

**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
MONDAY, JANUARY 12, 2015, 9:30 A.M. CT**

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**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
MONDAY, JANUARY 12, 2015, 9:30 A.M. CT**

**Board  
Members:**

*Jeff Erickson*

*Dale Clement*

*Tony Klein*

*Sharon  
Casey*

*John Calvin*

*Tom Burchill*

*Michael  
Luken*

*Greg  
Heineman*

*Tim Kessler*

*Ted Husted*

*Don  
Kettering*

*Pat  
Prostrollo*

**Non-Voting**

*David Lust*

*Bruce  
Rampelberg*

*Tom Jones*

*Scott Parsley*

**Motion Sheet  
(STAFF RECOMMENDATIONS)**

**Agenda**

Motion to approve the agenda as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Minutes**

Motion to approve the minutes of the meeting held December 9, 2014 and January 5, 2015, as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**BankWest, Inc. Servicing Contract Amendment**

Motion to approve the BankWest, Inc. Servicing Contract Amendment as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Executive Session**

Motion to enter into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Chairman: Declare board out of executive session. [        a.m.]. Chairman: The BED entered into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action taken.**

**Motion to approve the chairman's report from executive session.**

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Loan Reviews**

**Loan Review Summary**

Motion to approve the loan review and recommendation as presented for Watertown Development Company/Nutting.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Old Business**

**EDFA Matching Loans**

Motion to approve withdrawing the loan commitments as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Pure Pulp Products, Inc.**

Motion to approve accepting the settlement offer as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

Please note times:

Call To Order: \_\_\_\_\_

Executive Session \_\_\_\_\_

Regular Session \_\_\_\_\_

Adjournment \_\_\_\_\_

**New Business**

**RTI, LLC/RTI Holdings, LLC**

Motion to approve the loan request from RTI, LLC/RTI Holdings, LLC in the amount of \$825,000. Secured by a shared first position on the real estate, personal guarantees of principals with 10% or more ownership, and waiving the personal guarantee of one owner. Bank covenants will be mirrored within the loan agreement.

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Adjourn**

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.



**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, SD  
MONDAY, JANUARY 12, 2015, 9:30 A.M. CT**

**REGULAR SESSION AGENDA**

- 9:30 A.M. Call To Order, Chairman Jeff Erickson
- 9:35 A.M. **Agenda**  
RECOMMENDED ACTION: Motion to approve the agenda as provided or amended.
- Minutes**  
RECOMMENDED ACTION: Motion to approve the minutes of December 9, 2014 and January 5, 2015 as presented.
- BankWest, Inc. Servicing Contract Amendment**  
RECOMMENDED ACTION: Motion to approve the BankWest, Inc. Servicing Contract Amendment as presented.
- 9:45 A.M. Commissioner's Comments
- 9:50 A.M. **Executive Session**  
RECOMMENDED ACTION: Motion to enter into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance applicants.
- 10:35 A.M. **Report from Executive Session**  
RECOMMENDED ACTION: Approve Chairman's report from Executive Session.
- Other Motions  
Loan Review Summary  
EDFA Matching Loans  
Pure Pulp Products, LLC  
RTI, LLC/RTI Holdings, LLC

Notice is further given to persons with disabilities that this meeting is being held in a physically accessible place. Please notify the above mentioned office within 48 hours of the public hearing if you have special needs for which this agency will make the necessary arrangements.

Participation in the meeting can be at GOED at 711 E Wells Ave, Pierre, South Dakota, or the GOED office at the Business & Technology Center at 2329 N. Career Avenue, Sioux Falls, South Dakota.



**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
WEDNESDAY, DECEMBER 9, 2014, 9:30 A.M. CT**

Members Present

Chairman Jeff Erickson, Dale Clement, Tony Klein, Tom Burchill, Mike Luken, Greg Heineman, Ted Hustead, Don Kettering, Pat Prostrollo, Scott Parsley, and Tom Jones

Staff Present

Commissioner Pat Costello, Deputy Commissioner Aaron Scheibe, Kim Easland, Ashley Moore, Cassie Stoesser, Cherissa Wright, Dale Knapp, and Mike Turnwall

Other Staff Present

Mandy Kuipers - BankWest, Inc.

Others Present

Bob Mercer

Call to Order

Chairman Erickson called the meeting to order at 9:32 A.M.

Agenda

A motion was made by Ted Hustead and seconded by Tom Burchill to approve the agenda as presented.

Motion passed by a roll call vote.

Minutes

A motion was made by Dale Clement and seconded by Pat Prostrollo to approve the minutes of the meetings held November 12, 2014, November 20, 2014 and December 2, 2014, as presented.

Motion passed by a roll call vote.

Executive Session

A motion was made by Tom Burchill and seconded by Don Kettering to enter into executive session at 9:35 a.m. to discuss contract matters, and commercial and financial information relating to loan and other assistance to applicants.

Motion passed by a roll call vote.

Executive Session Report

The Chairman declared the board out of executive session at 10:02 a.m. The Chairman reported that the Board of Economic Development entered into Executive Session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action taken.

A motion was made by Mike Luken and seconded by Tom Burchill to approve the chairman's report from executive session.

Motion passed by a roll call vote.

Old Business

3M Brookings – Project #2

A motion was made by Pat Prostrollo and seconded by Don Kettering to approve a one year extension to the project time period.

Motion passed by a roll call vote.

Arlington Community Development Corporation

A motion was made by Dale Clement and seconded by Don Kettering to approve an increase in wages and benefits in the amount of \$33,310, disbursed over the next three years as recommended by staff and Grant Committee.

Motion passed by a roll call vote.

GROW South Dakota

A motion was made by Tom Burchill and seconded by Ted Husted to approve a 180 day Grant Agreement extension.

Motion passed by a roll call vote.

TTJ Properties, LLC

A motion was made by Greg Heineman and seconded by Don Kettering to accept the offer of Griffith Properties, LLP, for an assignment of the Sheriff's certificate of sale for the former Midwest Performance Converter facility in Gary, South Dakota, subject to the following terms and conditions: (a) sale price is \$200,000 cash; (b) purchaser is responsible to pay all real property taxes, which purchaser understands are a prior lien on the property; (c) assignment conditioned on acceptance of the property "as is, where is"; (d) BED represents that the foreclosure was conducted in a manner such that upon expiration of the redemption period (and absent redemption by any party), the purchaser will receive a Sheriff's deed with no liens or encumbrances on the property except real property taxes and any special assessments that have attached or may attach to the property; (e) EDFA must approve a sale on similar terms and conditions; (f) purchaser is responsible for all remaining steps (and related costs) to obtain a Sheriff's certificate of sale; (g) risk of loss transfers to purchaser at the time of the assignment; (h) the parties will enter into a formal assignment that incorporates the foregoing terms; and (i) transaction must close and purchase price must be received no later than January 10, 2015.

Motion passed by a roll call vote.

New Business

Cattail Company

A motion was made by Ted Husted and seconded by Dale Clement to approve the loan request from Cattail Company in the amount of \$441,900. Secured by a sole first position on the real estate in New Hope, MN, a second position on the Sisseton property, and personal guarantees of principals with 10% or more ownership.

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

Motion passed by a roll call vote.

PEDCO/South Dakota Pulse Processors

A motion was made by Pat Prostrollo and seconded by Tony Klein to approve the loan request from PEDCO/South Dakota Pulse Processors in the amount of \$360,000. Secured by a shared first on real estate, assignment of lease and rents, and deposit account control agreement

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

Motion passed by a roll call vote.

Economic Development Partnership Program

Aberdeen Development Corporation, City of Kimball, Wagner Area Growth, Inc., and Northeast Council of Governments (RLF)

A motion was made by Pat Prostrollo and seconded by Don Kettering to approve the Economic Development Partnership Program grants for the following borrowers as recommended by staff and Grant Committee:

Aberdeen Development Corporation

- Approve an Economic Development Partnership grant award to the Aberdeen Development Corporation in the amount of \$150,542.00, to be granted in accordance with the board's Economic Development Partnership Award Policy for Staff Funding.

City of Kimball

- Approve an Economic Development Partnership grant award to the City of Kimball in the amount of \$40,000.00, to be granted in accordance with the board's Economic Development Partnership Award Policy for Staff Funding.

Wagner Area Growth, Inc.

- Approve an Economic Development Partnership grant award to Wagner Area Growth, Inc. in the amount of \$78,000.00, to be granted in accordance with the board's Economic Development Partnership Award Policy for Staff Funding.

Northeast Council of Governments (RLF)

- Approve an Economic Development Partnership grant award to the Northeast Council of Governments (RLF) in the amount of \$250,000.00, contingent upon securing a 3:1 match to be granted in accordance with the board's Economic Development Partnership Award Policy for Revolving Loan Funds.

Motion passed by a roll call vote.

Local Infrastructure Improvement Program

City of Valley Springs

A motion was made by Tom Burchill and seconded by Greg Heineman to approve the Local Infrastructure Improvement Program grant for the following borrower as recommended by staff and Grant Committee:

City of Valley Springs

- Approve a Local Infrastructure Improvement grant award to the City of Valley Springs in the amount of \$75,000.00 to be used for the water/sewer extension only, to be granted in accordance with the board's Local Infrastructure Improvement Award Policy.

Motion passed by a roll call vote.

PEG Project 1, LLC

A motion was made by Pat Prostrollo and seconded by Greg Heineman to approve the Reinvestment Payment application of PEG Project 1, LLC as recommended by staff in the board packet.

- Based on the representations and project description contained in the application for reinvestment payment, including but not limited to the representations concerning jobs created or retained and wages and benefits to be paid, the request of PEG Project 1, LLC for an equipment upgrades

reinvestment payment of up to \$356,420.00, but not to exceed 100 % of the State Sales and Use Tax paid on eligible equipment costs, is approved for PEG Project 1, LLC. The project as completed must be substantially similar to the project described in the application and must comply with the deadlines set out SDCL Ch. 1-16G and ARSD Ch. 68:02:07. The board has considered the factors set out in SDCL 1-16G-59 and ARSD 68:02:07:04 and the likelihood the project would not be located in South Dakota absent the reinvestment payment. Staff is authorized to issue a permit consistent with the application, this approval and the applicable provisions of SDCL Ch. 1-16G and ARSD Ch. 68:02:07.

Motion passed by a roll call vote.

Adjourn

A motion was made by Tony Klein and seconded by Pat Prostrollo to adjourn the meeting at 10:15 a.m.

Motion passed by a roll call vote.

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Dale Clement, Secretary or  
Tony Klein, Treasurer

**CREDIT COMMITTEE  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
JANUARY 5, 2015, 1:30 P.M. CT**

Members Present

Chairman Jeff Erickson, Pat Prostrollo, Dale Clement, and Tom Burchill

Staff Present

Deputy Commissioner Aaron Scheibe, Kim Easland, Ashley Moore, and Cassie Stoesser

Other Staff Present

Mandy Kuipers and Mike Bietz- BankWest, Inc.

Call to Order

Chairman Erickson called the meeting to order at 1:34 p.m.

Agenda

A motion was made by Tom Burchill and seconded by Pat Prostrollo to approve the agenda as presented.

Motion passed by a roll call vote.

Executive Session

A motion was made by Dale Clement and seconded by Pat Prostrollo to enter into executive session at 1:35 p.m. to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants.

Motion passed by a roll call vote.

Executive Session Report

The Chairman declared the Credit Committee out of executive session at 2:08 p.m. The Chairman reported that the Board of Economic Development Credit Committee entered into Executive Session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action taken.

A motion was made by Tom Burchill and seconded by Pat Prostrollo to approve the chairman's report from executive session.

Motion passed by a roll call vote.

Loan Review

Watertown Development Company/Nutting

Credit Committee recommends to the Board approving the loan review and recommendation as presented.

A motion was made by Pat Prostrollo and seconded by Dale Clement.

Motion passed by a roll call vote.

Old Business

Pure Pulp Products, Inc.

Credit Committee recommends to the Board approving staff to continue to research and work with other lenders to reach a mutually acceptable settlement.

A motion was made by Dale Clement and seconded by Tom Burchill.

Motion passed by a roll call vote.

New Business

RTI, LLC/RTI Holdings, LLC

Credit Committee recommends to the Board approving the application as discussed.

A motion was made by Tom Burchill and seconded by Pat Prostrullo.

Motion passed by a roll call vote.

Adjourn

A motion was made by Dale Clement and seconded by Tom Burchill to adjourn the meeting at 2:10 p.m.

Motion passed by a roll call vote

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Dale Clement, Secretary or  
Tony Klein, Treasurer



The attached contract has been amended in section 4(d), to include inserting language requiring all unscheduled principal payments and early payoff/final payoffs, to be remitted within one day to the State Treasurer's office. Currently the contract requires this for balloon payments as scheduled. The early payoffs and unscheduled principal payments are currently remitted with the monthly transfers. REDI has recently received some early payoffs to include Integra Plastics and JH investments. Due to the significant amount on these payoffs, staff is recommending these are remitted the next day, versus holding onto till month end.

STATE OF SOUTH DAKOTA  
BOARD OF ECONOMIC DEVELOPMENT  
REVOLVING ECONOMIC DEVELOPMENT AND INITIATIVE FUND

AMENDED AND RESTATED LOAN SERVICING AGREEMENT

AMENDED AND RESTATED LOAN SERVICING AGREEMENT, made and entered into this \_\_\_\_ day of January 2015, by and among the State of South Dakota Board of Economic Development, a governmental agency, 711 East Wells Avenue, Pierre, South Dakota 57501-3369 (the "BED"), Governor's Office of Economic Development, a governmental agency, 711 East Wells Avenue, Pierre, South Dakota 57501-3369 (the "GOED") (collectively referred to as the "State") and BankWest, Inc., a state chartered, FDIC insured financial institution, PO Box 998, Pierre, South Dakota 57501 (the "Bank").

WHEREAS, pursuant to SDCL Chapters 1-16G and 1-33, as amended and ARSD 68:02, BED has established the Revolving Economic Development Initiative Fund Loan Program ("REDI") for the purpose of making loans ("REDI Loans") to eligible private entities in furtherance of economic development within the state; and

WHEREAS, borrowers will apply to BED for REDI Loans, and will borrow funds from BED for the purposes set forth above and subject to the terms and conditions in the REDI Loan Documents, including but not limited to: Commitment Letter, Loan Agreement, Promissory Note, Mortgage, Employment Agreement, Guaranty Agreement, Security Agreement, Subordination Agreement and Lender Parity Agreement (the "Loan Documents"); and

WHEREAS, pursuant to SDCL Chapters 1-16G and 1-33, as amended, GOED is authorized to assist BED in administering the REDI loan portfolio; and

WHEREAS, pursuant to SDCL Chapters 1-16G and 1-33, as amended the State is authorized to enter into a contract with a private entity for purpose of assisting the State with the closing and servicing REDI Loans; and

WHEREAS, the Bank has agreed to act as closing agent and to service existing and new REDI Loans for BED and GOED, pursuant to the terms and conditions set forth herein;

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. This Loan Servicing Agreement shall commence on July 1<sup>st</sup>, 2013 and shall end on June 30<sup>th</sup>, 2018, unless sooner terminated pursuant to the terms hereof. Upon termination of this Loan Servicing Agreement, whether by expiration of the term or otherwise, the Bank shall promptly send all original Loan Documents in its possession to the State and provide the State with a current status report of all REDI Loans being serviced by the Bank at the time.

2. The Loan Servicing Agreement is intended to cover both existing and new REDI Loans. This Loan Servicing Agreement will govern all new REDI Loans approved by BED following its execution. This Loan Servicing Agreement will also apply to all existing REDI Loans upon GOED's turning over of its loan files to authorized Bank personnel. GOED will provide the Bank with a signed letter of transmittal which identifies the files being turned over and the Bank will acknowledge receipt and acceptance of the REDI Loan files by returning a copy of the letter of transmittal signed by the Bank to GOED. Upon execution by both parties the letter of transmittal shall be by this reference incorporated into and become a part of this Loan Servicing Agreement.

3. The Bank represents that it has the right, power and authority to enter into this Loan Servicing Agreement and to fully perform its obligations hereunder; that it is an experienced and established servicer of loans and that it intends to maintain adequate capital and personnel for the proper and prudent conduct of such business; and that it shall to the best of its ability and with reasonable diligence carry out its duties and responsibilities under this Loan Servicing Agreement.

4. In consideration of the State's payment of the fees described herein, the Bank agrees to perform the services described herein:

a) Prepare, process, complete, record, file, and distribute REDI Loan Documents consistent with the relevant statutes, rules and existing approved REDI Loan Document forms, and the directions provided by BED and GOED. The Bank will utilize the form REDI Loan Documents to be provided by GOED and will obtain approval from GOED or legal counsel of any proposed substantive modifications regarding the loan document forms;

b) Act as closing agent for the State and perform such acts consistent with prudent loan practices and policies and procedures established by BED and GOED. Perform REDI loan closings and requests for distribution of REDI funds (funding) to borrowers in compliance with policies and procedures established by the BED, GOED, the State and State Treasurer's Office. Provide GOED and the State Treasurer's Office with sufficient advance notice of the need to fund the REDI Loan in order for GOED and the State Treasurer's Office to process the request in time to meet the funding date;

c) Monitor, receive and process payments, including but not limited to principal, interest and balloon payments, and other monies received from the borrowers or guarantors and, with the exception of balloon payments, remit the same to the State Treasurer's Office once a month, on or before the fifth business day of that month;

d) Remit any balloon, unscheduled principal, or final payoff payments received to the State Treasurer's Office on the next business day following the receipt of such payment;

e) Maintain REDI Loan files and make available copies of documents to GOED upon request. The REDI Loan Documents and files will be held and

maintained by the Bank with the same care exercised for the Bank's own records and the Bank will bear the entire cost of restoration of such documents and files damaged or lost for any cause except those losses and damages caused while in the State's possession;

f) Prepare, process, complete, record and file such releases, waivers, satisfactions and other documentation to service the REDI Loans while balances are outstanding, and upon final payment and termination;

g) Prepare, complete and file with GOED such requested periodic reports in a form acceptable to the State including but not limited to the monthly status of all REDI Loans (including principal balances and detailing financial transactions);

h) Perform annual loan reviews of all loans that appear on the REDI Loan Watch List and no less than 75% of non-classified loans (by loan volume) and such other or additional loan reviews as are reasonably requested by BED. The reviews will be undertaken in a manner consistent with the BED's established loan review procedures for its outstanding loans and prudent servicing practices common within the banking industry. In addition to the Bank's loan reviews, the parties anticipate that an annual review of BED's portfolio will be performed by the South Dakota Division of Banking and Department of Legislative Audit;

i) Prepare a monthly report detailing all REDI Loans in default status and actions taken by the borrower, Bank and/or GOED during the month;

j) Prepare, upon request of GOED, memorandums for presentation to the BED on the status of problem REDI Loans or loans in a default status detailing the Bank and/or GOED's efforts and activities to cure defaults, bring loan payments back to a current status, and proposals for BED action to assist in these efforts;

k) Prepare, upon request of GOED, modifications or amendments to the REDI Loan Documents, including notifications or other letters to borrowers or take similar actions where, based upon the GOED's opinion such action is warranted, and assist the GOED in such actions;

l) Attend monthly meetings of the BED or other meetings as GOED determines prudent; and

m) Take such other action or provide GOED with such assistance as the GOED determines necessary or prudent in carrying out its obligations under this Loan Servicing Agreement under standard loan servicing practices within the banking industry.

5. In carrying out its obligations under this Loan Servicing Agreement, the Bank agrees:

a) To comply with all state statutes and rules that govern BED and all other generally applicable state and federal laws;

b) That the Bank's direct compensation for the services performed hereunder is provided in paragraphs 7 and 8 of this Loan Servicing Agreement and it will not charge the State or a REDI Loan borrower for any costs or expenses regarding services performed without the prior approval of the State, except for costs associated with filing and recording REDI Loan Documents which may be charged the borrower consistent with the Loan Documents;

c) Not to solicit any REDI Loan borrower, provided, however, that this prohibition does not prohibit a borrower from doing other business with the Bank or, with approval of the State, the Bank being a participating lender in a project funded in part by a REDI Loan;

6. The Bank at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

a) Commercial General Liability Insurance:

The Bank shall maintain occurrence based commercial liability insurance or equivalent form with a limit not less than \$2,000,000 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Loan Servicing Agreement or be no less than two times the occurrence limit. Such insurance shall include an endorsement for state employees as additional insured's for the purposes of coverage in connection with this Loan Servicing Agreement, shall contain no special limitations on the scope of the protection afforded to state employees, and shall be primary with respect to any insurance or self-insurance program covering state employees.

b) Errors and Omissions Insurance:

The Bank agrees to maintain errors and omissions insurance with a limit not less than \$5,000,000.

c) Fidelity Insurance:

The Bank agrees to maintain fidelity insurance on those of its employees having access to any amount paid by the borrowers, with a limit not less than \$3,500,000. The Bank may provide such insurance under any blanket policy or policies which it carries.

d) Business Automobile Liability Insurance:

The Bank shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

e) Worker's Compensation Insurance:

The Bank shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

f) FDIC Insurance:

The Bank shall maintain its requisite FDIC insurance coverage.

Before beginning work under this Loan Servicing Agreement, the Bank shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and shall contain a policy endorsement that such insurance may not be cancelled, except on 30 days' prior written notice to the State. The Bank shall furnish copies of insurance policies if requested by the State.

7. The State will make payment for the services rendered under this Loan Servicing Agreement on a monthly basis upon satisfactory completion of the services. The TOTAL ANNUAL CONTRACT AMOUNT is an amount not to exceed \$156,000 for FY 2014, FY 2015 and FY 2016 and an amount not to exceed \$162,000 for FY 2017 and FY 2018. The service fee shall be determined based on an amount of 27 basis points or an annual equivalent of .27% of the average outstanding principal balance of the REDI Loan portfolio, up to the maximum monthly contract amount for the month the services were performed and billing is submitted. However, regardless of the average outstanding principal balance of the REDI Loan portfolio, the minimum monthly contract amount under this Loan Serving Agreement is \$11,000. The maximum monthly contract amounts under this Loan Agreement are as follows:

- a) From July 1, 2013 to June 30, 2016, the maximum monthly contract amount is \$13,000; and
- b) From July 1, 2016 to June 30, 2018, the maximum monthly contract amount is \$13,500.

The Bank's sole source of this payment will be by a state warrant issued for services provided. Under no circumstances may the Bank offset or deduct any funds from REDI Loan payments prior to remitting the collected funds to the State Treasury pursuant to the terms of this Loan Servicing Agreement. Payment will be based upon a monthly itemized statement of all fees the Bank is entitled under this Loan Serving Agreement. The state warrants will be issued consistent with SDCL ch. 5-26.

8. In addition to the compensation provided in Paragraph 7, the State agrees to pay for any FDIC or State Banking examination fees in regard to the REDI Loan portfolio.

9. The State is additionally responsible for the following activities regarding the servicing of the REDI Loans:

- a) GOED will be responsible for assisting BED in negotiating the terms and conditions of REDI Loans, and will prepare the Commitment Letter and applicable

resolutions for BED approval. In this process GOED staff may seek assistance from assigned Bank personnel which the Bank agrees to provide;

b) Upon BED approval of a REDI Loan, GOED will provide the Bank with such documents, information and assistance as the Bank determines necessary or prudent to prepare the Loan Documents and to close the REDI Loan in a timely manner, including providing timely response to requests or inquiries regarding REDI Loan Document modification. If legal assistance is needed with REDI Loan Document modification, BED will be responsible for retaining counsel at its expense;

c) GOED will take action to fund the REDI Loan consistent with relevant state law, the policy and practices of the Offices of State Treasurer and State Auditor, the REDI Loan Documents and prudent closing and loan practices;

d) GOED will be responsible for monitoring the borrower's compliance with the employment terms and conditions of the REDI Loan. GOED will notify BED and the Bank in writing whenever a borrower is in default with regard to an employment condition. GOED will provide the Bank annually a report on the status of all REDI Loans regarding the employment conditions, or upon request by Bank. GOED will also immediately notify the Bank of any action taken by BED regarding an employment condition default.

e) GOED, will prepare all annual reports and financial statements required to be prepared and filed under state law; and

f) Upon receipt of the Bank's recommendation or a determination by BED to take legal action regarding a REDI Loan, BED will retain legal counsel to act on the State's behalf.

10. All prior discussions, communications and representations concerning the subject matter of this Loan Servicing Agreement are superseded by the terms hereof. No agreements with reference to the subject matter hereof, other than those specifically provided herein, exist between Bank and the State, and this Loan Servicing Agreement constitutes the entire agreement of Bank and the State.

11. In the event that the Bank, for any reason, closes or services a REDI Loan in a manner inconsistent with the Loan Documents or other instructions from the State, or fails to follow prudent closing or servicing practices, or in the event the Bank fails or refuses to perform any covenants or agreements hereunder on Bank's part made and entered into, or in the event of the insolvency of the Bank, the State may at its option declare this Loan Servicing Agreement to be in default and shall provide Bank with written notice of such default. If such default has not been cured within 15 days of Bank's receipt of written notice thereof, the State at its sole option, may immediately terminate this Loan Servicing Agreement, may direct all REDI borrowers to thereafter make payments on the REDI Loans directly to the State or other appropriate entity, and may pursue any rights or remedies at law or in equity it may have against the Bank

12. This Loan Servicing Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Loan Servicing Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

13. The Bank agrees to indemnify and hold the State, its officers, agents, employees, assigns and successors in interest harmless from any and all claims or liability of any kind or character whatsoever, including reasonable attorney fees and costs, arising from or in any way connected with the Bank's carrying out the duties and responsibilities required of the Bank under this Loan Servicing Agreement, provided that nothing herein requires Bank to indemnify the State, its officers, agents, employees, assigns and successors in interest for the State's own acts or omissions.

14. This Loan Servicing Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Loan Servicing Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

15. This Loan Servicing Agreement may not be assigned by the Bank without the prior written consent of the State. This Loan Servicing Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof or thereof, and which writing will be signed by an authorized representative of each of the parties.

16. In the event that any provision of this Loan Servicing Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

17. Any required or permitted notice or other communication under this Loan Servicing Agreement shall be in writing and addressed as follows:

To BED and GOED: Governor's Office of Economic Development  
Attn: Commissioner  
711 East Wells Ave.  
Pierre, SD 57501-3369

To Bank: BankWest, Inc.  
ATTN: Sr. Vice President  
P.O. Box 998  
Pierre, S.D. 57501

Notices required or permitted under this Loan Servicing Agreement shall be given by and to the Commissioner, Governor's Office of Economic Development on behalf of the State, and by and to Mark Litton, Executive Vice President on behalf of the Bank, or such authorized designees as either party may from time to time designate in writing. Any such notice or other communication, if mailed, shall be sent by registered or certified mail, return receipt requested.

Notices or communications to or between the parties shall be deemed to have been delivered when mailed by registered or certified mail or, if personally delivered, when received by such party.

18. Terms used herein and defined in the Loan Documents shall have the same meaning as set forth in the Loan Documents between BED and the borrower unless the context clearly requires otherwise.

19. Time is of the essence in the performance of the covenants, terms and conditions contained in this Loan Servicing Agreement. This Loan Servicing Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors and assigns except that Bank may not assign or transfer its rights hereunder without prior written consent of the State.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, Bank, BED and GOED have caused this agreement to be duly executed the date first above written.

SOUTH DAKOTA BOARD OF ECONOMIC  
DEVELOPMENT

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
ITS: \_\_\_\_\_

GOVERNOR'S OFFICE OF ECONOMIC  
DEVELOPMENT

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

BANKWEST, INC.

(SEAL)

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
ITS: \_\_\_\_\_