



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](http://www.deschutes.org)

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## **AGENDA REQUEST & STAFF REPORT**

### **For Board Business Meeting of April 27, 2016**

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**DATE:** April 14, 2016

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

**TITLE OF AGENDA ITEM:**

Consideration of converting \$50,000 business loan made to Buehner Fry, dba NAVIS 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 this level of employment for an additional set period of time. On June 7, 2013, Buehner Fry, dba NAVIS, entered into a business development loan agreement with the County for the amount of \$50,000 with terms that included adding twenty-six (26) full-time employees on or before January 28, 2015 and maintaining a level of one-hundred forty-nine (149) full-time employees through January 28, 2016. As certified by Economic Development for Central Oregon (EDCO), Buehner Fry, dba NAVIS, has met these terms and, in accordance with the agreement, is eligible to have the loan converted to a grant.

**FISCAL IMPLICATIONS:**

None.

**RECOMMENDATION & ACTION REQUESTED:**

Authorize County Administrator to convert \$50,000 business loan made to Buehner Fry, dba NAVIS, to a grant.

**ATTENDANCE:** Judith Ure, Management Analyst

**DISTRIBUTION OF DOCUMENTS:**

N/A

**DESCHUTES COUNTY**  
**Business Development Forgivable Loan Program**

**Loan Recipient:** Buehner Fry, dba NAVIS  
389 SW Scalehouse Court, Suite 100  
Bend, OR 97701  
541-385-5255

**Agreement No.:** DC-2013-238

**Date of Agreement:** June 7, 2013

**Loan Amount:** \$50,000


On behalf of Economic Development for Central Oregon, I hereby certify that Buehner Fry, dba NAVIS has met all conditions of the Deschutes County Business Development Forgivable Loan Program as specified in Agreement DC-2013-238 (attached).

I further attest that a representative of Economic Development for Central Oregon has reviewed employment and payroll records furnished by NAVIS and that such records confirm that NAVIS:

- a) Employed a baseline of one-hundred twenty-three (123) full-time employees on June 7, 2013, and
- b) Increased the number of full-time employees by twenty-six (26) for a total of one-hundred forty-nine (149) full-time employees on or before January 28, 2015, and
- c) Maintained a total of one-hundred forty-nine (149) full-time employees over any 12-month period through January 28, 2016.

I therefore, request that the Deschutes County Board of Commissioners authorize that the business development loan to NAVIS be converted to a grant in accordance with the terms of the attached agreement.

**Economic Development for Central Oregon**

By:  \_\_\_\_\_

Title: EXECUTIVE DIRECTOR

Date: 3/27/10



**DESCHUTES COUNTY**  
**Business Development Forgivable Loan Fund**

**AGREEMENT FOR NAVIS**

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:** Buehner Fry, Inc. dba NAVIS *(hereinafter referred to as "Company")*  
389 SW Scalehouse Court Ste #100  
Bend, Oregon 97701  
Phone: 541-385-5255

**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 building improvements; and

WHEREAS, the said expansion will relocate and create at least 26 new full-time equivalent (FTE) jobs by January 28, 2015, over and above the Company's current Bend employment of 123 FTE as of January 28, 2013; and

WHEREAS, the County desires to promote the expansion of the Company's facility by loaning funds to the Company for certain equipment purchases 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 26 new full-time equivalent positions by January 28, 2015, over and above the Company's current employment of 123 full-time equivalent employees as of January 28, 2013.
- Section 1.4**    Full Time Equivalent (FTE) shall mean any combination of positions that equal forty (40) hours per week or 2080 hours per year with the expectation that the job(s) will last for at least one (1) 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 \$50,000 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 26 additional FTE for a total of 149 FTE and maintain this level over any consecutive 12 month period through January 28, 2016.
- 3.2.3** Company will submit annual progress reports to EDCO with documentation for job creation, capital investment relating to new facilities and equipment associated with the Project.
- 3.2.4** Quarterly updates on employment progress will also be submitted to the County.
- 3.2.5** Company shall comply with all applicable federal, state, regional and local laws, regulations and ordinances.
- 3.2.6** 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) January 28, 2016.

**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 26 FTE. In the event of such partial conversion of the Loan, the Loan shall continue to be payable on a pro-rated basis in an amount determined by multiplying \$1,923 by the difference between 26 and the number of FTE employed in Deschutes County by the Company as of January 28, 2015. Annual interest will accrue on this portion of the loan at a rate of eight percent (8%) per year from the time the Company received the loan monies to the time they are repaid.

## **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 to 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 Deschutes County, Oregon on or before January 28, 2016 (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**

Date:

By:



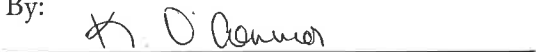
Tom Anderson, County Administrator

6/4/13

Date: 6-7-13

**Buehner Fry, Inc. dba NAVIS**

By:



Kate O'Connor, VP Finance

## DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

**Date:** May 8, 2013

**Department:** Administrative Services

**Contractor/Supplier/Consultant Name:** Economic Development for Central Oregon

**Contractor Contact:** Nate LiaBraaten

**Contractor Phone #:** 541-388-3236

**Type of Document:** Economic Development Loan Agreement

**Goods and/or Services:** Economic Development Loan

**Background & History:** On April 22, 2013, the Board of Commissioners approved an Economic Development Loan to NAVIS in the amount of \$50,000 as recommended by Economic Development of Central Oregon (EDCO). The loan is intended to support the creation of 26 new jobs at an average salary of \$43,723 by January 28, 2015 and will be converted from a loan to a grant if this goal is met and maintained through January 28, 2016. The loan will be paid from the Economic Development Fund (150) and is based on a formula of 26 jobs x \$2,000 or \$50,000, whichever is less.

NAVIS provides call management services to the lodging and corporate housing industries. The company's headquarters are located in Bend, Oregon and it employed 123 people as of January 2013.

**Agreement Starting Date:** Upon Signing

**Ending Date:** January 28, 2015

**Annual Value or Total Payment:** \$50,000

☐ Insurance Certificate Received (check box)

Insurance Expiration Date: \_\_\_\_\_

Check all that apply:

☐ RFP, Solicitation or Bid Process

☐ Informal quotes (<\$150K)

☐ Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

**Funding Source:** (Included in current budget? ☒ Yes ☐ No

If **No**, has budget amendment been submitted? ☐ Yes ☐ No

**Is this a Grant Agreement providing revenue to the County?** ☐ Yes ☒ No



Special conditions attached to this grant:

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: ☐ Yes ☐ No

Contact information for the person responsible for grant compliance:

Name:

Phone #:

**Departmental Contact and Title:** Judith Ure, Management Analyst

**Phone #:** 541-330-4627

**Department Director Approval:**

Erich Kuy  
Signature

5/10/13  
Date

**Distribution of Document:** Who gets the original document and/or copies after it has been signed? Include complete information if the document is to be mailed.

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**Official Review:**

County Signature Required (check one): ☐ BOCC ☐ Department Director (if <\$25K)

☒ Administrator (if >\$25K but <\$150K; if >\$150K, BOCC Order No. \_\_\_\_\_)

Legal Review

Mark Pellini

Date

5-14-13

Document Number 2013-238