month period through July 22, 2014, and
- d) Will repay a portion of the Deschutes County business development forgivable loan in the amount of \$10,000 that corresponds with the principle and interest related to the five (5) full-time positions agreed to, but not created.

I therefore, request that the Deschutes County Board of Commissioners authorize that the remaining portion of the business development loan to Geo-Spatial Solutions, Inc. be converted to a grant in accordance with the terms of the attached agreement.

Economic Development for Central Oregon

By: Robyn R. Sharp

Title: Bend Area Manager - EDCO

Date: December 1, 2015



**DESCHUTES COUNTY
Business Development Forgivable Loan Fund**

AGREEMENT FOR GEO-SPATIAL SOLUTIONS, INC

This Development Agreement (“Agreement”) is entered into:

BETWEEN: Deschutes County (*hereinafter referred to as “County”*)
1300 NW Wall Street, Suite 200
Bend, OR 97701
Facsimile number: (541) 385-3202
Phone: (541) 388-6570

AND: Geo-Spatial Solutions Inc. (GSS) (*hereinafter referred to as “Company”*)
598 NW Hill Street
Bend, OR 97701
Phone: 541-330-0371

RECITALS

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

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

WHEREAS, the said expansion will create at least 10 new jobs by July 22, 2013, over and above the Company’s current employment of five employees as of July 22, 2011 and

WHEREAS, the County desires to promote the expansion of the Company’s facility by loaning funds to the Company for equipment purchase and personnel expenses and such loan will later be converted to a grant upon the condition that the Company satisfy certain requirements; and

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

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

SECTION 1 DEFINITIONS

- Section 1.1** Dollars and \$ shall mean lawful money of the United States of America.
- Section 1.2** Loan shall mean the funds loaned by County to Company as provided under Section 3.
- Section 1.3** Project shall mean expansion of Company employment in Bend, Oregon by hiring at least 10 new employees by July 22, 2013, over and above the Company's current employment of five employees as of July 22, 2011.
- Section 1.4** Full Time Employee shall mean any employee who has been hired with the expectation that the job will last for at least one (1) year and who will work at least forty (40) hours per week or the equivalent of 2,080 hours per year.

SECTION 2 TERM

This agreement shall be effective as of the date of execution by all parties and continue until the Loan is paid in full or the Loan is converted to a grant as provided in Section 3.2 below.

SECTION 3 LOAN

Section 3.1 Loan

The County agrees to loan the Company the sum of \$20,000 no later than 30 days following the signing of this agreement.

Section 3.2 Loan Purpose and Representations of the Company

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

3.2.1 Company will employ a minimum of 10 additional Full Time Employees and maintain this level over any 12 month period through July 22, 2014. Company baseline FTE employment as of July 22, 2011 is five. Total Company employment to be reached and maintained by July 22, 2013 is determined to be 15 Full Time Employees or the equivalent.

3.2.2 Company will submit quarterly progress reports to EDCO with documentation for job creation, capital investment relating to new facilities and equipment associated with the Project.

3.2.3 Company shall comply with all applicable federal, state, regional and local laws, regulations and ordinances.

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

Section 3.3 Loan Repayment or Conversion to Grant

3.3.1 Unless the Loan is converted to a grant as provided below, the Company agrees to pay to the order of the County the full amount of the Loan, plus interest at the rate of 8% per annum

starting with the date County releases funds to Company, upon the earlier of: (a) the occurrence of an Event of Default, as defined below, or (b) July 22, 2013.

3.3.2 The County agrees to convert the Loan to a grant that does not need to be repaid, if and when the County determines in its sole discretion that the Company has satisfied all of the obligations in Section 3.3 and its other obligations under this Agreement. Such conversion shall only be effective upon written verification by the County Administrator that the loan has been converted to a grant.

3.3.3 The County may in its sole discretion convert a portion of the Loan to a grant if all of the obligations under Section 3.3 and this Agreement have been satisfied to the reasonable satisfaction of the County, except the obligation under Section 3.2.1 to employ 10 Full Time Employees. In the event of such partial conversion of the Loan, the Loan shall continue to be payable in an amount determined by multiplying \$2,000 by the difference between 10 and the lesser of (a) number of Full Time Employees employed by the Company as of July 22, 2013, or the number of Full Time Employees employed by the Company as of July 22, 2014. For example, if the Company employs 15 Full Time Employees as of July 22, 2014 and 13 Full Time Employees on July 22, 2013, the amount of the Loan payable by the Company would be $\$2,000 \times (15 - 13) = \$4,000$.

SECTION 4 DEFAULT

Section 4.1 Events of Default

The following shall be Events of Default:

- 4.1.1** Company fails to complete, or the County reasonably determines that the Company will not be able complete, the obligations described in Section 3.3 and its other obligations under this Agreement; provided, however, that upon such failure or determination, the County shall first provide to the Company written notice of such failure or determination, and the Company shall have thirty (30) days to correct the matter. If the matter has not been corrected by the Company within such thirty (30) day period, to the reasonable satisfaction of the County, the County shall be entitled to declare the Company in default of its obligations under this Agreement and the Loan, plus accrued interest shall be payable in full.
- 4.1.2** Company effects a change of ownership, a change of control of its business, or relocates its business conducted in Redmond, Oregon on or before August 10, 2014 (the end of the contract) without prior written consent of the County.
- 4.1.3** The occurrence of any event that has or may reasonably be expected to have a material adverse effect on Company's financial condition or Company's ability to make any payment required by this Agreement.
- 4.1.4** Company fails to pay, becomes insolvent or unable to pay, or admits in writing an inability to pay Company's debts as they become due, or makes a general assignment for the benefit of creditors.
- 4.1.5** A proceeding with respect to Company is commenced under any applicable law for the benefit of creditors, including but not limited to any bankruptcy or insolvency law, or an order for the appointment of a receiver, liquidator, trustee, custodian, or other officer having similar powers over Company is entered.

SECTION 5 MISCELLANEOUS

Section 5.1 Right to Inspect

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

Section 5.2 Attorney's Fee Provision

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

Section 5.3 Indemnification

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

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

Section 5.4 Entire Agreement

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

Section 5.6 Titles and Subtitles

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

Section 5.7 Notice

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

Section 5.8 Time is of the Essence

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

Section 5.9 Applicable Law

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

Section 5.10 Disclosure

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

Section 5.11 No Waiver

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

Section 5.12 No Assignment by Company

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

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

Deschutes County

By: Erik Kropp
Erik Kropp, Interim County Administrator

Date: 10/31/11

GEO-SPATIAL SOLUTIONS, INC
By: Rusty Merritt
Rusty Merritt, CEO

Date: 10/20/11