

STATE OF WYOMING  
BUSINESS READY COMMUNITY GRANT AND LOAN PROGRAM  
RULES

Most recent amendments filed November 22, 2013

Rules are anticipated to be effective for all projects awarded after September 1, 2016

WYOMING BUSINESS COUNCIL  
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## **Chapter 1**

### **GENERAL PROVISIONS**

#### **Section 1. Purpose.**

(a) The purpose of the program is to promote economic development at the city, town and county levels in order to improve economic health and a stronger state economy. These rules are adopted in order to implement W.S. 9-12-602 through 9-12-603, which provide for the making of grants and loans to eligible applicants for economic or educational development infrastructure. The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of awards and a hearing process.

(b) Guiding Principles of the Business Ready Community Grant and Loan Program:

(i) Support to Wyoming's communities that are diverse in size, resources and economies.

(ii) Focus Business Ready Community funding on projects that will lead to sustainability of the program and local economic development efforts.

(iii) Support projects that will help people, families and communities thrive.

(iv) Increase the capacity of community and economic development partnerships and cooperative efforts between the private and public sectors recognizing that each has its own responsibilities.

(v) Support and encourage communities that develop innovative responses to their economic challenges through a flexible review and recommendation process.

**Section 2. Authority.** Rulemaking for this program is the responsibility of the Wyoming Business Council as authorized by W.S. 9-12-104(a)(iv) and W.S. 9-12-601.

#### **Section 3. Definitions.**

(a) "Board" means the Wyoming State Loan and Investment Board.

(b) "Community Development Organization" means a business entity organized to provide services as an agent of the applicant for the exclusive mission of helping to develop and support economic development within a specified city, region or state by providing necessary resources and assistance.

(c) “Council” means the Wyoming Business Council Board of Directors.

(d) “Council staff” means the staff of the Wyoming Business Council assigned to administer the program.

(e) “Eligible project costs” means total project cost, less ineligible project costs. Examples of ineligible costs include appliances, equipment, furnishings and other features of the facility which are not physically attached.

(f) “Cash match” means cash contributed to the total eligible project cost. Real estate owned by the applicant or community development organization may be used as cash if the property in question was not purchased or developed by BRC funds and the value of the real estate is supported by an appraisal. Engineering and design work completed within six months of the date a project application is received by the Wyoming Business Council may be counted as cash match.

(g) “In-kind match” are contributions with value and must be applicable to the period to which the matching requirement applies and must be necessary for the project. Examples of in-kind contributions include labor, materials and real estate. In-kind contributions must be verifiable from the records showing how the value placed on in-kind contributions was derived. Labor services will be reported using rates consistent with those ordinarily paid by the applicant or other employers for similar work in the same labor market. Donated materials will be valued at market value at the time of donation. The value of donated buildings or land will be established using a market value or appraisal set by an independent appraiser or a market analysis prepared by a licensed realtor.

(h) “Multi-year project” means a large scale, stand-alone project which will be constructed over separate calendar years and which cannot be separated into smaller, independently operational phases.

(i) “Phased projects” means a project in which parts (“phases”) are completed and fully functional before the entire project is built-out. For example, a business park that will eventually have twenty lots may be phased such that infrastructure will open up five lots at a time over four different phases. The first five lots can be occupied immediately upon completion of the infrastructure and do not require completion of the remaining three phases.

(j) “Political subdivision” is an entity, serving as an agent for the applicant that meets two of the three following criteria:

- (i) A governmental function with a local purpose;
- (ii) Officers elected by the district’s inhabitants;

(iii) Provisions for assessment of taxes for finance purposes.

(k) “Primary jobs” are jobs created or retained by a business(es) that provide(s) goods and services that are primarily exported out of the state, that gain market share from imports to the state, or that meet an unmet need in the market area and result in the creation of new wealth.

(l) “Revenue generating project” means real property developed with Business Ready Community grants that can generate revenue from, lease payments or the proceeds from the sale of real property.

(i) “Net Revenue” means income generated by the lease or sale of a BRC funded asset, less expenses associated with maintaining the asset. Deductible expenses must be paid by owner and can include utility costs, insurance, property taxes, pest control, repairs, property association fees and property maintenance.

(m) “State Development Organization” means a corporation organized under W.S. 17-11-101 through 17-11-120 with the authority to provide financing for new, existing or expanding businesses and to fulfill other economic or community development purposes throughout the state of Wyoming and which may take equity positions and shall take security positions in its borrowers’ businesses and appropriate personal guarantees from the owners thereof.

**Section 4. Eligible Applicants.**

(a) A county, an incorporated city or town and joint powers board may apply for funding. A joint powers board may apply with the approval of all participating agencies to the joint powers agreement.

(b) The Council may enter into a contract/cooperative agreement with the Eastern Shoshone or the Northern Arapahoe Tribe in order to promote the purpose of this program.

(c) An applicant may contract with a Community Development Organization, State Development Organization or political subdivision to use BRC funds.

**Section 5. Type of Projects.** A grant or loan may be used for the following types of projects:

(a) A Business Committed Project is a project in which an applicant has a business committed to start-up, expand, locate or retain jobs in the community. The applicant must demonstrate that new primary jobs will be created or retained by the

business and that the new jobs will be created at or above the county mean and/or median wages and/or improve community and economic capacity. In addition to assisting a particular business, a Business Committed Project may also fulfill the purpose of a Community Readiness Project. The maximum grant amount is \$3,000,000. Funding in excess of the maximum grant amount may be applied for as a BRC loan.

(b) A Community Readiness Project is a project which has no specific business committed to expand or locate in a community. The community wants to build infrastructure to ready itself for new business development under a specific strategy or plan of action; for example, development of a business or industrial park, a downtown development project or facilities for labor force or entrepreneurial training. The applicant must demonstrate potential exists for creation of new primary jobs. The maximum grant amount is \$3,000,000. Funding in excess of the maximum grant amount may be applied for as a BRC loan.

(c) A Community Enhancement Project is a project in which an applicant wants to improve the community's aesthetic character or quality of life in order to make itself more attractive for business development or workforce attraction and/or retention under a specific strategy or plan of action; for example, landscaping, recreational, convention facilities, community centers, senior care or child care infrastructure. Landscaping and streetscaping enhancements must be located in commercial districts, sites of business activity or high visibility areas. Recreation, convention or cultural centers must have a draw greater than the jurisdictional boundaries of the applicant. The maximum grant amount is \$500,000. Funding in excess of the maximum grant amount may be applied for as a BRC loan.

(d) A planning project is a project in which an applicant creates or further develops a community's economic development strategy and outlines an implementation plan.

(i) An economic development plan assesses the community as a whole and identifies potential future economic development opportunities. This includes regional targeted industry plans. The maximum award is \$50,000.

(ii) A feasibility study is a site specific or industry specific plan to determine the feasibility of a project to meet economic development objectives. The maximum award is \$25,000.

(iii) A promotional plan addresses marketing of a community's assets. The maximum award is \$25,000.

(iv) A tourism plan addresses economic development opportunities for a defined region or community related to tourism. The maximum award is \$25,000.

**Section 6. Eligible Activities.**

(a) The following are eligible activities:

(i) Grant and loan funds may be used for economic or educational development infrastructure projects which may include, but are not limited to, water, sewer, streets and roads, telecommunications, airports, purchase of rights of way, purchase of land, buildings, facilities, industrial and business parks, industrial site or business district development, amenities within a business or industrial park, landscaping, recreational and convention facilities and other physical projects;

(ii) Grant and loan funds may not be used for the rehabilitation or expansion of existing infrastructure unless the Council determines the rehabilitation or expansion is necessary to meet the purpose of the program;

(iii) Grant and loan funds may be used for the expansion of infrastructure previously funded under this program for phased projects.

(b) Grants for planning projects may only be used for the creation of the planning document(s). Funds may not be used for salary costs of the applicant or local organizations, travel costs for anyone other than the planning consultant(s) or reproduction of any promotional materials.

**Section 7. Ownership of Infrastructure**

(a) The infrastructure funded by this program shall be owned by the applicant or an agent of the applicant: community development organization, state development organization or political subdivision.

(b) Unless the project is owned by an applicant, there shall be documentation that in the event of dissolution of the owner, BRC-funded infrastructure must revert to the sponsoring applicant or a related city, town, county, joint powers board or tribe. This requirement may be satisfied by either specific language within articles of incorporation or a filing of the real estate record with the county of record.

(c) The infrastructure or facility can be sold to a private entity without advertising the sale or calling for bids, provided that the grantee and/or borrower makes a determination that the sale will benefit the economic development of the community and holds a public hearing, notice of which shall include the appraised value of all real properties, at least once each week for three (3) consecutive weeks in a newspaper of general circulation in the county in which the grantee and/or borrower is located. All sales must be done in accordance with all applicable statutes.

**Section 8. Revenue Generating Projects.** Revenue generated by the applicant or an owner described in Section 7 must be recaptured at a negotiated rate commensurate with the public investment. A minimum of twenty-five percent (25%) of net revenue generated must be reimbursed to the BRC fund up to the original grant amount of the project. Revenue recapture requirements may be satisfied by repayment of a BRC loan or via revenue recapture payments unless otherwise prohibited by governmental rules or regulations.

(a) All funds recaptured at the local level shall be placed in a segregated economic development account.

(b) No more than fifty percent (50%) of local recapture may be used for operational expenses if matched dollar-for-dollar by local funds.

(c) Revenue recapture must be repaid to the BRC fund annually or according to a schedule agreeable to Council staff.

**Section 9. Projects Involving a Private Developer.** Projects involving a private developer must demonstrate the projected economic impacts are at least as great as the BRC assistance and may be demonstrated through repayment of BRC funds, direct jobs created, projected tax benefits and/or donation of real estate that is not otherwise necessary for the project to the applicant or an agent of the applicant. The value of all real estate donations must be verified by a certified appraisal or market analysis as determined by Council staff.

**Section 10. Local Public Hearing and Approval.**

(a) An applicant is required to inform and educate the public and business community to the greatest extent possible about the proposed economic development project (including, but not limited to the economic development opportunity, possible funding sources and alternative solutions) utilizing a variety of techniques and media. The applicant must make readily available to the public access to the application and associated materials, exclusive of business plans or business financial information. An applicant shall actively solicit citizen input that can be submitted via writing, electronically or in person at a public hearing. A minimum of one public hearing is required before submission of an application. For the purposes of this program, seven (7) days is the minimum period for notification of a hearing date. Public notice shall be published in a newspaper of general circulation within the boundaries of the applicant or as approved by the Council staff. If the project facility is to be located outside the boundaries of the applicant, the applicant shall hold an additional public hearing near the location of the proposed project facility. The notice shall contain a concise description of the proposed project and state that time will be set aside at the public hearing to take testimony from citizens about the project.

(i) To inform the public and gather information, any public hearing should at a minimum:

(A) Identify the economic development opportunity(ies);

(B) Explore all known possible funding sources and alternative solutions to the opportunity(ies);

(C) Contain a comprehensive description of the proposed project;

(D) Solicit testimony from citizens who may feel that the proposed project might compete with an existing business.

(ii) An applicant must use its best efforts to notify all providers of similar services in the market area about the public hearing at least seven (7) days in advance of the public hearing.

(b) An application must be accompanied by a description of the applicant's public engagement process, written comments received by the applicant, evidence of the public hearing notification, minutes from the public hearing and a signed resolution passed by the applicant or participating agencies to a joint powers board after the public hearing is held and public comments are considered.

## **Section 11. Application Procedures.**

(a) Each Wyoming Business Council Regional Director is available to assist applicants with the development of projects and preparation of applications. The Regional Director will use resources available such as the Department of Workforce Services and Wyoming's Community Colleges to define available workforce training programs that could be used in conjunction with educational development infrastructure and/or the labor market/workforce portion of the application. Draft applications must be provided to the Regional Director two weeks prior to submission.

(i) The applicant must schedule a consultation with a Wyoming Business Council Regional Director to discuss the project. The Wyoming Business Council Regional Director will submit preliminary comments and concerns along with the application. A copy of the draft application and draft application materials must be submitted to the Wyoming Business Council Regional Director at least two weeks before the application submission deadline;

(b) An application shall be reviewed by the council staff to determine eligibility and completeness.

(c) All grant and loan applications shall be reviewed by the office of the Attorney General for project structure, including recapture provisions, in advance of Council consideration.

(d) A complete application shall be forwarded by the Council staff with a recommendation to the Council for review. Incomplete applications will be either tabled or sent back to the applicant for resubmittal at a different time. An application that is determined by the Council staff to be incomplete shall be provided an explanation of the findings in writing within thirty (30) working days of its receipt where practical.

(e) The Council staff shall publish statewide notice of Council and Board meetings at which Business Ready Grant and Loan Program applications will be discussed.

(f) The Council shall consider each application, allow for comments from the public, the applicant and the Council staff and refer to the Board the application with a recommendation.

(g) Under extraordinary circumstances, the Council may recommend a waiver of rule requirements if the Council determines the waiver is consistent with the purpose of the Business Ready Community Grant and Loan Program.

**Section 12. Application Submittal Requirements.**

(a) Application Submittal Requirements. An applicant shall submit the required application form and supplemental documentation as required by Council staff.

(b) Other information as requested by Council staff.

(c) Previous Applicant. An applicant must show that satisfactory performance has been demonstrated under previous grants and/or loans awarded through this program.

**Section 13. Allocation Plan and Funding Cycles**

(a) The Council may adopt a funding allocation plan for BRC projects and prioritize project types.

(b) Applications will be accepted according to an annual deadline schedule posted by the Council.

(c) BRC awards per applicant are limited as follows:

Business Committed	No Limit
Managed Data Center Cost Reduction	No Limit
Community Readiness	One per calendar year
Community Enhancement	One per calendar year
Planning	One per calendar year

(d) An applicant may request, with a single application, grant or loan funds up to the annual maximum amount for a multi-year project for a period not to exceed three (3) fiscal years. The applicant must demonstrate how the project meets the definition of a multi-year project.

**Section 14. Application Evaluation.** In addition to the Guiding Principles for the Business Ready Community Grant and Loan Program the Council may evaluate a grant and/or loan application utilizing one or more of the following criteria and measures:

(a) The extent to which the project will increase the number of primary jobs;

(b) The extent to which the project will create jobs at or above the county mean and/or median wages;

(c) The extent to which the project will create sustainable jobs or jobs with benefits such as health insurance and retirement;

(d) The extent to which the demand for those services outpaces the existing supply of services causing a detriment to the ability of the applicant to develop its workforce, community needs and economy;

(e) The extent of private investment in capital equipment and/or facilities for a new or existing business. Preference is given to projects leveraging private investment;

(f) The extent to which the project aligns with targeted industries identified by the local and regional community as well as the Council;

(g) The extent to which the total revenue for an existing business is increased;

(h) The extent to which the market share increases for an existing business as measured by units sold or some other measure that competitors in the market generally recognize as valid;

- (i) The viability and thoroughness of a business plan which includes, at a minimum, a business description, management qualifications, market investigation, balance sheet, profit and loss for the previous three (3) years or tax returns for the previous three (3) years and cash flow projections for the next three (3) years;
- (j) The extent to which the project helps an applicant attract new businesses and/or expand and retain existing business(es);
- (k) The extent to which the project helps an applicant fulfill community development goals related to economic development;
- (l) The extent to which the project helps an applicant diversify its economy;
- (m) The extent to which the project builds upon an applicant's unique assets and characteristics to develop momentum in market niches;
- (n) The extent to which the project is ready to begin construction and/or implementation. For example, projects have secured financing, permits and licensing, zoning classifications, annexation, appraisals and purchase agreements necessary to complete the project;
- (o) The extent to which the project helps the applicant grow the local workforce;
- (p) The extent to which the project helps the applicant expand entrepreneurial and/or workforce training;
- (q) The viability and thoroughness of the recapture plan for revenue generating projects that will anticipate revenue streams and prioritize economic development initiatives to be paid for with the revenue while allowing the applicant flexibility to respond to opportunities;
- (r) The extent to which the project involves the use of a Business Ready Community loan;
- (s) The extent to which the project leverages additional private investment.
- (t) The extent to which the project assists the applicant's Main Street Program efforts;
- (u) The extent to which the Community Enhancement project provides a listing of proposed community enhancement projects and site related to economic development along with preliminary cost estimates;

(v) The extent to which the planning project will create or further develop an applicant's specific economic development strategy;

(w) The extent to which the planning project will potentially lead to job creation or retention;

(x) The extent to which the planning project will address methods of funding to implement the plan;

(y) The extent to which the tourism planning project will increase overnight visitors, local sales tax revenue, local lodging tax revenue and local employment opportunities and earnings;

(z) Satisfactory performance under previous grants awarded through this program;

(aa) The extent to which the project will provide for information technology services to the state or to the applicant at a price discounted from the fair market value of the services;

(bb) The extent to which the project will provide information technology services to technology related businesses in the state, at a price discounted from the fair market value of the services;

(cc) The extent to which the project will facilitate the expansion or retention of a business developed at the University of Wyoming Business Technology Center;

(dd) In order to determine compliance with Article 16, Section 6 of the Wyoming Constitution, the Council staff will consult with the Attorney General when evaluating a request to fund a "Business Committed" project, project involving a private developer or a "Managed Data Center Cost Reduction" project. The application and the Council recommendation will be reviewed by the Attorney General using the following criteria:

(i) A public purpose must exist;

(ii) Adequate consideration must be exchanged;

(iii) Statutory authority must exist.

**Section 15. Grant Match Requirements for Projects Other than Managed Data Center Cost Reduction grants.**

- (a) BRC loans do not require a match.
- (b) A BRC loan can be used to satisfy match requirement.
- (c) Match is based on total eligible project costs.
- (d) Following is a breakdown:

<b>BRC Required Match</b>			
	Category 1 Applicant	Category 2 Applicant	Notes
Business Committed	10%	5%	Half of match must be cash
Community Readiness	10%	5%	Half of match must be cash
Community Enhancement	25%	20%	Half of match must be cash
Planning	25%	25%	Match must be all cash
All matches are calculated as a percentage of total project cost.			

(e) A grant for a “Planning” project shall require a minimum cash match of twenty-five percent (25%) of total eligible project activities. Community Development Block Grant funds cannot be used for a match.

(f) Applicants for all other projects are categorized based on population and local government share of state sales and use tax per capita. Categories determine the required match. Sales and use tax figures are updated annually by the Wyoming Department of Revenue and population figures are updated every five years by the U.S. Census Bureau. Sales and use tax figures used for determination will be an average of the three most recent years’ data available. A schedule of categories will be regularly updated and posted on the Wyoming Business Council website.

(i) Category One applicants are those municipalities with a population greater than 1,300 or are located in a county where the three-year average of the local government share of state sales and use tax per capita is more than 70% of the statewide average.

(ii) Category Two applicants are those municipalities with a population under 1,300 or are located in a county where the three-year average of the local government share of state sales and use tax per capita is less than 70% of the statewide average.

(iii) In the case of a joint powers board, the project’s location will determine its categorization.

**Section 16. Fund Disbursement, Project Monitoring, Performance Measures and Revenue Recapture Reporting.**

(a) Procurement Standards. Applicants must follow state procurement regulations for cities and towns and the Wyoming Preference Act. If a non-municipal

applicant has a procurement policy, staff or qualified consultants reserve the right to review that policy prior to fund disbursements.

(b) Fund Disbursement. Funds shall be disbursed to the applicant only as needed to discharge obligations incurred in accordance with the Board approved eligible project costs. Request for disbursement shall be made via the online grant management system, access to which shall be provided by Council staff. Requests for fund disbursement must be supported by adequate proof that such an obligation has been incurred for the project purpose and is due and owing.

(c) Fund Reversion.

(i) If the Council staff determines that a project has not been completed within a reasonable time, Council staff shall notify the applicant in writing at least thirty (30) days prior to presenting the matter for Council review.

(ii) If the Council staff determines that the project is complete, but the full amount of the grant or loan has not been expended, the Council staff shall notify grantee of this determination. Thirty (30) days following the notification, the unused portion of the grant or loan shall revert to the BRC Fund.

(iii) For projects that have not been started within one year: Council staff will notify a grantee/borrower of a pending expiration prior to the one-year anniversary of the grant/loan approval. The grantee/borrower can submit a written request to continue the project. Council staff may request new and/or updated information and documentation. Council staff may recommend and the Council may grant an extension of time in which to start the project or terminate the project.

(iv) For projects with contingencies: Council staff may request a monthly update on the status of the contingencies. The grantee/borrower has the option to submit a new application or may request an extension or modification of the contingency terms through the Council staff. Council staff may recommend and the Council may grant an extension of time or modification to the contingencies.

(d) Project Monitoring.

(i) Reports. Within fifteen (15) calendar days of the conclusion of each calendar quarter during the term of the grant or loan contract, the applicant shall supply Council staff with a progress report. Each progress report shall set forth in narrative form the work accomplished under the grant or loan during the quarter and shall include a financial status report. At the end of the project, the applicant shall furnish Council staff with a comprehensive report of the project. The applicant shall likewise furnish the Council staff with a cumulative financial statement, reflecting the total expenditure pursuant to this grant agreement.

(ii) Audits and inspections. The Council staff may, at its expense, conduct an audit of the records of the applicant and inspect the construction and operation of the project.

(iii) Record retention. Grantee agrees to retain all records related to the project for five (5) years following the Council staff's date of notice to grantee of closeout of the grant.

(e) Project Evaluation.

(i) Reports. Upon project construction, the grantee/borrower shall annual reports for five years project outcomes against established measures. Council staff shall tailor reports to the specific nature of each grant or loan, in agreements between the Council and grantee.

(ii) Evaluation results. The Council shall use the evaluation report information to measure program outcomes, to promote learning from experience and to improve program performance. Evaluation results will be available to other grantees.

(iii) At the end of the term of a BRC project, the Grantee/Borrower shall provide a comprehensive report to the Council staff, in a format prescribed by the Council staff that is a cumulative financial and performance report of the project. This report shall, at a minimum, include a detailed accounting of project expenditures that were paid for with BRC grant or loan funds, match contributed, recapture revenue(s) received, how recaptured revenues were or will be used, how recaptured revenue use complies with the rules of the BRC program and the project grant/loan agreement and a list of the accomplishments that resulted from the grant or loan. An authorized official of the Grantee/Borrower shall certify, under penalty of false swearing, that the information in the report is true. The Council staff reserves the right to require a BRC project audit to be conducted by the director of the department of audit or his designee. The cost of this audit shall be the responsibility of the Grantee/Borrower.

(iv) A grant/loan recipient shall keep recapture funds in a segregated account and report on such to council staff for the term of the revenue recapture agreement.

**Chapter 2**

**REPEALED**

## Chapter 3

### BUSINESS READY COMMUNITY LOAN INFORMATION

#### Section 1. Definitions.

(a) “Non-recourse loan” is a loan that is secured by a pledge of collateral, typically real property. If the borrower defaults, the Council can seize collateral, but will not seek any further compensation from the borrower.

**Section 2. General Policy.** A BRC loan may be made to fund all or a portion of any project that is an eligible activity. A BRC loan can be used in conjunction with a BRC grant. In no event shall a loan be made to pay off or refinance existing debt.

#### Section 3. Application Submittal Requirements.

(a) In addition to application requirements in Chapter 1, the following items are required:

(i) A copy of the signed resolution of support from the applicant or the member agencies if the applicant is a joint powers board that includes source of repayment of the loan and the proposed security for the loan;

(ii) If applicable, documentation of any environmental requirements (at the expense of the borrower). Council staff will determine the level of environmental review required;

(iii) If applicable, determination if property is subject to federal flood regulations. An applicant must include a federal floodplain map and identify location of proposed collateral. If necessary, flood and hazard insurance will be required at the expense of the borrower;

(iv) If applicable, an applicant must include guarantees, letters of credit and any other proposed security;

(v) A letter from the applicant’s attorney addressing the following in detail:

(A) The applicant’s authority to enter into the loan;

(B) The applicant’s current indebtedness and borrowing capacity;

(C) Whether or not this loan will require an election;

(D) Method of repayment and revenue sources;

(E) Affirmation that Wyoming State Constitution debt provisions and all other applicable statutes will be followed.

(vi) In order for the Council to determine the ability of the applicant to repay a loan and to aid the Attorney General in evaluating the legality of the proposed indebtedness, an applicant shall provide an annual budget for the preceding and current fiscal years and a completed financial statement provided on a “General Financial Information” form provided by the Council staff, that includes, but is not limited to the following information:

(A) Assessed valuation for the current and two (2) preceding fiscal years;

(B) Total bonded and non-bonded indebtedness, including outstanding principal balance, interest rate and remaining term;

(C) Total mills levied within the jurisdiction of the applicant for the current and two (2) preceding years: and, a breakdown of the mill levy for the current fiscal year;

(D) Sales and use tax imposed within the jurisdiction of the applicant;

(E) A summary of the applicant’s total investments and cash balances for the three (3) preceding fiscal years.

(vii) Council staff may require additional information in accordance with Council loan policies.

(viii) Other applicable information as requested by the Council staff.

**Section 4. Loan Amount.**

(a) The maximum loan amount is \$3,000,000 per application.

**Section 5. Interest Rate and Term.** A Business Ready Community Loan shall be made at the following interest rates as recommended by the Council and established by the Board and reflective of market rates.

(a) A floor of zero percent (0%) for non-revenue generating projects.

(b) A floor of one percent (1%) for revenue generating projects.

(c) Loans may have a one-time servicing fee of one-half of one percent (0.5%) not to exceed \$5,000 and will be serviced through a third-party contract.

(d) Fees such as origination, documentation, filing appraisal and any additional fees will be paid by the applicant.

(e) The term of the loan will be based upon the useful life of the asset not to exceed 30 years.

**Section 6. Security Interest.**

(a) A loan shall be adequately collateralized as recommended by the Council and determined by the Board. The Council may recommend and the Board may require a first position security interest in the revenue generating facility and the related user fees or assessments. Other security may be required as determined by the Council and approved by the Board. A borrower will be required to maintain adequate insurance on the proposed infrastructure, pay applicable taxes and assessments when due and maintain the infrastructure in good condition. An applicant will be required to provide a complete appraisal on the collateral. Council reserves the right to review and accept the appraisal or assign the appraisal to a third party at the cost of the applicant. An appraisal may be waived in the event staff determines the project has sufficient equity coverage.

(b) Loans may be non-recourse.

**Section 7. Attorney General Opinion.** No loan shall be made without the written opinion of the Attorney General certifying the legality of the transaction and all loan documents. An election approving the project and borrowing for the project by the qualified electors of the borrowing entity shall be required only if the Attorney General determines such an election is otherwise required by law.

**Section 8. Loan Evaluation.** In addition to Application Evaluation criteria in Chapter 1, council staff shall evaluate a loan application utilizing the following criteria:

(a) Whether the user fees or assessments generated by the project will be sufficient so that the loan may be considered a reasonable and prudent investment of state funds;

(b) Whether the applicant is current on repayment obligations to the Business Ready Community account or other state loan accounts.

**Section 9. Council Consideration.** The Council shall consider each application, allow for comments from the public, the applicant and the Council staff and refer to

the Board a recommendation including the amount of the loan, the term of the loan and the type of security required to secure the loan.

**Section 10. Disbursement of Loan Proceeds.** Funds shall be disbursed to the applicant as needed to discharge obligations incurred in accordance with the Board approved eligible project costs. Request for disbursement shall be made via the online grant and loan management system access to which shall be provided by the Council staff. Disbursement requests shall be supported by adequate proof that such an obligation has been incurred for the project purpose and is due and owing.

## Chapter 4

### BUSINESS READY COMMUNITY MANAGED DATA CENTER COST REDUCTION FUNDING

#### Section 1. Definitions.

(a) “Managed Data Center” means a center whose primary purpose is the centralized repository for storage, management and dissemination of data and information for multiple businesses. This definition does not include spaces primarily for housing office computers, including individual work stations, servers associated with workstations or small server rooms. For the purposes of these rules, the Council has adopted the Uptime Institute, Inc.’s four tiered classification approach to site power infrastructure. Projects must be similar and align with the characteristics of the tier classifications or another widely accepted metric for evaluating data centers.

(i) Tier IV data centers support companies with an international market presence delivering around the clock, year round services in a highly competitive market. Tier IV businesses are based on E-commerce, market transactions or financial settlement processes. The businesses tend to be large, global companies spanning multiple time zones.

(ii) Tier III data centers support internal and external clients around the clock, year round such as service centers and help desks, but can schedule short periods when limited service is acceptable.

(iii) Tier II data centers are typically internet-based companies without serious financial penalties for quality of service commitments and small businesses whose information technology requirements are mostly limited to traditional normal business hours, allowing system shutdown during “off-hours”.

(iv) Tier I data centers are small businesses where information technology primarily enhances internal business process and whose web-presence is as a passive marketing tool. For example, internet based startup companies without quality of service commitments.

#### Section 2. Maximum Amount and Match.

(a) The maximum grant amount is \$2,250,000. The grant amount will be determined by the business’ match amount.

(b) The grant shall require a minimum private investment match that is at least one hundred twenty-five percent (125%) greater than the “Managed Data Center Cost Reduction” grant. No less than fifty percent (50%) of the match shall be calculated by the net wages of those employees earning one hundred fifty percent (150%) of the median wage for all occupations in all industries within the county in which the project will take place. Nor more than fifty percent (50%) of the match shall be calculated by the private capital investments in taxable items. The following table shows three (3) examples of grant amounts and the required match. The match can be realized up to five years. The following table shows three (3) examples of grant amounts and the required match.

Total Grant Amount	Percent of Minimum Consideration	Minimum Required Match (Realized over 5 Years)	Minimum Percent of Required Consideration Comprised of Wages (100% of which are 150% the County Median)	Minimum Required Wages (100% of which are 150% above County Median)	Maximum Private Capital Investment in Taxable Items Allowable as Consideration
\$ 2,250,000	125%	\$ 2,812,500	50%	\$ 1,406,250	\$ 1,406,250
\$ 1,500,000	125%	\$ 1,875,000	50%	\$ 937,500	\$ 937,500
\$ 750,000	125%	\$ 937,500	50%	\$ 468,750	\$ 468,750

**Section 3. Eligible Project Activities.** Grants for Managed Data Center Cost Reduction projects may be used for the reduction of the costs of electrical power, broadband or both.

**Section 4. Fund Disbursement, Project Monitoring and Project Evaluation.** Managed Data Center Cost Reduction projects are subject to all requirements listed in Chapter 1, Section 15 and the following:

(a) Funds will only be disbursed for businesses that are in operation in the jurisdiction of the applicant. Funds may be disbursed over five years applicant realizes the match requirement. Annual grant disbursements may total no more than one-third (1/3) the total amount in addition to the unused balance available from previous grant years.

(b) If the Council staff determines that a business participating in a “Managed Data Center Cost Reduction” project is not operating within one year from the time the grant is approved, the grant will automatically expire. Based on information supplied by the grantee, Council staff may grant an extension of time in which the business must start operations.

(c) If the Council staff determines that five (5) years has elapsed since the commencement of operations of a business participating in a “Managed Data Center Cost Reduction” project and the match requirement has not been met, then the full or

partial amount of grant disbursed to the applicant may be reimbursed to the BRC account.

**Section 5. Application Evaluation.** In addition to other application evaluation criteria in Chapter 1, Managed Data Center Cost Reduction requests will be evaluated on the extent to which the project will provide for the growth or recruitment of managed data centers at Tier II, Tier III and Tier IV levels or similar levels. Preference will be given to Tier III or Tier IV level or similar level managed data centers.

**Section 6. Application Submittal Requirements**

(a) Applicant must follow application requirements in Chapter 1.

(b) In addition to other requirements listed for a development agreement in Chapter 1, the following must be included:

(i) An agreement that the business will repay all grant funds expended at a reasonable rate of return as negotiated with the applicant and approved by the Council if the business relocates from the political subdivision within five (5) years from first receiving funds;

(ii) An agreement that the business will repay all grant funds expended at a reasonable rate of return as negotiated with the applicant and approved by the Council if the business does not meet its match requirements within five (5) years from first receiving funds;

(iii) An understanding of the required match and job creation requirements;

(iv) The terms of the fund disbursements and a statement of which utility costs will be reduced using the grant funds and in what amount;

(v) An understanding of the timeline for the business to become operational;

(vi) An offer by the business and an acceptance or declination by the applicant to provide a stated amount of information technology storage services to the applicant at a price discounted from the fair market value of the services;

(vii) The signed contingency may also include a commitment by the business to offer a stated amount of information technology services to the state or a Wyoming based technology related business at a price discounted from the fair market value of the services;

(viii) (If applicable) A signed lease agreement or memorandum agreement with regards to the terms of a lease agreement;

(ix) (If applicable) Evidence that there is or will be infrastructure, architecture and services necessary for the support of a data center at a Tier II, Tier III or Tier IV level or similar level.

(c) At the applicant's expense, the Council staff may request a disinterested third party to validate a data center's Tier level, review a business plan or examine other aspects of an application. Council staff must approve the third party.