**Development Agreement between** **APPLICANT,** **CDO and** **BUSINESS**

THIS AGREEMENT is made and entered into by and between APPLICANT, CDO and BUSINESS, collectively referred to as the “Parties”.

WHEREAS, the purpose of the Business Ready Community Program (“BRC”) is to promote economic development at the city, town and county level in order to create economic health and a stronger state economy; and

WHEREAS, the parties to this Agreement understand and agree the PROJECT PURPOSE will promote economic development in LOCATION through PUBLIC ECONOMIC BENEFITS; and

WHEREAS, APPLICANT is an eligible applicant to the Wyoming Business Council for BRC Grants; and

WHEREAS, CDO desires to facilitate the RELOCATION OR EXPANSION of BUSINESS to BUSINESS PURPOSE in LOCATION and further desires to procure funds to pay for INFRASTRUCTURE.

NOW, THEREFORE, in consideration of the promises and agreements contained herein, the parties agree as follows:

1. **Purpose**. The purpose of this Agreement is to facilitate the award of BRC funds to APPLICANT for the construction of INFRASTRUCTURE through grant applications made to the Wyoming Business Council. The application for BRC funds are available for review at the offices of APPLICANT and the Wyoming Business Council.
2. **Term:** This Agreement shall commence upon the date the last signature is affixed hereto and all approvals pursuant to Section VI, Paragraph D are granted and shall remain in full force and effect until ### years following the last expenditure from BRC funds.
3. **Responsibilities of APPLICANT**: APPLICANT shall:
   1. Apply for a BRC Grant in the amount of $$$ for the construction of the project for BUSINESS
   2. Contingent upon the award of funds and the receipt from CDO of invoices substantiating project costs, act as fiscal agent for BRC funds, process all required paper work and seek reimbursement of amounts paid to or on behalf of CDO from the Wyoming Business Council
   3. BRC Funds received by APPLICANT will be paid to CDO as its agent and in consideration for its performance as described in this Agreement and in terms and conditions of all other agreements required to be entered into by and between the Wyoming Business Council and APPLICANT. APPLICANT shall not be obligated to proceed with the project if it does not receive the requested funding from the Wyoming Business Council, nor shall APPLICANT be obligated to expend funds for the project in excess of the funds received from the Wyoming Business Council
   4. If funding is Business Ready Community Program funding is awarded, this Agreement will become part of the grant/loan agreement between the Wyoming Business Council and APPLICANT. APPLICANT must notify and receive approval from Wyoming Business Council staff before changing this Development Agreement.
   5. (IF APPLICABLE) Purchase or accept ownership of real estate in connection with the project
   6. Enter into one or more lease agreements with CDO for BUSINESS ultimate sublease of the INFRASTRUCTURE provided by BRC funds.
   7. Manage the advertising, bidding and award of construction contracts and other procurement related to the project and certify to the Wyoming Business Council that Wyoming Statute § § 15-13-113 and 16-6-101 et seq were followed and that a public and competitive procurement process was used to award all contracts for which grant funds were utilized, including the requirement that preference be given to: Wyoming bidders for contractual services; Wyoming laborers, workmen and mechanics; and for materials, supplies, equipment, machinery and provisions produced, manufactured, supplied or grown in Wyoming. Provided, however that CDO shall not hire, contract with, bind itself or otherwise commit BRC funds for construction or development of the project until it has consulted with APPLICANT staff to ensure compliance with state law, applicable building and land use codes and APPLICANT policies.
4. **Responsibilities of CDO**: CDO shall:
   1. Act as APPLICANT'S agent for the purposes of RELOCATING OR EXPANDING BUSINESS operations to LOCATION.
   2. Collaborate with BUSINESS on the design and construction of the project to meet BUSINESS design criteria.
   3. Obtain designs, specifications and other information necessary to conduct a public and competitive procurement process for construction contracts for the project.
   4. Require project contractors to provide payment and performance bonds, as may be necessary, in amounts equal to the total estimated cost of constructing and completing the project as a completed and functional INFRASTRUCTURE, suitable for BUSINESS use according to the specifications and design criteria provided by CDO.
   5. (IF APPLICABLE) Donate real property including DESCRIPTION, worth an estimated $$$, located at ADDRESS. Such real property will function as matching funds required for the project.
   6. Convey property to APPLICANT, which will own the property and improvements built thereon during and after project construction.
   7. Enter into a lease with APPLICANT and a sublease with BUSINESS, which sublease will be for a period of not less than ### years, at rates and with terms and conditions as provided for in the lease. Lease payments pursuant to the terms of the sublease shall be construed to satisfy BRC revenue recapture requirements and shall comply with the repayment of grant funds subject to recapture pursuant to Section VI below.
   8. Provide the APPLICANT grant management contact any and all required information and/or reports in a timely manner for reporting and reimbursement requests that will be made to the Wyoming Business Council. CDO understands and agrees APPLICANT will only reimburse costs incurred for the purposes described in this Agreement and for which the Wyoming Business Council reimburses APPLICANT. CDO agrees to repay APPLICANT any amount of funds paid by APPLICANT in furtherance of the project not reimbursed by the Wyoming Business Council.
   9. Maintain reasonable and responsible accounting procedures and practices and maintain books, records, documents and other evidence to sufficiently and properly reflect all transactions of any nature relating to this Agreement and any funds provided by or through APPLICANT, including but not limited to funds referenced herein and any and all grants acquired or received by or through APPLICANT from any source. Such books, records, documents and other evidence shall be made available upon written request of APPLICANT for inspection at the offices of either CDO or APPLICANT or such location as approved by the parties.
   10. Retain all required records for three (3) years after receipt of final reimbursement of the BRC funds and all other matters relating to the Agreement are concluded.
   11. Comply with all applicable federal, state and local laws, including, but not limited to the Civil Rights Act of 1964.
   12. Finished or unfinished documents, data or reports prepared under this agreement shall be considered the property of APPLICANT. Upon completion of the services to be performed or upon termination of this agreement for cause or for the convenience of APPLICANT, CDO agrees to provide such documents and information to APPLICANT.
5. **Responsibilities of** BUSINESS: BUSINESS shall:
   1. Enter into a sublease with CDO at rates and terms as provided for in said sublease, which sublease shall be acceptable to BUSINESS. Sublease shall be for a period of not less than ### years.
   2. BUSINESS shall provide CDO with specifications for improvements needed to make INFRASTRUCTURE suitable for BUSINESS use.
   3. BUSINESS shall be exclusively responsible for any and all costs associated with the project which may exceed the total amount awarded through BRC funds. BUSINESS understands and agrees that CDO will use any and all BRC funds it receives for the construction of the project. BUSINESS also agrees it shall be exclusively responsible for the acquisition and installation of any and all trade fixtures or other property which does not become a permanent fixture or attached to the physical building.
   4. (IF APPLICABLE) Relocate its operations from OLD LOCATION to NEW LOCATION with the intention of creating ### jobs with an average annual payroll of $$$ over ### years. In connection therewith, BUSINESS shall be exclusively responsible for any relocation costs.
   5. (IF APPLICABLE) Expand its operations with the intention of creating ### jobs with an average annual payroll of $$$ over ### years. In connection therewith, BUSINESS shall be exclusively responsible for any expansion costs.
   6. Provide economic and business development data to CDO for the purposes of reporting to the Wyoming Business Council to help fulfill obligations of the grant agreement.
6. **Special Provisions Related to this Agreement** 
   1. (IF APPLICABLE, STATE REVENUE RECAPTURE) It is mutually understood and agreed that the intent of this Agreement contemplates APPLICANT receiving up to SPELL OUT GRANT AMOUNT ($$$) from the Wyoming Business Council. Of the SPELL OUT GRANT AMOUNT ($$$) so awarded, $$$ will be awarded with repayment obligations. Such repayment shall not commence until at least ### Years after the completion of project construction. This repayment obligation will also be subject to and contingent upon final completion of and occupancy of the Project by BUSINESS and CDO receipt of payments from BUSINESS under terms and conditions of its sublease for the project. The total amount subject to repayment shall not include and shall be reduced by, any portion of the grant amount which is not disbursed for the project. CDO and BUSINESS shall not have an obligation to accept all or any of the grant funds.
   2. In the event of a default by BUSINESS, CDO or APPLICANT, at APPLICANT direction and in APPLICANT discretion, shall have the obligation to make reasonable attempts to attach and liquidate the assets to be pledged to secure repayment of any required recapture funds, but APPLICANT shall have no obligation to pay any portion of the recapture amount or any funds due or owing to the State of Wyoming as a result of any default or other costs or penalties associated with said grant from its general tax revenues, funds or reserves.
   3. The parties further agree:
      1. Neither this Agreement, nor any related grant documents or agreements, shall result in the imposition of any debt upon APPLICANT in contravention of any constitutional or statutory limitations or requirements concerning the indebtedness of APPLICANT;
      2. Neither this Agreement, nor any related grant documents or agreements, shall constitute a pledge of or result in the imposition of any lien, charge or encumbrance upon any tax revenues, cash reserves or other assets or revenues of APPLICANT.
   4. This Agreement and the duties and obligations of APPLICANT and CDO under this Agreement are also subject to the contingency that the grant contemplated herein is approved by the Wyoming Business Council and the State Land and Investment Board. In the event any of the aforementioned fails to approve the grant under the terms acceptable to APPLICANT and CDO, this Agreement shall become null and void and each party to this agreement shall thereafter be responsible for its own costs and expenses associated with the development of this agreement and the termination thereof.
   5. This Agreement and the duties and obligations of APPLICANT under this Agreement, are also subject to the contingency that they Attorney General of Wyoming issues an opinion certifying:
      1. The legality of the transaction contemplated by this Agreement;
      2. APPLICANT may enter into the arrangement contemplated by this Agreement without the necessity of conducting an election.
7. **General Provisions**
   1. Independent Contractor: It is specifically understood and agreed that the relationship of the Parties is that of independent contractors and that the officers, employees and agents of one party are not acting as officers, employees or agents of the other. No party or person representing any party hereto shall make any representation that he or she is an officer, agent or employee of any other party.
   2. Acceptance Not Waiver: APPLICANT approval of the reports and work or materials furnished hereunder shall not in any way relieve any party of the responsibility for the technical accuracy of the work. APPLICANT approval or acceptance of or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
   3. Termination: This Agreement may be terminated;
      1. by any party at any time for failure of another party to comply with the terms and conditions of this Agreement, after the non-compliant party has been provided ten (10) days’ notice and an opportunity to cure its non-compliance,
      2. by CDO or BUSINESS at any time prior to the disbursement of any grant fund contemplated under this Agreement or after the disbursement of grant funds, pursuant to the terms and conditions of the lease and sublease agreements the Parties will enter into governing their relationship,
      3. by mutual agreement by all Parties.
   4. Entire Agreement: This Agreement consisting of ## pages, the lease agreement between APPLICANT and CDO which is included as Attachment A to this Agreement, and the Sub-Lease Agreement between CDO and BUSINESS which is included as Attachment B to this Agreement represents the entire and integrated agreement and understanding between the Parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral. (Any other agreements pertaining to the lease or sale of the asset should also be included as attachments and referenced in this section.)
   5. Assignment: Except for the permitted assigns as defined under the lease and sublease agreements entered into by the Parties, neither this Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of all other Parties.
   6. Modification: This agreement shall be modified only by a written agreement, duly executed by all Parties hereto.
   7. Invalidity: If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction or if APPLICANT is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the Parties that provisions of this Agreement are fully severable.
   8. Applicable Law and Venue: The Parties understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming without regard to its conflicts of laws principles. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the Parties to be a material inducement to all parties in executing this Agreement. This provision is not intended nor shall it be construed to waive APPLICANT’s governmental immunity as provided in this Agreement.
   9. Contingencies: All Parties certify and warrant that no gratuities, kick-backs or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement.
   10. Discrimination: All Parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition or national origin.
   11. ADA Compliance: All Parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans with Disabilities Act, P.L. 101-336,42 U.S.C. §12101, et seq. and/or any properly promulgated rules and regulations relating thereto.
   12. Governmental/Sovereign Immunity: The Parties to this Agreement do not waive their Governmental/Sovereign Immunity, as provided by any applicable law including Wyo. Stat. §§ 1-39-101 et seq., by entering into this Agreement, except to the extent necessary for the Parties to pursue a contract action to clarify or enforce the written terms of this Agreement. Designations of venue, choice of law, enforcement actions and similar provisions should not be construed as a waiver of sovereign immunity. Any actions or claims against APPLICANT under this Agreement, to the extent that the same are permissible under the terms of this Section and/or applicable law, must be brought in accordance with the requirements of the act. Further, the other Parties fully retain all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement.
   13. Indemnification: To the fullest extent permitted by law, CDO agrees to indemnify and hold harmless APPLICANT, its elected and appointed officials, employees and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with work performed by or on behalf of CDO for APPLICANT, except to the extent liability is caused by sole negligence or willful misconduct of APPLICANT or its employees. BUSINESS shall indemnify, defend and hold APPLICANT and CDO harmless from and against any liability from injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with work performed by or on behalf of BUSINESS for CDO or APPLICANT, except to the extent liability is caused by sole negligence or willful misconduct of CDO or APPLICANT or their employees. CDO and APPLICANT agree to require similar indemnity obligations for all contractors, construction manager and similar participants in the construction of the Project. Further CDO and APPLICANT agree to require in construction contracts customary provisions for liability coverage and indemnity provisions for the benefit of CDO, APPLICANT and BUSINESS which shall be acceptable to BUSINESS.
   14. Third Parties: The parties do not intend to create in any other individual or entity the status of third party beneficiary and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to the Agreement and shall inure solely to the benefit of the Parties to this Agreement.
   15. Conflict of Interest: The Parties affirm, to their knowledge, no employee of any party to this Agreement has any personal beneficial interest whatsoever in this Agreement described herein. No staff member of any party, compensated either partially or wholly with funds from this Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Agreement. Nothing in this section precludes a party to this Agreement or related companies from bidding, contracting or sub-contracting on all or part of the project.
   16. Force Majeure: No party hereto shall be liable to perform under this Agreement if such failure arises out of causes beyond control and without the fault or negligence of said party. Such causes may include, but are not restricted to act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or negligence of said party.
   17. Limitation on Payment: APPLICANT’s payment obligation is conditioned upon the availability of BRC funds for the payment of this obligation. If sufficient funds are not granted and available, in the fiscal judgement of APPLICANT, this Agreement may be terminated by APPLICANT at the end of the period for which funds are available. No penalty shall accrue to APPLICANT in the event this provision is exercised and APPLICANT shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision.
   18. Notices: All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S Mail, properly stamped and addressed to the party for whom intended at such parties’ address listed below or when delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party. Notices shall be delivered as follows:

|  |  |
| --- | --- |
| If to APPLICANT: APPLICANT  ADDRESS | With copies to: APPLICANT'S ATTORNEY  ADDRESS |
| If to CDO: CDO  ADDRESS | With copies to: CDO'S ATTORNEY  ADDRESS |
| If to BUSINESS:  BUSINESS  ADDRESS | With copies to:  BUSINESS'S ATTORNEY  ADDRESS |

* 1. Compliance with Laws: All Parties shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.
  2. Contingent Agreement: The Parties agree that this Agreement is contingent upon receipt of BRC funds by APPLICANT and is intended to meet the first level of convincing evidence of development and public benefit as required by the BRC program. The Parties agree that in the event that APPLICANT does not receive BRC funds for this project from the Wyoming Business Council, no party has any obligation under this Agreement and that this Agreement is void.
  3. Counterpart Signature: For the convenience of the Parties, this Agreement may be executed in one or more counterparts and each executed counterpart shall for all purposes be deemed an original and shall have the same force and effect as an original, but all of which shall together constitute in the aggregate one and the same instrument.

**APPLICANT**

SIGNATORY OFFICIAL, TITLE Date

**CDO**

SIGNATORY OFFICIAL, TITLE Date

**BUSINESS**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATORY OFFICIAL, TITLE Date