Regional Railroad Authority Meeting
Brookings City & County Government Center
520 3rd Street
Community Room, Room 300

1. **11:00 AM Call to Order on Friday, April 10, 2015.**
2. **Approval of Minutes**

   Documents: 04-04-14 MINUTES DRAFT.PDF
3. **Reorganization of the Board**

   A. **Nomination and Election of the Chairperson**

   B. **Nomination and Election of the Secretary/Treasurer**
4. **Regular Business**

   A. **Action to Approve the Railroad Trust Fund Application for Novita Aurora, LLC.**

      Documents: RAILROAD TRUST FUND LOAN APPLICATION.PDF

   B. **Action to Approve Resolution 2015-01: A Resolution Approving the Brookings County Regional Railroad Authority to Borrow Money in Relation to a Rail Project in Brookings County, South Dakota.**

      Documents: RESOLUTION 2015-01.PDF
5. **Old Business**

   A. **Discussion and possible Action to elect Member-at-Large**
6. **Adjournment**

NOTE: Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact Brookings County (605-696-8205) 48 hours in advance of the meeting to make necessary arrangements. The County of Brookings is responsive to requests for communication aids and the need to provide appropriate access and will provide alternative formats and accessible locations consistent with the American's With Disabilities Act.

Brookings Area Regional Railroad Authority Meeting
April 4, 2014

Chairperson Donald Larson called the meeting to order at 3:00 p.m. with the following members present: Donald Larson, Tom Pierce, and Craig Howell. Dennis Falken was absent.

Motion by Howell, seconded by Pierce to approve the minutes from the October 28, 2013 Brookings Area Regional Railroad Authority meeting. All members voted aye. Motion carried.

Motion by Howell, seconded by Pierce to acknowledge receipt of a letter from Novita, LLC regarding their intent to decline the loan from the SDDOT and South Dakota Railroad Board and to give notice to the SDDOT that the Brookings Area Regional Railroad Authority will not be proceeding on the loan.

Commission Assistant Stephanie Ellwein said the loan was contingent on the project beginning May 15, 2014. She said this doesn't mean the loan disappears; but if no money is dispersed, then no money has to be paid back. Pierce said there may not be money available in the future. Larson said he is glad Novita was up front with them and came to them in advance of the due date. Larson said he's not sure the Novita project will happen, but since they acknowledged this early on and gave proper notification, he doesn't believe it has hurt their credibility. Howell noted no money has come to the Railroad Authority from this loan. Deputy State's Attorney Abigail Howard said she will draft a letter to send to the state.

All members voted aye. Motion carried.

Motion by Pierce, seconded by Howell to name Deputy State's Attorney Abigail Howard as the Registered Agent for the Brookings Area Regional Railroad Authority. All members voted aye. Motion carried.

The board asked that Citizen Interest Applications be posted to fill the open position on the board.

Motion by Howell, seconded by Pierce to adjourn. All members voted aye. Motion carried.

DRAFT

RAILROAD TRUST FUND LOAN APPLICATION

SECTION I. APPLICATION INFORMATION DATE: **April 8, 2015**

Name of Applicant: **Brookings County Regional Rail Authority**

Applicants Address: **520 3rd Street, Suite 330**

City/State/Zip: **Brookings, SD 57006** County: **Brookings**

Contact Telephone: **Abigail Howard (605) 692-8606**

Date Regional Railroad Authority Established in South Dakota: **August 16, 1996**

Regional Railroad Authority has Taxing Authority: ___X__yes _____no

Is Tax Authority conditional: ____X____yes _____no

If yes explain: **Article X of the Agreement Establishing the Brookings County Regional Railroad Authority requires receiving approval from the Member governing bodies prior to certifying to said governing bodies the amount of tax to be levied.**

Name of Industry: **Novita Aurora, LLC**

Industry Address: Office: **2301 Research Parkway, Suite 226**

City/State/Zip: **Brookings, SD 57006**

Contact Telephone: **(605) 610-1026**

Requested Amount of Loan: **$4,000,000**

Project: **Novita Aurora, Livestock Protein Meal and Vegetable Oil Production Facility**

Location of Project: **47491 213th Street, Aurora, SD 57002**

Mainline the Project will be Located on: **Rapid City, Pierre & Eastern (RCP&E)**

Is Regional Railroad Authority requesting collateral for loan: _X_yes _____no

Identify Personal and Corporate Guarantees and other Collateral for Loan:

No personal or corporate guarantees will be given. Collateral will be the assets of Novita Aurora, LLC. Equity of $40,000,000 has been raised from a mix of private equity and retail investors. We are currently in discussion with commercial banks for $26,000,000 of debt.

The funds will be used exclusively for the construction of rail siding as described in Attachment A – Engineers Preliminary Opinion of Probable Cost.
Loan will be re-paid by cash flow from operations.

A commercial bank loan will be in a first collateral position for $26,000,000. The Railroad Trust Fund Loan will be in a second collateral position for $4,000,000. The remaining amount of $40,000,000 will be equity and will be in a third collateral position.

See Following Page for 10 Year Consolidated P&L Pro Forma

1,300 TPD Plant

10 year Consolidated P&L-Pro Forma

Confidential Information

		Construction 2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
NovaMeal Value Per Ton		$ -	$ 186.75	$ 205.19	$ 208.69	$ 212.26	$ 215.91	$ 219.63	$ 223.42	$ 227.29	$ 231.23	$ 235.26
NovaOil Value Per Pound		$ -	$ 0.30	$ 0.31	$ 0.31	$ 0.32	$ 0.32	$ 0.33	$ 0.34	$ 0.34	$ 0.35	$ 0.36
DDGS Value Per Ton		$ -	$ 171.75	$ 175.19	$ 178.69	$ 182.26	$ 185.91	$ 189.63	$ 193.42	$ 197.29	$ 201.23	$ 205.26
Gallons of NovaOil		0	7,300,682	7,351,787	7,403,249	7,455,072	7,507,257	7,559,808	7,612,727	7,666,016	7,719,678	7,773,716
Tons of DDGS		0	458,900	462,112	465,347	468,605	471,885	475,188	478,514	481,864	485,237	488,634
Tons of NovaMeal		0	431,595	434,617	437,659	440,723	443,808	446,914	450,043	453,193	456,365	459,560
Revenue												
NovaMeal		$ -	$ 80,600,450	$ 89,176,811	$ 91,334,474	$ 93,548,858	$ 95,821,490	$ 98,153,936	$ 100,547,809	$ 103,004,760	$ 105,526,490	$ 108,114,743
Less: NovaMeal Marketing Fee		$ -	$ (1,612,009)	$ (2,229,420)	$ (2,283,362)	$ (2,338,721)	$ (2,395,537)	$ (2,453,848)	$ (2,513,695)	$ (2,575,119)	$ (2,638,162)	$ (2,702,869)
Less: NovaOil Marketing Fee		$ -	$ (163,827)	$ (164,974)	$ (166,129)	$ (167,292)	$ (168,463)	$ (169,642)	$ (170,830)	$ (172,025)	$ (173,230)	$ (174,442)
NovaOil		$ -	$ 16,382,730	$ 16,827,357	$ 17,284,052	$ 17,753,141	$ 18,234,961	$ 18,729,858	$ 19,238,186	$ 19,760,311	$ 20,296,606	$ 20,847,455
Total Revenue		$ -	$ 95,207,344	$ 103,609,774	$ 106,169,035	$ 108,795,986	$ 111,492,451	$ 114,260,304	$ 117,101,470	$ 120,017,927	$ 123,011,704	$ 126,084,888
Cost of Goods Sold												
Distillers Grains Purchased		$ -	$ 78,816,075	$ 80,955,143	$ 83,152,266	$ 85,409,018	$ 87,727,019	$ 90,107,930	$ 92,553,460	$ 95,065,361	$ 97,645,434	$ 100,295,532
Incoming DDGS Freight		$ -	$ 1,747,629	$ 1,759,862	$ 1,772,181	$ 1,784,587	$ 1,797,079	$ 1,809,658	$ 1,822,326	$ 1,835,082	$ 1,847,928	$ 1,860,863
Chemicals		$ -	$ 1,761,550	$ 1,809,359	$ 1,845,546	$ 1,882,457	$ 1,920,106	$ 1,958,508	$ 1,997,678	$ 2,037,632	$ 2,078,384	$ 2,119,952
Electricity		$ -	$ 736,535	$ 756,524	$ 771,655	$ 787,088	$ 802,829	$ 818,886	$ 835,264	$ 851,969	$ 869,008	$ 886,388
Natural Gas		$ -	$ 1,458,878	$ 1,498,472	$ 1,528,442	$ 1,559,011	$ 1,590,191	$ 1,621,995	$ 1,654,435	$ 1,687,523	$ 1,721,274	$ 1,755,699
Spare Parts		$ -	$ 150,000	$ 153,000	$ 156,060	$ 159,181	$ 162,365	$ 165,612	$ 168,924	$ 172,303	$ 175,749	$ 179,264
Maintenance		$ -	$ 150,000	$ 153,000	$ 156,060	$ 159,181	$ 162,365	$ 165,612	$ 168,924	$ 172,303	$ 175,749	$ 179,264
Labor		$ -	$ 1,253,750	$ 1,278,825	$ 1,304,402	$ 1,330,490	$ 1,357,099	$ 1,384,241	$ 1,411,926	$ 1,440,165	$ 1,468,968	$ 1,498,347
Water & Sewer		$ -	$ 300,000	$ 306,000	$ 312,120	$ 318,362	$ 324,730	$ 331,224	$ 337,849	$ 344,606	$ 351,498	$ 358,528
Property Taxes		$ -	$ 79,320	$ 106,040	$ 132,760	$ 159,480	$ 186,200	$ 186,200	$ 186,200	$ 186,200	$ 186,200	$ 186,200
Road Payment to County		$ -	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ -	$ -	$ -	$ -	$ -
Depreciation		$ -	$ 3,320,000	$ 3,320,000	$ 3,320,000	$ 3,320,000	$ 3,320,000	$ 3,320,000	$ 3,320,000	$ 3,320,000	$ 3,320,000	$ 3,320,000
Total Cost of Goods Sold		$ -	$ 89,783,737	$ 92,106,226	$ 94,461,491	$ 96,878,854	$ 99,359,983	$ 101,869,867	$ 104,456,986	$ 107,113,143	$ 109,840,192	$ 112,640,037
Gross Margin		$ -	$ 5,423,607	$ 11,503,548	$ 11,707,544	$ 11,917,132	$ 12,132,468	$ 12,390,437	$ 12,644,485	$ 12,904,784	$ 13,171,512	$ 13,444,851
SG&A		$ -	$ 1,983,750	$ 2,023,425	$ 2,063,894	$ 2,105,171	$ 2,147,275	$ 2,190,220	$ 2,234,025	$ 2,278,705	$ 2,324,279	$ 2,370,765
Bank Interest Expense and Bank Fees		$ -	$ 1,239,138	$ 1,128,752	$ 1,013,869	$ 894,305	$ 769,870	$ 629,338	$ 494,108	$ 353,368	$ 206,894	$ -
Railroad Authority Interest Expense		$ -	$ 80,000	$ 75,374	$ 70,655	$ 65,842	$ 60,933	$ 55,926	$ 50,818	$ -	$ -	$ -
Convertible Subordinated Debt Interest Expense		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Interest Expense		$ -	$ 1,319,138	$ 1,204,126	$ 1,084,524	$ 960,148	$ 830,803	$ 685,264	$ 544,926	$ 353,368	$ 206,894	$ -
Pre-Tax Income		$ -	$ 2,120,719	$ 8,275,997	$ 8,559,126	$ 8,851,813	$ 9,154,390	$ 9,514,953	$ 9,865,534	$ 10,272,711	$ 10,640,338	$ 11,074,086
Taxes (LLC structure will pass tax liability to m	0%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net Income		$ -	$ 2,120,719	$ 8,275,997	$ 8,559,126	$ 8,851,813	$ 9,154,390	$ 9,514,953	$ 9,865,534	$ 10,272,711	$ 10,640,338	$ 11,074,086
EBITDA		$ -	$ 6,759,857	$ 12,800,123	$ 12,963,651	$ 13,131,960	$ 13,305,193	$ 13,520,216	$ 13,730,460	$ 13,946,079	$ 14,167,233	$ 14,394,086

SECTION II. PROJECT INFORMATION

Description of Project (attach plans/drawings and cost budget):
Description of the project and purpose of the loan:

Novita Aurora, LLC plans to construct and operate a rail siding to support our proposed agricultural processing facility in Aurora, SD. Using standard technology the $70 million livestock protein meal and vegetable oil production facility will process up to 1,300 tons per day of Distillers Dried Grains with Solubles (DDGS) from ethanol plants mainly from eastern South Dakota, and produce high quality protein meal for animal feed branded as NovaMeal™ and renewable oil branded as NovaOil™. Specifically, the plant will process; 458,900 tons per year of DDGS; produce 431,595 tons per year of NovaMeal™; and produce 55 million pounds of NovaOil™ annually.

Per Attachment A: The Railroad Trust Fund Loan will be used to engineer and construct a rail siding with unit train capabilities, allowing Novita Aurora, LLC to strategically ship 80 - 110 car unit trains of NovaMeal™ to feed markets, and tanker cars of NovaOil™ to markets across North America. The rail will also be used to bring in DDGS via hopper cars from ethanol plants along the railroad, and take advantage of other business opportunities as they arise.

Description of Economic Benefits of the Project During and After Construction:

The plant will provide approximately 28 good paying jobs to the area, and will help to enhance the agricultural and ethanol industries in eastern South Dakota. The total payroll for the plant positions is estimated to be in excess of $1.5 million dollars, and management payroll of $1 million. An economic development ROI was completed by Al Heuton, Brookings County Economic Development, and estimated an annual economic benefit to Brookings County in excess of $4 million.

Explain the Transportation Needs of the Area Served by the Project:

Novita Aurora, LLC will transport a majority of its production by rail. We have determined that shipping NovaMeal™ by 80-110 car unit trains offers significant benefits to Novita, the State of South Dakota, and our customers:

1. **Novita will purchase large volumes of DDGS for processing from SD ethanol producers who do not have unit train shipping capabilities, efficiently aggregating volume, increasing ethanol plant DDGS values, and reducing the number of single car moves on SD railroads.**
2. **Novita railcar fleet sizes is significantly reduced, thus reducing overall congestion on the SD rail system.**
3. **NovaMeal™ railcar turn times to California (one market) are reduced from 32 days to 18 days.**
4. **Novita will realize potential freight savings which significantly improves the viability of exporting product.**

Has City/County/State & Federal Permits been obtained: __**X**__yes _____no

Explain:

Permits pertaining to the Novita Aurora, LLC facility:

- **Building Permit** – Issues on March 16, 2015
- **Construction Air Permit** – Issued by SDDENR on Sept 8, 2013
- **Conditional Use Permit** – Approved for issuance by Brookings County Planning and Zoning on July 16, 2013.
- **Road Use Agreement** – Signed December 16, 2014

Date of Construction will commence: **Dirt work began on site March 2015. Fagen, Inc., general contractor is expected to mobilize May 2015.**

Estimated Completion date of Project: **Q2 - 2016**

Estimated Date Project Will Be Fully Operational: **Q2 - 2016**

REMIT TO:

South Dakota Department of Transportation
Office of Air, Rail and Transit
700 E. Broadway Avenue
Pierre, SD 57501

SECTION III. CERTIFICATION

All information contained above and in schedules attached hereto is true and complete to the best knowledge and belief of the applicant. There is no intent to deceive or defraud the Railroad Board or any potential participant in any loans to finance this project.

The applicant recognizes that the Division or the State Railroad Board may not process any application that is not complete. Incomplete applications will be returned to the applicant for completion.

The applicant recognizes that a letter of promise must be included stating the borrower does and/or will comply with all State/Federal environmental laws concerning business activities, local zoning laws and building codes before disbursement of funds from the Railroad Trust Fund.

The applicant also recognizes that Chapter 70:05:03 of the South Dakota Administrative Rules states notwithstanding any assurance, guarantee, communication, or representation to the contrary. THERE SHALL BE NO COMMITMENT OF THE RAILROAD TRUST FUND WITHOUT SPECIFIC AUTHORIZATION OF THE STATE RAILROAD BOARD.

Applicant: _____

Officer's Signature: _____

Officer's Name: _____

Officer's Title: _____

Telephone number: _____ Date:_____

RESOLUTION NO. _____ APPROVED SOUTH DAKOTA STATE RAILROAD BOARD

_____
Chairman

Date _____

Attachment A

Novita Aurora, LLC

Protein Enhancement Project

Construction Budget

Confidential Information

Category	Budget
Prime Contractor	$ 15,264,505.00
Land & Development	$ 2,976,748.00
Other Construction	$ 3,314,225.00
Engineers Quote for Rail	$ 7,490,775.00
Engineering	$ 1,005,000.00
Construction Management Costs	$ 986,000.00
Financing Costs	$ 4,551,430.00
Office Equipment (Operations)	$ 212,000.00
Start-Up	$ 1,620,000.00
Mobile Equipment	$ 145,000.00
Corporate Overhead	$ 2,686,200.00
Inventory	$ 3,600,000.00
Engineered Equipment Procurement	$ 19,603,523.00
Construction Contingency	$ 7,315,594.00
Sales & Use Tax Rebate	$ (771,000.00)
TOTAL CONSTRUCTION	**$ 70,000,000.00**

Engineer's Preliminary Opinion of Probable Cost
Novita Facility - Aurora, South Dakota
Preliminary Alternative #19
2/16/2015

Schedule A - Grading and Subballast - Rail Only

Bid Item Number	Items	Approximate Quantity	Unit	Unit Cost	Total Cost
A-1	Mobilization	1	LS	$ 100,000.00	$ 100,000.00
A-2	Grading	1	LS	$ 1,500,000.00	$ 1,500,000.00
A-3	Woven Geotextile	1	LS	$ 300,000.00	$ 300,000.00
A-4	Subballast	1	LS	$ 625,000.00	$ 625,000.00
A-5	Erosion Control	1	LS	$ 35,000.00	$ 35,000.00
A-6	Railroad Protective Insurance	1	LS	$ 5,000.00	$ 5,000.00
				Construction Cost - Schedule A:	**$ 2,565,000.00**

Schedule B - Track Construction

Bid Item Number	Items	Approximate Quantity	Unit	Unit Cost	Total Cost
B-1	Mobilization	1	LS	$ 150,000.00	$ 150,000.00
B-2	#9 Turnout, Furnish & Install	5	Each	$ 52,000.00	$ 260,000.00
B-3	#11 Turnout, Furnish & Install	8	Each	$ 55,000.00	$ 440,000.00
*B-4	#9 Yard Turnout, Furnish & Install	2	Each	$ 50,000.00	$ 100,000.00
B-5	Track Construction	19,605	Each	$ 155.00	$ 3,038,775.00
B-6	Timber Crossing	240	Ft	$ 200.00	$ 48,000.00
B-7	Bumping Post	1	Each	$ 5,000.00	$ 5,000.00
B-8	Hayes Model HB Sliding Derail	2	Each	$ 3,000.00	$ 6,000.00
B-9	Railroad Protective Insurance	1	LS	$ 5,000.00	$ 5,000.00
*	Flagging	1	LS	$ 10,000.00	$ 10,000.00
				Construction Cost - Schedule B:	**$ 4,062,775.00**

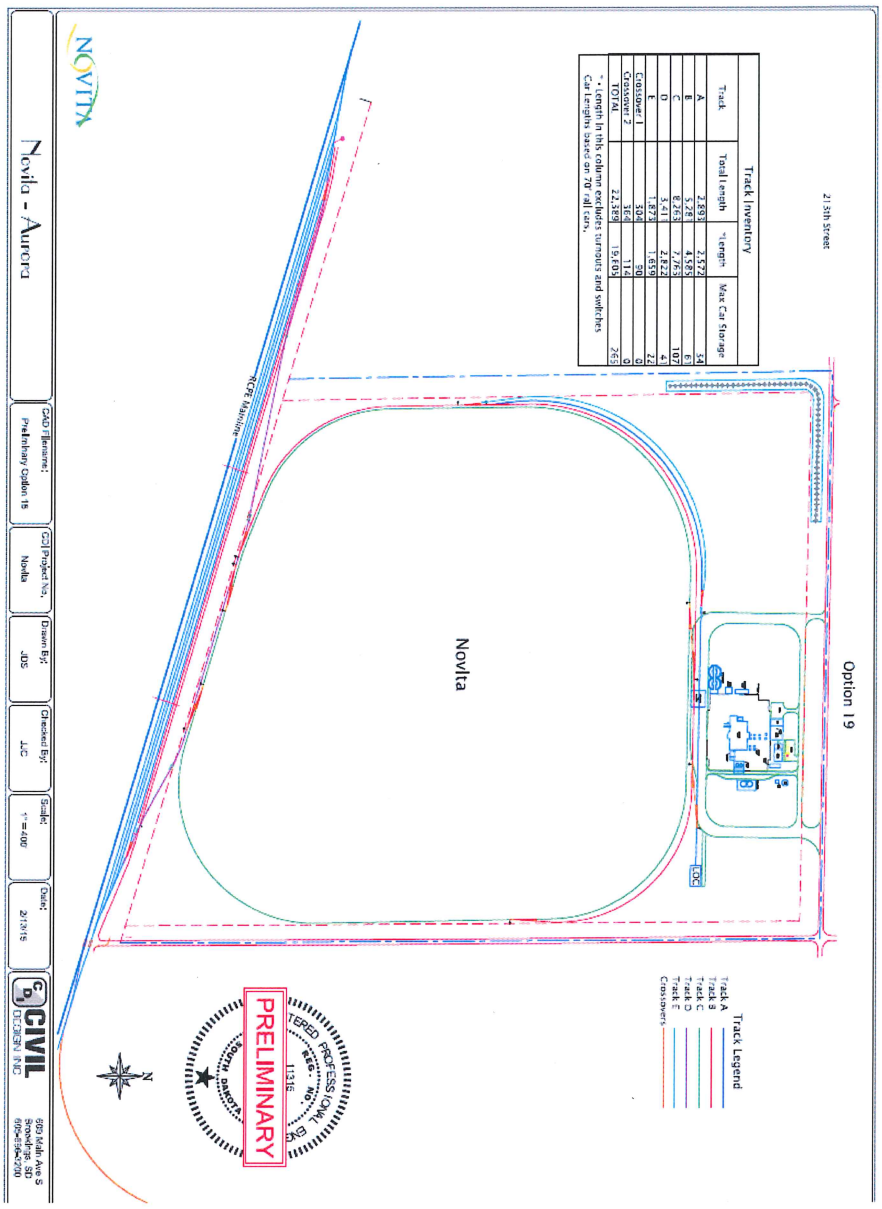
Total Construction Cost:	**$ 6,627,775.00**
Contingency:	**$ 663,000.00**
Engineering:	**$ 200,000.00**
Total Project Cost:	**$ 7,490,775.00**

* #9 Yard Turnout could vary from $50,000 to $200,000 based on who installs turnout, contractor or RCP&E.

CIVIL DESIGN INC

Page 1

Attachment A
Continued



Attachment A
Continued
Letters of Support

March 30, 2015

Rapid City, Pierre & Eastern Railroad, Inc.
246 Founders Park Drive, Suite 202
Rapid City, SD 57701

Dear Mr. Chairman,

The Rapid City, Pierre, & Eastern Railroad would like to express our support for the new Novita Aurora, LLC plant at Aurora, SD.

The Novita Aurora plant will represent new business growth for the RCP&E, the state of South Dakota, and Brookings County. This new rail served customer location will enable the RCP&E railroad to grow our railcar volume in South Dakota with consistent, long term business that will have positive economic benefits for many years to come.

The Rapid City, Pierre, & Eastern Railroad is looking forward to working with Novita Aurora to develop a strong business partnership that will provide growth and a positive economic impact for South Dakota and Brookings County.

Sincerely,

Micah Powell

Micah Powell
Director, Sales & Marketing
Rapid City, Pierre & Eastern Railroad, Inc.

Attachment A
Continued
Letters of Support

CIVIL DESIGN INC
Civil Engineers & Land Surveyors

April 6, 2015

Chairman
Brookings County Regional Railroad Authority
501 Third Street
Brookings, SD 57006

RE: Novita Nutrition, LLC - Aurora Proposal

Mr. Sirs;

Civil Design Inc performed the preliminary surveying and railroad design for Novita. CDI has been in the Railroad Design business for more than 15 years. We have designed many facilities in nine states and on every Class 1 Railroad except the Kansas City Southern. CDI designed the rail yard south of this property, which will serve as the connection for this facility. This new value added agricultural facility will provide substantial investment in the tax base of Brookings County and will provide new jobs to our county.

CDI has reviewed the railroad design with the Rapid City Pierre & Eastern Railroad and received approval. The design of this processing facility will allow it to receive raw material by rail or by truck. Processed materials will be shipped by rail either in single car movements or by unit train movements. The track design allows for the ability to have a unit train on site for meal loading while providing adequate track for movements to load oil and unload raw materials. The ability to ship meal in unit trains is important because the freight is much more competitively priced. We believe that this design is conservative for a unit train capable facility, but adequate for the basic operations intended.

I am certainly available to answer any questions.

Respectfully,

Carey Bretsch, PE
President

info@civildes.com // www.civildes.com
609 Main Ave S // Brookings, SD 57006 // Phone: 605.696.3200 // Fax: 605.696.3220

Attachment A
Continued
Letters of Support

brookings
ECONOMIC DEVELOPMENT CORPORATION

January 26, 2015

Brookings County Regional Railroad Authority
711 East Wells Avenue
Brookings, South Dakota 57006

Dear Brookings County Regional Railroad Authority:

The purpose of this letter is to express our support for Novita's request for funding through the Brookings County Railroad Authority.

Adding value to agricultural products has, and will continue to be, a key component of the Brookings Area economic development strategy. The Brookings Area has benefitted significantly from value-added agricultural industry investments such as South Dakota Soybean Processors, Valero, dairy operations, and more recently the addition of Bel Brands. These types of investment projects produce valuable returns for the Brookings Area by serving to diversity our economic base and by touching nearly all segments of our local economy.

The proposed project, and implementation of proprietary technologies developed by Novita, will add-value to local agricultural products, produce quality jobs, and further develop Brookings County's production, and science and technology industry economic base. As you know, Brookings County, the City of Brookings, and private sector donors have invested substantially in the infrastructure needed to produce new science and technology based discoveries and commercialized products. This project is, in part, an outcome of those investments, and will create additional recognition of Brookings County as a leader in economic development.

We encourage your positive review of Novita's request for funding.

Sincerely,

Mary Bjerke, President

tel 605•697•8103 fax 605•697•8109 414 Main Avenue • Brookings, SD 57006-2012
BrookingsEDC.com

BRING YOUR DREAMS

CHAPTER 70:05:03

RAILROAD TRUST FUND LOANS

Section

70:05:03:01 Definitions.

70:05:03:02 Eligibility requirements.

70:05:03:03 Application requirements.

70:05:03:04 Equity contribution.

70:05:03:05 Permissible uses of loan proceeds.

70:05:03:06 Factors for board action.

70:05:03:07 Acceptance and time restrictions of applicant.

70:05:03:08 Loan agreement.

70:05:03:09 Borrower reporting requirements.

70:05:03:10 Inspection of the borrower by the board and retention of records.

70:05:03:11 Additional notification requirements.

70:05:03:12 Maturity and interest rate.

70:05:03:13 Review of financial status.

70:05:03:14 Default on loan agreement.

70:05:03:15 Delegation of administrative functions.

70:05:03:01. Definitions. Words used in this chapter have the following meanings:

(1) "Applicant," a regional railroad authority created pursuant to the provisions of SDCL chapter 49-17A;

(2) "Board," the South Dakota state railroad board;

(3) "Borrower," an applicant who has been awarded a loan from the railroad trust fund;

(4) "Railroad trust fund," a special fund within the state treasury created pursuant to SDCL chapter 49-16C;

(5) "Division," the South Dakota division of railroads;

(6) "Primary jobs," jobs that provide goods and services which are primarily exported from the state, that gain market share from imports to the state, or that meet an unmet need in the area and result in the creation of new wealth. Primary jobs are derived from businesses that bring new income into an area, stimulate other local businesses, or assist a community to diversify and stabilize its economy;

(7) "Total project costs," the direct costs associated with the purchase of materials and services, necessary site development and improvements, construction or rehabilitation, and works necessary to the operation and protection of the project;

(8) "Rail operator," the railroad company that will provide rail service.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 1-44-20, 49-16C-3, 49-17A-26.

70:05:03:02. Eligibility requirements. A regional railroad authority created pursuant to the provisions of SDCL chapter 49-17A is eligible for loans under this chapter.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 49-16C-3, 49-17A-3.

70:05:03:03. Application requirements. The division shall provide application forms to applicants. The application must be complete before it is processed. Applications must include the following information:

(1) The applicant's name and address;

(2) The names, addresses, resumes, and references of the proposed rail operator;

(3) Articles of incorporation and bylaws or other agreements that describe the legal operation or structure of the rail operator;

(5) A statement that addresses the economic benefit of the project;

(6) Assurance of compliance with local zoning laws and building codes;

(7) The approximate project commencement date, the completion date, and the date by which the project will be fully operational;

(8) Any other information requested by the board to make a sound loan decision.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 49-16C-3.

70:05:03:04. Equity contribution. The board may require an equity contribution by the applicant or others to the total project costs. In-kind contributions and completed work may be applied toward such equity contribution if, in the judgment of the board, such in-kind contributions and completed work contribute sufficiently to the current project. The applicant must provide proof of ability to make such equity contribution.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 49-16C-3.

70:05:03:05. Permissible uses of loan proceeds. Railroad trust fund loans may be used for acquisition, development, and improvement of "railroad facilities" as they are defined in SDCL 49-16B-2(3).

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 49-16C-3.

70:05:03:06. Factors for board action. When making a decision on an application, the board may consider the following in addition to other factors necessary to make a loan decision:

(1) Number of primary jobs created;

(2) Amount of the loan requested;

(3) Net economic effect on the area and state;

(4) Transportation needs of the area served by the project;

(5) Support of the public entities of the community and area

(7) The effect of the project on the environment, health, and safety of the people in the area and state;

(8) Compatibility with the economic development plans of the area and state;

(9) The potential success of the project;

(10) The character, experience, management record, and financial capacity of the rail operator;

(11) The capacity of the applicant to repay the loan. In determining the capacity of the applicant, the board may consider the following:

(a) The amount of the loan;

(b) The economic feasibility of the project;

(c) The ability of the applicant to service the debt;

(d) The financial status of the project, applicant, and rail operator;

(e) The satisfaction of engineering, legal, and environmental regulations;

(12) The total capitalization of the project, including any capitalization subordinated to the trust fund loan; and

(13) The terms and conditions of the loan and their compatibility with the needs of the project.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 49-16C-3.

70:05:03:07. Acceptance and time restrictions of applicant. The applicant must comply with any conditions required by the board before approval of the application is given. Within ~~90 days after~~ 6 months after the board approves the loan, the applicant must accept the approval ~~in writing~~ by signing loan agreement. Within 6 months after written acceptance, the applicant must commence the project. If mitigating circumstances prevent starting the project and a diligent effort has been made, an applicant may apply to the board for an extension of time. The request for extension must be submitted to the director of the division of railroads prior to the expiration of the 6-month period. The board shall decide the length of the extension period based on the mitigating circumstances.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 49-16C-3.

70:05:03:08. Loan agreement. After the application for a loan is approved, the board shall execute a loan agreement with the borrower. The loan agreement shall contain the rights and responsibilities of the parties and the terms and conditions of the loan as determined by the board including requirements to secure the loan.

Loans may be secured by liens on the interest of the borrower in all real and personal property; easements; rights-of-way; and any other assets of the borrower considered necessary by the board to adequately secure the loan.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 49-16C-3.

70:05:03:10. Inspection of the borrower by the board and retention of records. During the term of the loan, the board or division may inspect the project and require the borrower to provide any books and records necessary to ensure compliance with the terms of the loan agreement. The borrower shall retain all of its accounting and tax records for the term of the loan.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 1-44-20, 49-16C-3.

70:05:03:11. Additional notification requirements. The borrower shall notify the board in a timely manner of any change in the rail operator. If the notice required in this section is not provided, the board may call the loan immediately due and payable.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 49-16C-3.

70:05:03:12. Maturity and interest rate. The maturity of the loan may not be more than 20 years, and interest may be either fixed or variable, adjusted annually, over the term of the loan.

The board shall set the interest rates annually. The board may consider the following in setting the interest rate:

(1) State and national market interest rates;

(2) State and national economic conditions;

(3) The solvency and balance of the fund; and

(4) Other economic or business information determined by the board to be relevant.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3, 49-16C-4.

Law Implemented: SDCL 49-16C-3, 49-16C-4.

70:05:03:13. Review of financial status. After the loan is approved but before the loan is closed, the board or the division may conduct an overall review of the applicant's financial status. The review may include an analysis of all assets and liabilities and an analysis of the ability of the applicant to service and honor the loan commitments.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 1-44-20, 49-16C-3.

70:05:03:14. Default on loan agreement. If the borrower violates any of the terms of the loan agreement, the board may place the borrower in default. Upon default, the board may declare due and payable the entire principal amount then outstanding and the accrued interest or take any other action provided by law which is considered appropriate by the board to protect its interests.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 49-16C-3.

70:05:03:15. Delegation of administrative functions. The division shall perform the administrative functions for the creation, processing, and review of loan applications; the preparation and negotiation of agreements~~; the review of the financial status of an applicant;~~ and other functions necessary to expedite the loan process and assist the board in the performance of its duties.

Source: 19 SDR 107, effective January 24, 1993.

General Authority: SDCL 49-16C-3.

Law Implemented: SDCL 1-44-20, 49-16C-3.

Back to 70:05

BROOKINGS COUNTY REGIONAL RAILROAD AUTHORITY
RESOLUTION NO. 2015-01

A RESOLUTION APPROVING THE BROOKINGS COUNTY REGIONAL RAILROAD AUTHORITY TO BORROW MONEY IN RELATION TO A RAIL PROJECT IN BROOKINGS COUNTY, SOUTH DAKOTA

WHEREAS, Novita Aurora, LLC plans to construct an agricultural processing facility near Aurora, Brookings County, South Dakota; and

WHEREAS, Novita Aurora, LLC requires the construction of a 22,389 foot loop track to facilitate rail car storage and loading for its agricultural processing facility; and

WHEREAS, Novita Aurora, LLC has requested the Brookings County Regional Railroad Authority support their application to the State Railroad Board Loan Fund; and

WHEREAS, the Brookings County Regional Railroad Authority supports the application by Novita Aurora, LLC to the South Dakota Railroad Board to borrow an amount up to Four Million Dollars ($4,000,000.00) for construction of the Loop Track as shown on the attached plans and specifications prepared by Civil Design, Inc.; and

WHEREAS, the South Dakota State Railroad Board will require a resolution from the Brookings County Commission, acknowledging the authority of the Brookings County Regional Railroad Authority to certify any tax levy as allowed by SDCL 49-17A-21 to be used in the event of default to pay such annual payments as may be required to service the project debt arising from the construction of the siding extension project.

NOW, THEREFORE, BE IT RESOLVED, the Brookings County Regional Railroad Authority shall and hereby does make application for a loan to the South Dakota State Railroad Board in the amount of Four Million Dollars ($4,000,000.00) to fund the construction of the loop track to serve the Novita Aurora, LLC agricultural processing plant; and

BE IT FURTHER RESOLVED, that Novita Aurora, LLC will execute and record a second mortgage to the Brookings County Regional Railroad Authority on the land on which the railroad is built and the railroad loop in order to secure payment on the loan agreement and promissory note, prior to the loan being funded; and

BE IT FURTHER RESOLVED, that, in the event of default regarding such loan, the Brookings County Regional Railroad Authority shall certify a tax levy as allowed by SDCL 49-17A-21 to be used to pay the annual payments as may be required to service such loan; and

BE IT FURTHER RESOLVED, that the Chairperson of the Brookings County Regional Railroad Authority, _____, is hereby authorized to sign any loan documents on behalf of the Brookings County Regional Railroad Authority.

Passed, approved and adopted this _____ day of April, 2015, on a motion by Commissioner _____, seconded by Commissioner _____. Motion carried.

Voting on Motion Yea _____

Nay _____

_____
Chairperson
Brookings County Regional Railroad Authority

ATTEST: _____