

## Timeline of Events

We constructed the following timeline of events from materials provided by the City, both voluntarily and at our request, along with interviews of City, EDTAB, and CIDC representatives. As mentioned previously, we believe that any discrepancies in individuals' accounts of the events below were merely the result of varying involvement and the passage of time.

1. May 4, 2000 – City Commission creates the Clovis Economic Development Advisory Board, a precursor to EDTAB, to enhance the City's economic development efforts. The City Manager served as Chairman, and the duties of the Board were general in nature. **See Exhibit 1.**
2. December 20, 2001 – City Commission creates and designates EDTAB as the body responsible for reviewing applications for economic assistance and performing due diligence related to such applications. **See Exhibit 2.**
3. June 22, 2009 – City enters into a contract with CIDC for economic development activities.<sup>1</sup> **See Exhibit 3.**
4. September 14, 2011 – CIDC was contacted by Dana Olson of Ecodev about a pharma-cosmetic manufacturing company (BHSI) looking for a manufacturing location.<sup>2</sup> Mr. Olson informed CIDC the project had to be completed by the first week in December as a stipulation for Clovis to be considered.
5. October 18, 2011 – A reception to acquaint BHSI personnel with members of the Clovis community was held at Mayor Gayla Brumfield's home.
6. Last week of October, 2011 – EDTAB hosts a site visit with BHSI in Clovis. BHSI personnel also visited with members of CIDC during this trip. Mayor Brumfield and Commissioner Garza took a tour of the city with Brian Sperber, Owner and President of BHSI.
7. November 2, 2011 – BHSI submitted a Clovis/Curry County Application for Economic Development Project Assistance (the "Application") to City. **See Exhibit 4.**
8. November 7, 2011 – CIDC processed the Application.<sup>3</sup> CIDC requests an Economic Impact Report from the State of New Mexico as part of the review process.

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<sup>1</sup> The contract at different times purports to be between CIDC and the Curry County Chamber of Commerce. We understand any references to the Curry County Chamber of Commerce to be typographical errors.

<sup>2</sup> CIDC had a previous relationship with Mr. Olson, as CIDC had hosted Mr. Olson on site visits involving other economic development opportunities before the BHSI project.

<sup>3</sup> A list of CIDC members between September 2011 and December 2011 is included as **Exhibit 5.**

9. November 10, 2011 – A conference call with Consultant Dana Olson, Brian Sperber, a BHSI finance consultant, Chase Gentry, CIDC Member Lee Malloy, and CIDC Member Kent Carruthers is held to review the Application and BHSI pro-formas.
10. November 11, 2011 - CIDC receives the Economic Impact Report back from the State of New Mexico.
11. November 15, 2011 – A contract between Proessa and BHSI acknowledging a \$687,850.00 sale of equipment by Proessa to BHSI is presented to CIDC by BHSI. **See Exhibit 6.** The contract requires that the equipment be delivered to Clovis, New Mexico on or before January 31, 2011. The contract acknowledges payments from BHSI to Proessa as follows:
  - November 15, 2011 – Check No. 114 in the amount of \$135,853.00
  - November 15, 2011 – Check No. 115 in the amount of \$77,580.30
  - November 16, 2011 – Check No. 116 in the amount of \$50,000.00
  - November 17, 2011 – Check No. 117 in the amount of \$34,379.92
  - November 29, 2011 – Check No. 118 in the amount of \$46,111.78<sup>4</sup>

These amounts totaled \$343,925.00. The balance of \$343,925 was to be due on December 9, 2011.

12. November 16, 2011 – EDTAB held a meeting to consider whether the economic incentive package should be offered to BHSI. Mayor Gayla Brumfield, Commissioner Dan Stoddard, and City Manager Joe Thomas were also present at the meeting. A motion recommending that the incentive package be granted passed. The minutes reflect that Mr. Carruthers informed EDTAB that there was still due diligence to be performed. **See Exhibit 7.**
13. November 17, 2011 –The Clovis City Commission held a meeting during which the request for the approval of the BHSI incentive package and the City's authorization to enter into a Project Participation Agreement (“PPA”) with BHSI were introduced. The minutes reflect that EDTAB members unanimously recommended this project to the City Commission though Gentry stated that “... they have a little bit of work to do regarding due diligence for BHSI.” **See Exhibit 8.**

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<sup>4</sup> This amount differs from the amount shown for check no. 118 on the Banrural bank statement provided by Brian Sperber. It should also be noted that the bank statement provided to confirm these amounts is for a company named Promed Estetica, S.A., and not BHSI or Brian Sperber. **See Exhibit 17; see also Footnote 7.**

14. November 17, 2011 – CIDC requested that Brian Sperber submit a personal credit application and credit check authorization. CIDC created a personal credit application on November 17<sup>th</sup> and forwarded that application to BHSI. This personal credit application was requested pursuant to Mr. Sperber’s offer of a personal guarantee in favor of the City.<sup>5</sup>
15. November 23, 2011 – A draft of the PPA was sent to BHSI for review. Dana Olson notified CIDC personnel that Brian Sperber would be in Clovis to close on the 6<sup>th</sup> or 7<sup>th</sup> of December.
16. December 2, 2011 – Brian Sperber completed the personal credit application as requested by CIDC.
17. December 5, 2011 - Chase Gentry received the personal credit application from Dana Olson for Brian Sperber at 3:46 p.m. The application contains potentially harmful information such as references to past-due accounts. **See Exhibit 9.**
18. December 5, 2011 – A City Commission meeting is scheduled for 5:15 p.m. The Clovis City Commission was not informed of information contained in the personal credit application prior to or during its 5:15 p.m. meeting.
19. December 5, 2011 –Ordinance 1975-2011 is approved authorizing the PPA pursuant to the Local Economic Development Act and approving the Project Participation Agreement between BHSI and the City. The Commission meeting lasted approximately 7 minutes. **See Exhibit 10.**
20. December 6, 2011 – CIDC received Brian Sperber’s personal credit report from one or more of the credit reporting agencies. **See Exhibit 11.** Like the credit application, the credit report contains potentially harmful information such as references to late payments, past-due accounts, and accounts in collection. Thereafter, the Clovis Police Chief was contacted and a National Crime Information Center (“NCIC”) check on Brian Sperber was requested. CIDC receives no response to the NCIC request.
21. December 7, 2011 – CIDC Member Kent Carruthers, CIDC Member Lee Malloy, Mayor Brumfield, and City Manager Joe Thomas are contacted, presumably by Chase Gentry, in regard to the credit report. CIDC Member Kent Carruthers, City Manager Joe Thomas, City Attorney Dave Richards, Chamber of Commerce Representative Ernie Kos and Mayor Brumfield meet via conference call to discuss the credit report, the business credit, foreign credit references from Banrural (Brian Spurber's foreign bank), the Application, pro-formas, and project parameters with BHSI consultant Dana Olson. **See Exhibit 11.**

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<sup>5</sup> Although CIDC, EDTAB, and the City had previously considered similar economic incentives for other applicants, it is our understanding that the request of a personal credit application and credit check authorization was unique to this application process.

22. Brian Sperber arrived in Clovis on the night of December 7<sup>th</sup> for the anticipated closing of the agreement.
23. December 8, 2011 – Brian Sperber meets with CIDC Member Kent Carruthers, City Manager Joe Thomas, City Attorney Dave Richards, Chamber of Commerce Representative Ernie Kos, CIDC Executive Director Chase Gentry, and BHSI consultant Dana Olson (via phone). An additional meeting and conference call with Mayor Brumfield, Joe Thomas, David Richards, Chase Gentry, Kent Carruthers, and Brian Sperber is scheduled for 8:00 p.m. that evening. Brian Sperber reviewed and explained the project, pro-formas, and the business and personal credit reports with the group. Dana Olson and Brian Sperber discussed the Proessa equipment and down payments for the equipment.
24. December 8, 2011 – Kent Carruthers formulates additional conditions that Brian Sperber and/or BHSI must agree to before the incentive package will be issued. **See Exhibit 12.** Brian Sperber agreed to pay off the balance of the Proessa order in full. Dana Olson sent the Proessa Equipment invoices for the new equipment order to the group. City Attorney David Richards confirmed the Cobe bankruptcy closing requirements and verified the assets as security in favor of the City. Terms and Conditions of Disbursement of Funds with milestone dates are also discussed.
25. December 8, 2011 – BHSI and Brian Sperber, as Maker, and City, as Payee, executed a Promissory Note in the amount of \$2,000,000.00 (the “Note”). The Note is secured by a second mortgage and security agreement in favor of City. **See Exhibit 12.**
26. December 9, 2011 – Proessa invoices totaling \$411,350.00 and \$276,500.00, respectively, are due and payable on this date. **See Exhibit 13 and Exhibit 14.**
27. December 9, 2011 – the PPA is signed by BHSI and the City. The loan amount is personally guaranteed by Brian Sperber. **See Exhibit 15.**
28. December 9, 2011 – A Special Commission meeting is held to address the BHSI ordinance and PPA. Mayor Brumfield and Chase Gentry confirm that they spent the past couple of days working with Brian Sperber and CIDC regarding this project. Language included in notes states, “... it appears that after a few “bumps” the project is once again moving forward.” **See Exhibit 16.**<sup>6</sup>
29. December 9, 2011 - Mr. Sperber reaffirms that BHSI hopes to close on the purchase of COBE Chem Labs next Monday (December 12, 2011) and begin the transition of company operations to Clovis by the end of March, 2012.

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<sup>6</sup> In separate interviews, interviewees confirmed that the “bumps” referred to in the December 9<sup>th</sup> Special Commission Meeting were the credit report and the credit application. It appears some Commissioners had an understanding of the credit problems, but others did not.

30. December 9, 2011 – Meetings with Brian Sperber, CIDC Consultant Dana Olson, City Manager Joe Thomas, City Attorney Dave Richards, Chamber of Commerce Representative Ernie Kos, CIDC Member Kent Carruthers, CIDC Executive Director Chase Gentry and Mayor Brumfield are held via conference call. A conference call with the finance consultant representing BHSI is also held to discuss project projections and timelines. A bank statement was received as proof of cash on hand and payments for new equipment.<sup>7</sup> **See Exhibit 17.** The City agreed to reimburse BHSI for equipment purchase upon submission of invoices and payment verification.
31. December 9, 2011 -- Bankruptcy closing was required by the bankruptcy judge by the close of business on December 9<sup>th</sup>. The City sent a letter from the Mayor to bankruptcy court stating the funds would be disbursed on Monday, December 12, 2011.
32. December 12, 2011 – A general affidavit is received from Brian Sperber asserting that he has placed orders with Proessa for equipment described in invoices A00031 (\$411,350.00) and A00032 (\$276,500.00) and confirming that he has paid \$687,850.00 for that equipment. This equipment was to be delivered to Clovis on or before January 31, 2011 (sic). **See Exhibit 18.** Sperber agreed to provide copies of the front and back of the checks used to pay for the equipment referenced in A00031 and A00032 on or before December 31, 2011.<sup>8</sup>
33. December 12, 2011 – CIDC receives a letter from Ana Avila with Proessa confirming that Mr. Sperber paid \$687,850 for the equipment described in invoices 0031 and 0032 on November 15, 2011<sup>9</sup> and December 12, 2011. **See Exhibit 19.**
34. December 12, 2011 – CIDC Executive Director Chase Gentry prepared a document justifying \$1,502,552.62 check to Aztec Abstract & Title. **See Exhibit 20.**
35. December 12, 2011 – The City of Clovis remits check no. 201249 to Aztec Abstract & Title in the amount of \$1,502,552.62. **See Exhibit 21.**
36. December 12, 2011 – Closing at Aztec Title on equipment and FrozFruit building. **See Exhibit 22.**

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<sup>7</sup> The bank statement was apparently not for an account owned or controlled by BHSI or Brian Sperber, but instead a company named Promed Estetica, S.A. Also, the address does not match the address for BHSI on the closing documents. Finally, check 118 is in a different amount than previously provided to CIDC. **See Footnote 4.**

<sup>8</sup> It does not appear that these requested documents were ever received. This is important in light of the different amounts attributed to check no. 118. **See Footnote 4; see also Footnote 7.**

<sup>9</sup> Other documents show a number of payments on November 15, 16, 17, and 29.

37. December 13, 2011 – CIDC Executive Director Chase Gentry submits a check request to Don Clifton for \$350,000.00 to reimburse BHSI for equipment. **See Exhibit 23.**
38. December 13, 2011 – Financing Statement in favor of City and relating to all equipment, machines, furnishings, raw material, inventory, work in process, products and accounts receivable of BHSI, now existing on herein after acquired is filed with the New Mexico Secretary of State. **See Exhibit 24.**
39. December 13, 2011 – City check no. 201251 to BHSI for reimbursement of \$350,000 for the equipment purchase is deposited into BHSI account at Wells Fargo. **See Exhibit 21.**