

**EAGLE MOUNTAIN CITY
CITY COUNCIL MEETING
MARCH 18, 2014**

TITLE:	MOTION – Consideration and Approval of the Rural Economic Development Loan and Grant Program		
FISCAL IMPACT:	\$1,360,000		
APPLICANT:	Eagle Mountain City		
GENERAL PLAN DESIGNATION	CURRENT ZONE	ACREAGE	COMMUNITY NSA, SSA or Citywide

NOTICES:

- Posted in 2 public places
- Posted on City webpage
- Posted on State website

REQUIRED FINDINGS:

Planning Commission Action / Recommendation
Vote: N/A

Prepared By: Ikani Taumoepeau Economic Development Director

NOTES/COMMENTS:

RECOMMENDATION:

Staff & the Economic Development Board recommend that the City Council approve the Rural Economic Development Loan & Grant (REDL/G).

BACKGROUND:

The USDA has granted Eagle Mountain a 60 day grace period from January 22, 2014 (when the REDL/G approval forms were postmarked) to approve or reject the funds for the REDL/G. The decision to move forward or not to move forward with the REDL/G has to be made before the 60th day, or **Monday March 24, 2014.**

The REDL/G provides a zero-interest (0%) loan for ten years to promote sustainable rural economic development and job creation projects. Direct Communications (Star West Eagle Mountain Properties), has proposed the construction of an eleven thousand (11,000) square foot office building in the Eagle Mountain Business Campus. The total project cost is estimated to be one million five hundred and sixty thousand dollars (\$1,560,000) and the ultimate recipient is in need of one million three hundred and sixty thousand dollars (\$1,360,000) to fund the project. Star West has requested the two year maximum deferment period to repay the \$1,000,000 loan. The loan will be paid back in equal monthly installments so that the loan is fully repaid upon the tenth anniversary of the loan closing date.

Breakdown:

- **\$1,000,000** is the **loan** to be provided to Eagle Mountain City, as intermediary, and re-loaned to Star West, as the ultimate recipient, to fund the project. As security, the ultimate recipient will provide a letter of credit before the release of any funds which will be equal to the outstanding principal amount of the debt, which is to be issued by USDA-RD-RBCS.
- **\$300,000** is the maximum **grant** portion that can be used to establish and operate a revolving loan fund to provide loans that foster rural

economic development in the City. These funds will initially be passed through to the ultimate recipient as a 0% interest loan, but will eventually be paid to the City (intermediary) during the repayment period.

- **\$60,000** is the required minimum (20%) **matching contribution** that the City (intermediary) is obligated to make in order to receive the \$300,000 grant portion.

**RURAL ECONOMIC DEVELOPMENT GRANT
LETTER OF CONDITIONS**

January 22, 2014

City of Eagle Mountain Power Company
Christopher Pengra, Mayor
1650 E. Stagecoach Run
Eagle Mountain, Utah

Dear Mr. Pengra:

We are pleased to announce that the application of the City of Eagle Mountain Power Company (the Grantee) for a grant in the amount of \$300,000.00 (Grant) to make an initial loan to Star West Eagle Mountain Properties, LLC (Ultimate Recipient) and to establish a revolving loan fund (Revolving Loan Fund) in accordance with the Grantee's Revolving Loan Fund Plan dated October 15, 2012, as approved by Rural Development (Plan) has received approval of Rural Development, subject to the following terms and conditions:

- A. The Grantee provides:
1. evidence that it has created a Revolving Loan Fund Account (Account) and has deposited the approved contribution amount in the Account.
 2. a resolution of its Board of Directors adopting the Plan approved by Rural Development.
 3. satisfactory evidence that it has obtained fidelity bond coverage on all of its officers, employees or agents that are authorized to receive or disburse funds from the Revolving Loan Fund, in the total amount of the Grant, or the Revolving Loan Fund, whichever is greater.
 4. duplicate original sets of duly authorized and executed copies of this Letter of Conditions.
 5. duplicate original sets of duly authorized and executed copies of the Rural Economic Development Grant Agreement (Grant Agreement.)

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0570-0035. The time required to complete this information collection is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

6. a legal opinion from its counsel stating that the Grantee possesses the necessary legal authority to execute the Letter of Conditions and the Grant Agreement and to execute the Plan.
7. evidence of satisfactory written procedures to:
 - (i) minimize the time elapsing between receipt of funds from Rural Development and disbursement of funds to the Ultimate Recipient,
 - (ii) ensure funds control and accountability in accordance with 7 CFR parts 3015 and 3019 as applicable,
 - (iii) limit cash advances from Rural Development to the minimum amounts needed for the actual, immediate cash required for carrying out the project.

And,

B. Rural Development approves

1. the Grantee's loan agreement, promissory note(s), and security agreement which will be entered into with the Ultimate Recipient.
2. a legal opinion provided by counsel for the Ultimate Recipient, regarding the legal ability of the Ultimate Recipient to incur debt and perform its obligations under the loan agreement.

The enclosed certification form entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" must be referenced in, and included as an exhibit to, the loan agreement that you execute with the Ultimate Recipient. The Ultimate Recipient in turn, must require these certifications in any lower tier covered transactions. Please note this certification is for the signature of the Ultimate Recipient.

Please evidence acceptance of the terms and conditions of this Letter of Conditions by executing and dating the enclosed duplicate original in the space provided and returning it to Rural Development within 60 days from the date of this Letter of Conditions. The Grantee must comply with the conditions set forth in this Letter of Conditions within 120 days from the date of its acceptance. Unless extended, if the Grantee has not complied with these stipulations, the Grant commitment will be automatically rescinded.

Sincerely,



 Dave Conine
State Director

Accepted and Agreed to:

City of Eagle Mountain Power Company

by: _____ Date _____
Mayor

(SEAL) Attested to for the Grantee:

by: _____
Secretary

Enclosures:

- Duplicate Original Letter of Conditions
- Rural Economic Development Grant Agreement
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions
- Form of Legal Opinion
- Standard Form 270

**RURAL ECONOMIC DEVELOPMENT LOAN
LETTER OF CONDITIONS**

January 22, 2014

City of Eagle Mountain Power Company
Christopher Pengra, Mayor
1650 E. Stagecoach Run
Eagle Mountain, Utah 84005

Dear Mr. Pengra:

We are pleased to announce that the application of the City of Eagle Mountain Power Company, ("Intermediary") for a zero-interest loan in the amount of **\$1,000,000** ("Loan") to partially finance a loan to Star West Eagle Mountain Properties, LLC ("Ultimate Recipient") for the project known as, Eagle Mountain Business Campus located in Eagle Mountain, Utah ("Project"), for the purpose of the shell construction and occupancy stabilization of an office building has received approval of Rural Development, subject to the following terms and conditions:

- A. The Intermediary will:
1. deliver satisfactory evidence to Rural Development that the Ultimate Recipient has obtained or received binding commitments for supplemental financing of at least **\$260,000.00** that is needed, in addition to the Loan proceeds, to ensure completion of the Project.
 2. establish a Loan payment system using the Automated Clearing House-Customer Initiated Payment (ACH-CIP) method. These steps include: (i) sending a canceled or voided check on the account that the Intermediary will use to make payments on the Loan to the Rural Development Finance Office, and (ii) completing and submitting to Rural Development an ACH-CIP enrollment form with the Intermediary's canceled or voided check. Establishment of the ACH-CIP account will be handled by Mellon Bank, Pittsburgh, PA, and a personal identification number (PIN) will be issued directly to the Intermediary by Mellon Bank. Payment instructions will be issued to the Intermediary by the Rural Development Finance Office.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0570-0035. The time required to complete this information collection is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

3. execute and return to the Rural Development State office at the address below, the enclosed original Promissory Note, original Rural Development Loan Agreement, and duplicate original of the Letter of Conditions.
4. execute and deliver its Promissory Note to Rural Development in the form attached hereto.
5. submit "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" properly signed by the Ultimate Recipient.
6. certify that no adverse actions have occurred since the application was approved.

And,

B. Rural Development approval of:

1. the Rural Development Loan Agreement, the Rural Development Promissory Note, and any security agreement which will be entered into between the Intermediary and the Ultimate Recipient.
2. a draft version of a legal opinion from both the Intermediary's and the Ultimate Recipient's respective attorneys, in the form of a typical opinion given to a lender in the Project State in commercial loan transactions, opining as to the legal authority of the entities to execute the Promissory Note and perform its obligations under the Rural Development Loan Agreement. Any legal issues identified by the Intermediary's counsel should be discussed and agreed to by counsel and the Rural Development State office before the executed legal opinion is sent to the Rural Development.

C. This Loan is also subject to the following conditions:

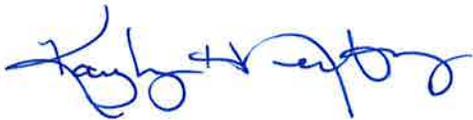
1. loan Agreement/Note between Intermediary and Ultimate Recipient approved by Rural Development Business Program.
2. intermediary will become an active participant in Rural Development's Revolving Loan Data System. Please review the enclosed Revolving Loan Fund User Manual.
3. submission of reports and audits, as per RD Instruction 4280.56 – In addition to any reports required by 7 CFR parts 3015 and 3019, the Intermediary must submit the following monitoring reports to Rural Development: Form RD 4280-1 "Survey of Recipients of Rural Economic Development Loan and Grant Program" to RD on an annual basis not later than 90 days after December 31 of each year; until it no longer owes money to USDA RD under the REDLG Program.

Please evidence your acceptance of the terms and conditions of this Letter of Conditions by executing and dating the enclosed duplicate original in the space provided and returning it to the State Office address below within 60 days from the date of this Letter of Conditions.

After closing, the Intermediary may request funds by submitting a letter, signed by an authorized official and addressed to the State office address shown below, requesting the advance of Loan funds for specific Approved Purposes as described by this Letter of Conditions and the enclosed Rural Development Loan Agreement.

Unless otherwise extended, if the Intermediary fails to satisfy all conditions and requirements within 120 days of the Intermediary's acceptance of the terms and conditions of the Letter of Conditions then this Letter of Conditions will terminate.

Sincerely,



 Dave Conine
State Director

Accepted and Agreed to:

City of Eagle Mountain Power Company

by: _____
Mayor

_____ Date

(SEAL)

Attested to for the Intermediary:

by: _____
Secretary

State Office Address

USDA Rural Development
125 South State Street, Rm 4311
Salt Lake City, UT 84138

Enclosures:

- **Duplicate Original Letter of Conditions**
- **Rural Development Loan Agreement**
- **Promissory Note**
- **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**