



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 June 22, 2016

DATE: June 15, 2016

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

TITLE OF AGENDA ITEM:

Consideration of converting \$32,000 business loan made to Paladin Data Corporation 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 October 17, 2013, Paladin Data Corporation entered into a business development loan agreement with the County for the amount of \$32,000 with terms that included adding sixteen (16) full-time employees on or before April 16, 2015 and maintaining a level of thirty-nine (39) full-time employees through April 16, 2016. As certified by Economic Development for Central Oregon (EDCO), Paladin Data Corporation 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 \$32,000 business loan made to Paladin Data Corporation to a grant.

ATTENDANCE: Judith Ure, Management Analyst

DISTRIBUTION OF DOCUMENTS:

N/A

DESCHUTES COUNTY
Business Development Forgivable Loan Program

Loan Recipient: Paladin Data Corporation
63400 Powell Butte Road
Bend, OR 97701
541-617-9955

Agreement No.: DC-2013-523

Date of Agreement: October 17, 2013

Loan Amount: \$32,000

On behalf of Economic Development for Central Oregon, I hereby certify that Paladin Data Corporation has met all conditions of the Deschutes County Business Development Forgivable Loan Program as specified in Agreement DC-2013-523 (attached).

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

- a) Employed a baseline of twenty-three (23) full-time employees on October 17, 2013, and
- b) Increased the number of full-time employees by sixteen (16) for a total of thirty-nine (39) full-time employees on or before April 16, 2015, and
- c) Maintained a total of thirty-nine (39) full-time employees over any 12-month period through April 16, 2016.

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

Economic Development for Central Oregon

By: _____

Title: EXECUTIVE DIRECTOR

Date: 4/12/16



DESCHUTES COUNTY
Economic Development Loan Program

AGREEMENT FOR PALADIN DATA CORPORATION, INC.

This Economic Development Loan 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: Paladin Data Corporation, Inc. *hereinafter referred to as "Company"*)
63400 Powell Butte Road
Bend, OR 97701
(541) 617-9955

RECITALS

WHEREAS, 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, 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 in Bend will relocate and create at least **sixteen (16)** new full-time jobs between **April 16, 2013 and April 16, 2015** for total employment by Company of **thirty-nine (39)** positions; and

WHEREAS, the new full-time jobs will be maintained for a period of **April 16, 2015 through April 16, 2016**; and

WHEREAS, County desires to promote the expansion of Company's facility by loaning funds in the amount of **\$32,000** for certain equipment purchases and personnel expenses and such loan will later be converted to a grant upon the condition that Company satisfy certain requirements; and

WHEREAS, 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 funds loaned by County to Company as provided under Section 3.
- Section 1.3** Project shall mean expansion of Company employment in Deschutes County, Oregon.
- 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 3.3 below.

SECTION 3 LOAN

Section 3.1 Loan

County agrees to loan Company the sum of **\$32,000** 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. Company represents and warrants that it will diligently pursue and complete the following:

- 3.2.1** Company will employ a minimum of **sixteen (16)** additional full-time employees between **April 16, 2013 and April 16, 2015** for a total of thirty-nine (39) full-time employees and will maintain this level over any consecutive 12 month period through **April 16, 2016**.
- 3.2.2** Company will submit quarterly and annual 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.
- 3.2.5** 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, Company agrees to pay to the order of County the full amount of the loan as well as interest at the rate of 8% per annum beginning at the date County releases funds to Company, upon the

earlier of: (a) the occurrence of an event of default, as defined below, or (b) March 4, 2016.

3.3.2 County agrees to convert the loan to a grant that does not need to be repaid, if and when County determines in its sole discretion that Company has satisfied all of the obligations in Section 3.2 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 County may, in its sole discretion, convert a portion of the loan to a grant if all of the obligations under Section 3.2 and this Agreement have been fulfilled to the reasonable satisfaction of County, with the exception of the obligation under Section 3.2.1 to employ a total of **thirty-nine (39)** full-time employees. 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 \$2,000 by the difference between thirty-nine (39) and the number of full-time employees employed in Deschutes County by Company as of **April 16, 2016**. Interest will accrue on this portion of the loan at a rate of eight percent (8%) per annum from the time Company received the loan monies to the time they are repaid.

SECTION 4 DEFAULT

Section 4.1 Events of Default

The following shall be considered events of default:

- 4.1.1** Company fails to complete, or County reasonably determines that Company will not be able to complete, the obligations described in Section 3.2 and its other obligations under this Agreement; provided, however, that upon such failure or determination, County shall first provide to Company written notice of such failure or determination, and Company shall have thirty (30) days to correct the matter. If the matter has not been corrected by Company within such thirty (30) day period, to the reasonable satisfaction of County, County shall be entitled to declare Company in default of its obligations under this Agreement and the loan and 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 the end of the contract period without prior written consent of 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

Company agrees that County, their agents, and employees shall be entitled, upon reasonable prior notice to Company, to access and inspect the property and employment records of Company and its affiliates in order to insure that 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 Company. The right of inspection shall continue until all of the obligations of 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 unsuccessful 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 this Agreement or funds provided to 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 County, which consent may be withheld, conditioned, or delayed in the sole discretion of 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: 

Tom Anderson, County Administrator

Paladin Data Corporation, Inc.

By: 

Dan Nesmith, President & Owner

Date: 10-17-13

Date: 10 Oct 13