

Assessor's Parcel Number: N/A

Date: MARCH 21, 2016

Recording Requested By:

Name: LISA GRANAHAN, COUNTY MANAGER'S OFC

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A



KAREN ELLISON, RECORDER

AGREEMENT #2016.070
(Title of Document)

AGREEMENT FOR ALLOCATION OF CATALYST FUNDS

A CONTRACT BETWEEN

DOUGLAS COUNTY, NEVADA
P.O. BOX 218
MINDEN, NV 89423
PHONE: 775-782-9821

And

BENTLY HERITAGE, LLC
1597 ESERALDA AVENUE
MINDEN, NV 89423
PHONE:

FILED
NO. 2016-070
2016 MAR 18 11:11:20
DOUGLAS COUNTY
CLERK
DEPT. 1

WHEREAS, Douglas County, Nevada (hereafter "Douglas County") is a political subdivision of the State of Nevada; and

WHEREAS, Douglas County has entered into an agreement with the Nevada Governor's Office of Economic Development ("GOED"), as required pursuant to NRS 231.1571- NRS 231.1577, for the distribution of proceeds from the Nevada Catalyst Fund (individually or collectively referred to herein as "Catalyst Fund Proceeds") as outlined in NRS 231.1571 and NRS 231.1573, as the sponsoring municipality; and

WHEREAS, Bently Heritage, LLC's (hereafter "Bently Heritage") project was approved by the GOED, as required pursuant to NRS 231.1571- NRS 231.1577, as meeting the criteria necessary to receive a distribution of Catalyst Fund Proceeds as outlined in NRS 231.1571 and NRS 231.1573; and

WHEREAS, Bently Heritage represents that it is ready, willing and able to perform and render the services required to allow Douglas County as the sponsoring agency to distribute Catalyst Fund Proceeds to Bently Heritage pursuant to the requirements hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

I. EFFECTIVE DATE OF CONTRACT. This Agreement, is made as of the date of approval of the agreement by the Douglas County Board of Commissioners ("Effective Date") by and between the Douglas County and Bently Heritage.

II. APPROVED CATALYST FUND PROCEEDS

1. The GOED Board approved a Catalyst Fund grant to Douglas County for \$99,000 for allocation to Bently Heritage on September 17, 2015.
2. The Catalyst Fund Proceeds are to be used in support of the redevelopment of a historic mill located at 1609 U.S. Highway 395, Minden, Nevada into a sustainable estate distillery (referred to herein as the "Project") as proposed by Bently Heritage and detailed in the "Douglas County Catalyst Fund Application for Bently Heritage, LLC" attached hereto as Exhibit A.

III. COVENANTS, WARRANTIES, AND REPRESENTATIONS

1. Bently Heritage covenants, warrants, and represents that it shall return Catalyst Fund Proceeds to Douglas County/GOED if it is determined that the Catalyst Fund Proceeds are not then currently being, or have not been, used in accordance with this Agreement;
2. Bently Heritage covenants, warrants, and represents that it agrees to and consents to the public disclosure of: (i) the company name of any entity receiving Catalyst Fund Proceeds; (ii) the applicable ownership interests for the entity receiving Catalyst Fund Proceeds, including but not limited to; equity interests, partnership interests, membership interests, shareholder interests, and any other ownership interests and by whom held; (iii) the award amount requested, and (iv) agreed-upon performance requirements, including, but not limited to: (a) number of primary jobs created, (b) anticipated wage levels to be paid, (c) capital investment, and (d) other project specific performance requirements to be determined under paragraph (5) of this Section;
3. Bently Heritage covenants, warrants, and represents that it agrees to disclose all details, not subject to legally recognized privilege or confidentiality restrictions, regarding: (i) proposed plans; (ii) projects and programs for which the Catalyst Fund grant or loan will be used; and (iii) any other information relevant to the proposed project for which Catalyst Fund Proceeds; and
4. Bently Heritage acknowledges that the Douglas County Manager or the Executive Director of GOED may, from time to time request additional information that he or she deems necessary for approval or denial of the Catalyst Fund Disbursement request, in his or her sole discretion.

IV. REPORTING REQUIREMENTS

1. The overall grant period for this award is defined as: April 1, 2016 through March 31, 2018, with Award Periods as defined below.
 - a. The award disbursement schedule is agreed upon as follows:

AWARD PERIOD	THROUGH DATE	AMOUNT	DISBURSEMENT CRITERIA
Period 1	March 31, 2017	Up to \$49,500	\$8,250 per primary job multiplied times 6 jobs, up to \$49,500, disbursed following the close of Fiscal Year 1 for operations in Nevada. The average wage for jobs created must meet or exceed \$40.00. No funding will be disbursed if less than 3 primary jobs are created during Period 1 of this Agreement.
Period 2	March 31, 2018	Up to \$49,500	\$8,250 per primary job multiplied times 6 jobs, up to \$49,500, disbursed following the close of Fiscal Year 2 for operations in Nevada. The average wage for jobs created must meet or exceed \$40.00. No funding will be disbursed if less than 3 primary jobs are created during the cumulative period through Period 2 of this Agreement.

Definitions:

- (1) Periods represent 12-month increments beginning the date as negotiated between the agreeing parties. Catalyst Funds will be disbursed based upon actual job creation versus agreed-upon hiring objectives over a defined duration of time.
 - (2) "Incremental primary job" for a defined period denotes a new primary job created within that period over and above the number of jobs created in the prior period. Only jobs created for which payment has been made in a given year count as jobs created for the purposes of the following year (incremental) calculation.
 - (3) Disbursement will occur upon achievement of agreed-upon milestones following commencement of operations in Nevada, and pursuant to verification of total FTEs based in Nevada.
 - (4) To qualify as a job created, the job must be continuously in place for a minimum of 3 months prior to the end of the 12-month period, must be a full-time position, and must be eligible for healthcare benefits.
2. In order to obtain the Catalyst Fund Proceeds from Douglas County, Bently Heritage shall provide to Douglas County within thirty (30) after the close of the Award Period during which Catalyst Fund Proceeds were approved for disbursement, an initial report on the project that includes **ALL** of the following information:
- a. A description of each activity undertaken (i.e., the business and project receiving Catalyst Fund Proceeds) with the Catalyst Fund Proceeds;
 - b. The number of primary jobs created as a result of each specific grant or loan made pursuant to the specific application for which this Agreement was entered into and Catalyst Fund Proceeds were disbursed;
 - i. "Primary Job" as used herein shall have the definition set forth in NAC 360.474(3), defining "primary job" to mean "a position of employment offered by an applicant for a partial abatement, the compensation for which is obtained from revenue that is generated outside the economic region in which the business is located";
 - c. The average wage levels of the primary jobs created as a result of each specific grant or loan made pursuant to the specific application for which this Agreement was entered into and Catalyst Fund Proceeds were disbursed;
 - d. Confirmation the minimum primary job and average wage targets agreed to by Bently Heritage have been reached in a given period;
 - e. Confirmation each primary job is eligible for healthcare benefits;
 - f. The return-on-investment on the Catalyst Fund Proceeds provided through the grant or loan expressed through performance measures including, but not limited to: (i) the number of primary jobs created, (ii) the anticipated wage levels to be paid, and (iii) capital investment;

- g. A statement of the benefit to the public from the distribution of Catalyst Fund Proceeds, including documentation that supports the benefit; and
 - h. Any additional documentation requested by GOED that the Executive Director of GOED reasonably deems appropriate to document the use of the Catalyst Fund Proceeds in accordance with the provisions of this Agreement and the grant or loan application request.
3. Bently Heritage hereby agrees to a continued reporting requirement based on disbursement of Catalyst Fund Proceeds. After the filing of the initial report described in Section IV(2) above, Bently Heritage shall make subsequent reports to Douglas County within thirty (30) days after the close of any Award Period during which Catalyst Fund Proceeds were approved for disbursement. Within the initial and subsequent reports, Bently Heritage shall provide to Douglas County the information described in Section IV(2)(a) through (h) above, in such form as may be prescribed by Douglas County or GOED from time to time.
4. The disbursement of Catalyst Fund Proceeds shall be made in defined installments only after an affirmative demonstration by Bently Heritage that:
- a. This agreement is not in default, breach, or otherwise non-complaint by either party;
 - b. Bently Heritage shall file its report in compliance with the requirements of Section IV(2) hereof; and
 - c. Bently Heritage confirms that it has no knowledge of then existing facts that would indicate that it is in danger of being unable to satisfy the requirements contained in this agreement.

V. REIMBURSEMENT OF CATALYST FUND PROCEEDS FOR FAILURE TO COMPLY WITH TERMS OF AGREEMENT

- 1. If Douglas County or GOED, after reasonable investigation, finds that Bently Heritage has failed to use or misused the Catalyst Fund proceeds in accordance with the terms of this Agreement, Bently Heritage shall repay to Douglas County the amount of the Catalyst Fund proceeds that was received. Bently Heritage shall, in addition to the amount of Catalyst Fund proceeds required to be repaid pursuant to this subsection, pay interest on the amount due at the rate most recently established pursuant to NRS 99.040 for each month, or portion thereof, from the last day of the month following the award period of the Catalyst Fund proceeds until the full repayment of the Catalyst Fund proceeds.
- 2. For purposes of this Section V of the Agreement, "misused" shall mean any failure to specifically comply with the express terms of this Agreement, or any specific provision of NRS 231.1571 to 231.1579.

VI. TERMINATION FOR FAILURE TO COMPLY WITH TERMS OF AGREEMENTS

- 1. If Douglas County finds after a reasonable investigation that Bently Heritage has failed to use or misused the Catalyst Fund money in accordance with the terms of this Agreement, Douglas County may determine that the Agreement is void and terminate the Agreement. Failure to use or misuse of the Catalyst Fund money includes of the following circumstances:

- a. Bently Heritage fails to open operations in Nevada within six (6) months following execution of this Agreement with Douglas County; or
- b. Bently Heritage fails to create primary jobs within six (6) months following execution of this Agreement with Douglas County; or
- c. Bently Heritage fails to meet the minimum standard (50% of target) for creation of primary jobs during each of the first two award periods identified this Agreement, following execution of this Agreement with Douglas County; or
- d. Bently Heritage fails to remain in good legal standing, as determined by Douglas County, or the Executive Director or the Board of GOED; or
- e. Bently Heritage and/or its principals either admits to or is otherwise found guilty of any crime or wrong-doing or criminal malfeasance as determined by a court of law; or
- f. Any behavior associated with Bently Heritage, including its owners, associates, and/or employees, that is deemed a departure from the broader interests of the State of Nevada, as determined at the sole discretion of the Board of GOED.

VII. CONSTRUCTION OF AGREEMENT. This Agreement shall be construed and interpreted according to the laws of the State of Nevada. Any legal action regarding this contract shall be filed and maintained in the Nevada Ninth Judicial District Court. Prior to filing any legal action, the parties agree to participate in mediation, with a mediator to be mutually selected from a list provided by the Nevada Supreme Court of Settlement Judges. Both sides shall pay an equal share of the mediator's fees. Each party shall be responsible for their own attorney fees in mediation or any other legal action. There shall be no presumption for or against the drafter in interpreting or enforcing this contract.

VIII. COMPLIANCE WITH APPLICABLE LAWS. Bently Heritage shall fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of this contract.

IX. ASSIGNMENT. This Agreement and its obligations cannot be assigned or transferred by either party.

X. DOUGLAS COUNTY INSPECTION. The books, records, documents and accounting procedures and practices of Bently Heritage related to this Agreement shall be subject to inspection, examination and audit by the County, including, but not limited to, the County Manager, the District Attorney, and any authorized representative of any other Federal entity.

XI. PUBLIC RECORDS LAW. Bently Heritage expressly agrees that all documents ever submitted, filed, or deposited with Douglas County, unless designated as confidential by a specific statute of the State of Nevada, shall be treated as public records pursuant to NRS Ch. 239 and shall be available for inspection and copying by any person, as defined in NRS 239.030, or any governmental entity. Bently Heritage expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleaded, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the County or any of its officers or

employees, in either their official or individual capacity, for violations of or infringement of the copyright laws of the United States or of any other nation.

XII. NON APPROPRIATION. All payments under this contract are contingent upon the payment of funds from GOED to the County. In accordance with NRS § 354.626 and any other applicable provision of law, the financial obligations under this contract between the parties shall not exceed those monies appropriated and approved by GOED to the County. This contract shall terminate and the County's obligations under it shall be extinguished if the County fails to receive the funds from GOED.

XIII. MODIFICATION OF CONTRACT. This contract constitutes the entire contract between the parties and may only be modified by a written amendment signed by both parties.

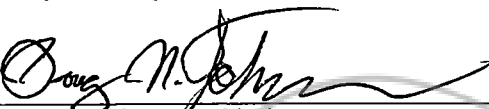
IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Allocation of Catalyst Funds to be signed and intend to be legally bound thereby.



Christopher Bently
On behalf of and with authority to sign for
Bently Heritage, LLC

3.7.16

(date)

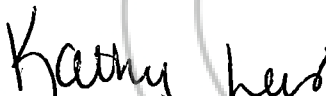


Doug N. Johnson, Chair
Douglas County Board of Commissioners

3.17.16

(date)

Attest:



Kathy Lewis, Douglas County Clerk

3.17.16

(date)

Exhibit A – Catalyst Fund Application



Douglas County

**Catalyst Fund
Application
for
Bently Heritage, LLC**



Governor's Office of Economic Development

**Las Vegas 702-486-2700
Reno 775-687-9900
Toll Free 800-336-1600**

PROJECT CHARACTERISTICS (check all that apply)

- Construct New Facility
- Expand/Renovate Existing Facility
- Purchase Machinery & Equipment
- New Business / Start-up
- Relocation from Out-of-State
- Relocation within Nevada

INDUSTRY CLUSTER

If applicable, identify the industry cluster within which this project falls.

- Aerospace and Defense
- Agriculture
- Business IT Ecosystems
- Other: Sustainable Estate Distillery
- Health & Medical Services
- Logistics & Operations
- Manufacturing
- Mining & Materials
- Renewable Energy
- Tourism, Gaming & Entertainment

A statement of project relevance to supply chains, sectors and clusters targeted by the State Plan for Economic Development:

This project will target several sectors outlined in the State Plan: manufacturing, entertainment and food processing operations. The Bently Enterprise family will introduce Bently Heritage, a sustainable estate distillery, in mid-2015. Along with supporting the targeted sectors, the project will achieve in aiding the Governor's priority of high paying jobs. The start-up average wage for the distillery is \$51.90. In addition, Bently Heritage plans on redeveloping a historic mill and renovating several surrounding buildings to support management, business support functions and administrative staff.

GRANT/LOAN SUMMARY

Amount requested: \$99,000

The proposed plans, projects, or programs to which the grant or loan will apply:

The grant will be used to off-set expansion and start-up costs.

The expected benefits of the grant or loan expressed as Jobs, Investments and wage levels:

Bently Heritage, LLC anticipates an initial capital investment exceeding \$10,000,000 and 12 new positions, at an average hourly wage of \$51.90.

A statement on the significance of this grant or loan to the company's described plans:

An alternative location considered for Bently Heritage's establishment was in the Northern California / San Francisco Bay area. There were a number of factors influencing its selection, including the state and local tax structure, business permitting / regulatory process, and real estate availability and costs. The availability of economic incentives by the state factored significantly into the company's decision to locate the distillery in Nevada.

A statement of the estimated return-on-investment to the State in job creation, wage levels and capital investment for the term of the proposed grant/loan:

ECONOMIC IMPACT ESTIMATES:

Total Jobs Supported: 32
 Total Payroll Supported: \$24,152,565
 Total Output Estimate: \$169,140,048

NEW TAX REVENUE ESTIMATES:

<u>Local Taxes</u>	<u>Direct</u>	<u>Indirect</u>	<u>Total</u>
Property	\$4,392,085	\$500,219	\$4,892,304
Sales	\$1,153,968	\$141,871	\$1,295,839
Lodging	\$0	\$110,605	\$110,605
<u>State Taxes</u>	<u>Direct</u>	<u>Indirect</u>	<u>Total</u>
Property	\$213,941	\$28,595	\$242,539
Sales	\$591,553	\$149,746	\$741,299
Modified Business	\$88,646	\$107,523	\$196,169
Lodging	\$0	\$3,919	\$3,919
<u>Total</u>	<u>Direct</u>	<u>Indirect</u>	<u>Total</u>
	\$6,440,193	\$1,042,478	\$7,482,674

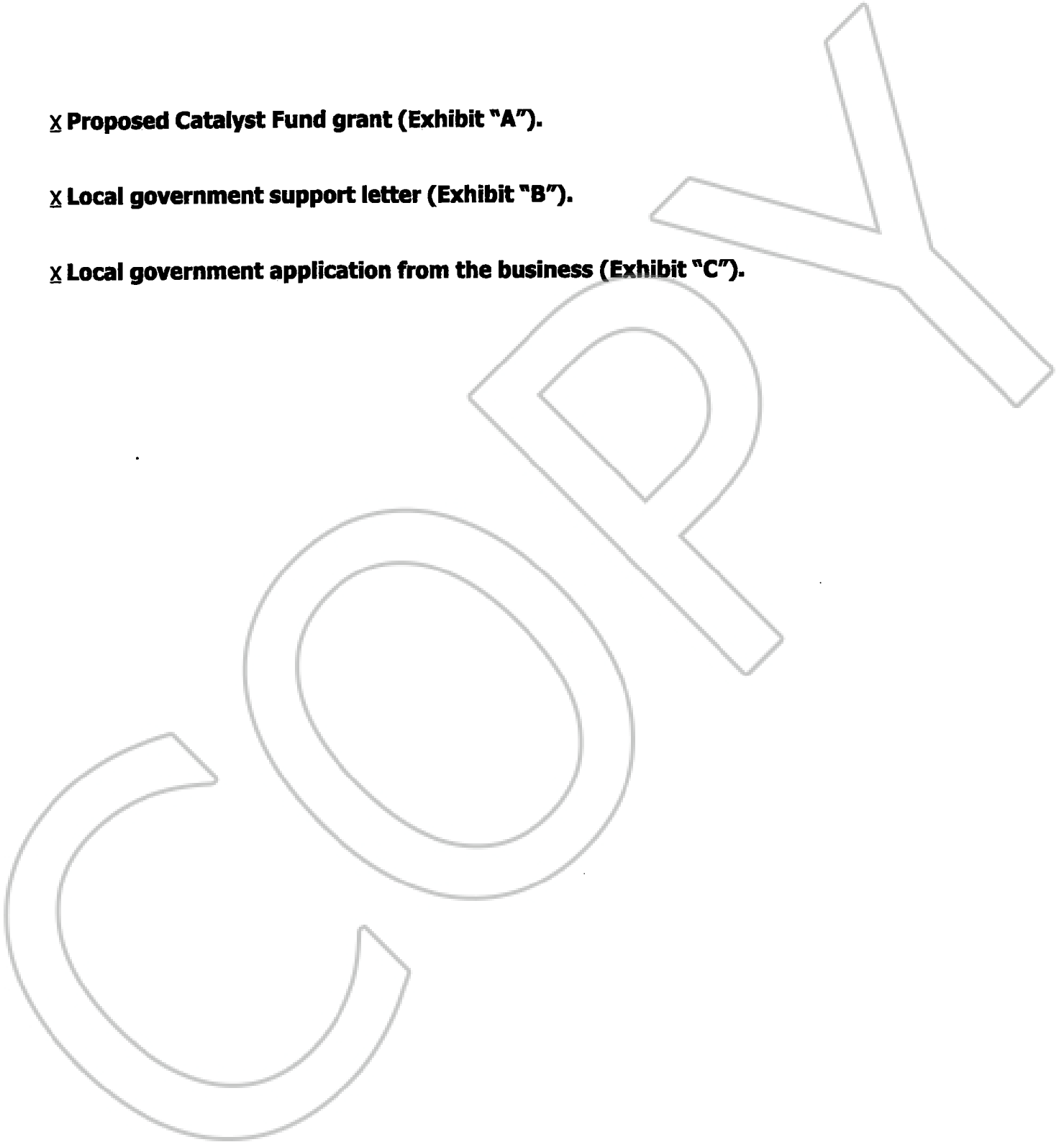
A statement of the fiscal character of the company:

Bently Heritage is a new company developed as part of the Bently Enterprises family of companies. Bently Heritage will develop, manufacture, store, and warehouse a variety of distilled liquors and spirits. The distillery will operate in several historic buildings in downtown Minden, including the Minden Flour Mill. Management, administration, and business support functions will be co-located near the manufacturing facility. The distillery will be open to the public for tours and tastings and is expected to draw visitors from the Tahoe Basin and beyond. Source: Bently Heritage.

Proposed Catalyst Fund grant (Exhibit "A").

Local government support letter (Exhibit "B").

Local government application from the business (Exhibit "C").



INTRODUCTION

LOCAL GOVERNMENT SUBMITTING – Douglas County

Authorized Representative

Name: James R. Nichols

Title: County Manager

Organization: Douglas County

Mailing Address: P.O. Box 218, Minden, NV 89423

Phone Number: 775-782-9821

To the best of my knowledge and belief, the information contained in this Catalyst Fund Application is true and correct, as evidenced by my signature below.

Signature James R. Nichols
(Local Government Representative)

Date 9/2/15

Signature _____
(RDA Representative)

Date _____



BOARD OF COMMISSIONERS

1594 Esmeralda Avenue, Minden, Nevada 89423

James R. Nichols
COUNTY MANAGER
775-782-9821

COMMISSIONERS:
Doug N. Johnson, CHAIRMAN
Nancy McDermid, VICE-CHAIRWOMAN
Greg Lynn
Barry Penzel
Steven Thaler

September 1, 2015

Steve Hill
Executive Director
Governor's Office of Economic Development
555 E Washington Ave #5400
Las Vegas, NV 89101

Dear Mr. Hill:

I am pleased to advise you that Douglas County has received and approved a Catalyst Fund application from Bently Heritage, LLC. The application seeks funding for the Bently Heritage Distillery project. In August of 2012, the Douglas County Board of County Commissioners authorized the County Manager to review and approve Catalyst Fund applications that meet the Governor's Office of Economic Development's (GOED) established criteria. The County has reviewed the expected benefits of the project, which includes the creation of 12 new jobs at an average hourly wage of \$51.90, and has determined the application is consistent with those criteria. Accordingly, I am approving the catalyst fund application submitted by Bently Heritage, LLC.

Sincerely,

James R. Nichols
County Manager

Cc: Northern Nevada Development Authority
Economic Vitality Manager

Douglas County

State of Nevada

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

18th day of March, 2016
By [Signature] Deputy

Mailing Address: P.O. Box 218, Minden, NV 89423