

SPECIAL MEETING of the WYOMING BUSINESS COUNCIL BOARD OF DIRECTORS

Wednesday, June 22, 2022 | 9:00 A.M. | via Zoom Webinar

Join the webinar here: <https://zoom.us/j/295704768> For the best experience, please join via your computer or the Zoom app on your device.

-OR-

Join by phone at 1-669-900-6833, Meeting ID 2957047678 (no PIN required, press # when prompted); if joining by phone please note your ability to interact with the panelists may be limited due to system limitations.

WPMA Notice: This Special Meeting of the Wyoming Business Council Board of Directors is called for the consideration of contracts and rulemaking actions. No other business will be discussed or taken at this meeting.

9:00 a.m. Convene Public Meeting – Board of Directors Co-Chair Erin Moore

- Pledge of Allegiance Video – *all panelists will be muted*
- Roll call of members present

9:05 a.m. Services Standing Committee – Committee Chair John Coyne (*Page 3*)

- **Contract with Advance Commercial Providers, LTD of Taiwan for the continued operation of the Wyoming-Asia Pacific Trade Office in Taipei through BFY2024** – Strategic Partnerships Director, Ron Gullberg, and Services Director, Brandon Marshall, and Wyoming-Asia Pacific Trade Office Director, Chester Chu
Testimonials: Kent Holiday, Eleutian Technology and Amber Pollock, Backwards Distilling
 - **ACTION ITEM:** Consideration of staff recommendation
- **Contract with Leadership Wyoming for design and implementation of statewide economic development leadership training program** – Services Director, Brandon Marshall and COO, Amy Grenfell
 - **ACTION ITEM:** Consideration of staff recommendation
- **Contract with LightBox Parent, L.P., for broadband mapping services** - Services Director, Brandon Marshall and Broadband Manager, Elaina Zempel
 - **ACTION ITEM:** Consideration of staff recommendation
- **Review and discussion of proposed amendments to Regular Rules for Chapter 4: Connect Wyoming Program** – Services Director, Brandon Marshall and Broadband Manager, Elaina Zempel
 - **ACTION ITEM:** Consideration of staff recommendation for amended Chapter 4: Connect Wyoming Program Regular Rules

9:45 a.m. Investments Standing Committee - Committee Chair Alex Klein (*Page 58*)

- **Amendment Five to the Contract with Markee Escrow Services, Inc. for continued management of WBC Loan Portfolio** – Finance Manager, Josh Keefe

- **ACTION ITEM:** Consideration of staff recommendation
- **Review and discussion of proposed amendments and new rules for the Wyoming Partnership Challenge Loan program-** Finance Manager, Josh Keefe
 - **ACTION ITEM:** Consideration of staff recommendation for amended and new Challenge Loan program Regular Rules
- **Review and discussion of proposed new rules for the Agricultural Processing Revenue Bond program –** Finance Manager, Josh Keefe
 - **ACTION ITEM:** Consideration of staff recommendation for new Agriculture Bond program Regular Rules
- **Review and discussion of proposed new rules for Wyoming's SSBCI (State Small Business Credit Initiative) Venture Capital Program -** Investments Director, Bert Adam
 - **ACTION ITEM:** Consideration of staff recommendation for new SSBCI Venture Capital program Regular Rules

10:45 a.m. Strategy Execution Standing Committee-Committee Chair-Kathy Tomassi **(Page 105)**

- **Amendment One to the Contract with Adbay.Com Inc. DbA Kalen Marketing Solutions for website development, migration, maintenance and hosting services -** Chief Strategy Officer, Sarah Fitz-Gerald and Strategic Communications, Amy Quick
 - **ACTION ITEM:** Consideration of staff recommendation
- **Contract with Three Elephant Public Relations LLC for public relations and communications services -** Chief Strategy Officer, Sarah Fitz-Gerald and Strategic Communications, Amy Quick
 - **ACTION ITEM:** Consideration of staff recommendation

11:15 a.m. Operations Standing Committee-Committee Chair-Erick Arens **(Page 122)**

- **Amendment One to the Contract with WAVE INTERACTIVE LLC for development and integration services for and within the Council's internal Salesforce environment–** COO, Amy Grenfell and IT Manager, Ben Peterson
 - **ACTION ITEM:** Consideration of staff recommendation

11:30 a.m. OTHER BOARD MATTERS and ADJOURNMENT

- **Standing Committees** will meet this quarter during the week of August 23:
 - **Investments Committee:** Tuesday, August 23 at 10:00 a.m.
 - **Strategy Execution Committee:** Tuesday, August 23 at 2:00 p.m.
 - **Operations Committee:** Wednesday, August 24 at 10:00 a.m.
 - **Services Committee:** Thursday, August 25 at 10:00 a.m.
- **Next Regular Meeting of this Board:** September 7-8, 2022 ****LIVE IN ROCK SPRINGS**** (details TBA)



Services Standing Committee

WYOMINGBUSINESS.ORG



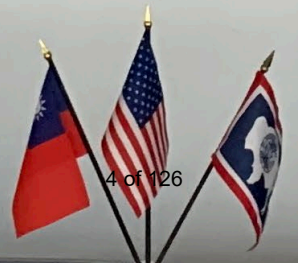
Wyoming-Asia Pacific Trade Office

Next Steps: 2022-2024

Presented by

Ron Gullberg and Chester Chu

June 22, 2022



2020-2022

Gamma Paradigm

C2

OwlTing Group

Strike Industry

Arcadia Mining

2022-2024

1. Blockchain Cluster

2. CCUS Cluster

3. Hydrogen Economy

4. Advance Manufacturing

5. Bioscience and Medical

FDI and Business Alignment

From individual approach to group approach

2020-2022

1. WYO Beef

2 Big Lost Meadery and Brewery

3. Backwards Distilling

4. GF Harvest

5. Coffee Roasters (Cody Coffee, Snowy Elk Coffee)

2022-2024 (ongoing)

1. Engineering Procurement & Construction (EPC)

2 Eleutian Technology

3. Maven Outdoor Equipment

4. Kennon Products Inc.

5. McGinley Innovations

6. Mountain Meadow Wool

7. Farmstead Cider

Business Services

From Agriculture-driven to both Ag and Technology, Energy
Solutions, Manufacturing and Bioscience, among others.



2020-2022

Ministry of Foreign
Affairs

Ministry of Economic
Affairs

Ministry of Science and
Technology

American Institute in
Taiwan

2022-2024

1. Import Export
Association Taichung

2. Taiwan Institute
of Economic and Research

3. Taiwan External Trade
Development Council

4. Taiwan Power

Partnership Development

From Governmental Organizations to Direct Business
Related Organizations.

Recruitment from

1. IMPACT 307/BRN
2. ENGAGE WYO
3. WYO Ag Coalition
4. WEDA/Local EDOs
5. Chamber of Commerce
6. Industry Associations
7. Wyoming Food Coalition

Deployment Approaches

1. International Expo and Local Trade Show
2. Showcase and Road show
3. Direct Visit to Importer and Distributor
4. Online Meeting
5. Taste Testing
6. Digital Marketing
7. Connection-Building

Develop Potential Opportunities

Enhance both recruitment for WYO companies
and Deployment Actions in marketplaces.



2020-2022

Education Fairs

2022-2024

1. Cell Drop Biosciences
2. IMPACT 307
3. ENGAGE WYO
4. WYO Ag Coalition
5. WEDA
6. High School Sistership Development

Education

**From UW Student Recruitment to
Entrepreneur and Start-Up Services**

Wyoming Business Council Board of Directors
Special Board Meeting
June 22, 2022-Meeting Materials

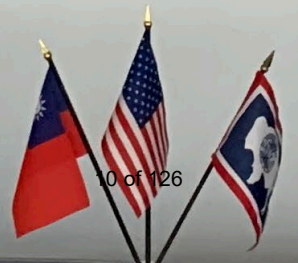




Q & A

Answer by

Ron Gullberg and Chester Chu



**PROFESSIONAL SERVICES CONTRACT BETWEEN
WYOMING BUSINESS COUNCIL
AND
ADVANCE COMMERCIAL PROVIDER LTD**

1. **Parties.** The parties to this Contract are the State of Wyoming, Wyoming Business Council (Council), whose address is: 214 West 15th Street, Cheyenne, Wyoming, 82002, USA, and Advance Commercial Provider LTD (Contractor), whose address is: 3F, 201, Nanjing E. Road Sec. 3, Taipei 104, Taiwan.
2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the Contractor shall serve as the Foreign Trade Representative for the State of Wyoming at the State of Wyoming-Asia Trade Office in Taiwan.
3. **Term of Contract.** This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from July 1, 2022, or the Effective Date, whichever is later, through June 30, 2024. All services shall be completed during this term.

This Contract may be extended twice by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of extension and any extension will be determined at the discretion of the Council.

4. **Payment.**
 - A. The Council agrees to pay the Contractor for the services described in Attachment A, Scope of Work, which is attached to and incorporated into this Contract by this reference. Total payment under this Contract shall not exceed four hundred thousand dollars (\$400,000.00). Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Contractor shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this Contract.
 - B. No payment shall be made for work performed before the Effective Date of this Contract. Should the Contractor fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as the Contractor performs its duties and responsibilities to the satisfaction of Council.
 - C. Except as otherwise provided in this Contract, the Contractor shall pay all costs and expenses, including travel, incurred by Contractor or on its behalf in connection with Contractor's performance and compliance with all Contractor's obligations under this Contract.
5. **Responsibilities of Contractor.** The Contractor agrees to:
 - A. Provide the services described in Attachment A.

- B. Invoice the Council for services in accordance with Section 4 above.
- C. Obtain and maintain suitable office space in the Taiwan World Trade Center building in Taipei, or in another facility as may be described by the Council and shall itemize all lease-related costs on invoices submitted to Council. Contractor must maintain such office space for the duration of this Contract and shall be solely responsible for compliance with all requirements set forth by its Lessor.
- D. Maintain detailed records of all subsidy monies received from the Taiwan Ministry of Foreign Affairs (MOFA) related to the State of Wyoming-Asia Pacific Trade Office and shall provide a detailed accounting of those funds to the Council as new funds are received by MOFA, as well as at any time requested by the Council. Subsidy funds received shall become the property of the Contractor upon their deduction from Contractor's subsequent invoice(s) for services performed under this contract. Any unspent subsidy funds remaining in the Contractor's possession at the termination of this contract shall be returned to the Council within thirty (30) days at the Contractor's sole expense.

6. **Responsibilities of Council.** The Council agrees to:

- A. Pay Contractor in accordance with Section 4 above.

7. **Special Provisions.**

A. **Conflicts of Interest.**

- (i) Contractor shall not engage in providing consultation or representation of clients, agencies, or firms which may constitute a conflict of interest which may result in a disadvantage to the Council, the State of Wyoming, or a disclosure which may adversely affect the interests of the Council or State of Wyoming. Contractor shall notify the Council of any potential or actual conflicts of interest arising during the course of the Contractor's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of this Contract will be subject to a mutual settlement of accounts. In the event this Contract is terminated under this provision, the Contractor shall take steps to ensure that all files, evidence, evaluations, and data are provided to the Council or its designee. This provision does not prohibit or affect the Contractor's ability to engage in consultations, evaluations, or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.
- (ii) A conflict of interest warranting termination of this Contract may include, but is not necessarily limited to, acting on behalf of a client in an adversarial proceeding against the State of Wyoming, its agencies, boards, commissions, or the University of Wyoming, or initiating suits in equity

including injunctions, declaratory judgments, writs of prohibition, or quo warranto.

- B. Kickbacks.** Contractor certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If Contractor breaches or violates this warranty, Council may, at its discretion, terminate this Contract without liability to the Council, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.
- C. Monitoring Activities.** The Council shall have the right to monitor all activities related to this Contract that are performed by Contractor or its subcontractors. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Contract; and to observe personnel in every phase of performance of Contract related work.
- D. No Finder's Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract, shall be paid by either party.

8. General Provisions.

- A. Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed by all parties to this Contract.
- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the United States of America and the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming, United States of America.
- C. Assignment Prohibited and Contract Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Council.
- D. Audit and Access to Records.** The Council and its representatives shall have access to any books, documents, papers, electronic data, and records of the Contractor which are pertinent to this Contract.

The Contractor shall immediately, upon receiving written instruction from the Council, provide to any independent auditor or accountant all books, documents, papers, electronic data, and records of the Contractor which are pertinent to this Contract. The Contractor shall cooperate fully with any such independent auditor or accountant during the entire course of any audit authorized by the Council.

- E. Availability of Funds.** Each payment obligation of the Council is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the Council at the end of the period for which the funds are available. The Council shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Council in the event this provision is exercised, and the Council shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. Award of Related Contracts.** The Council may award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Council in all such cases.
- G. Certificate of Good Standing.** The Contractor shall provide to the Council a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Contractor is authorized to conduct business in the State of Wyoming, if required, before performing work under this Contract. Contractor shall ensure that all annual filings and corporate taxes due and owing to the Secretary of State's office are up-to-date before signing this Contract.
- H. Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Council for its release. If and when Contractor receives a request for information subject to this Contract, Contractor shall notify Council within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Council.
- J. Entirety of Contract.** This Contract, consisting of ten (10) pages; Attachment A, Scope of Work, consisting of two (2) pages, and Attachment B. Budget, consisting of one (1) page, represent the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this

Contract and the language of any attachment or document incorporated by reference, the language of this Contract shall control.

- K. Ethics.** Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Contractor's profession.
- L. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the Council and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Contract or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Contract.
- M. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- N. Indemnification.** The Contractor shall release, indemnify, and hold harmless the State, the Council, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's negligence or other tortious conduct.
- O. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Contract, the Contractor shall be free from control or direction over the details of the performance of services under this Contract. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Council or to incur any obligation of any kind on behalf of the State of Wyoming or the Council. The Contractor agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance, or similar benefits available to State of Wyoming employees will inure to the benefit

of the Contractor or the Contractor's agents or employees as a result of this Contract.

- P. Nondiscrimination.** The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. §27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. §12101, *et seq.*, and the Age Discrimination Act of 1975 and/or any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.
- Q. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract.
- R. Notice of Sale or Transfer.** The Contractor shall provide the Council with notice of any sale, transfer, merger, or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If the Council determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Contractor's obligations under this Contract, then the Council may, at its discretion, terminate or renegotiate the Contract.
- S. Ownership and Destruction of Documents and Information.** Council owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract. Upon termination of services, for any reason, Contractor agrees to return all such original and derivative information and documents to the Council in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Council's verified receipt of such information, Contractor agrees to physically and electronically destroy any residual Council-owned data, regardless of format, and any other storage media or areas containing such information. Contractor agrees to provide written notice to Council confirming the destruction of any such residual Council-owned data.
- T. Patent or Copyright Protection.** The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the Council for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- U. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Contract has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and

approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-3204b)(iv).

V. Insurance Requirements.

- (i) During the term of this Contract, the Contractor shall obtain and maintain, and ensure that each subcontractor obtains and maintains, each type of insurance coverage specified in Insurance Coverage, below.
- (ii) All policies shall be primary over any insurance or self-insurance program carried by the Contractor or the State of Wyoming. All policies shall include clauses stating that each insurance carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- (iii) The Contractor shall provide Certificates of Insurance to the Council verifying each type of coverage required herein. If the policy is a “claims made” policy instead of an “occurrence” policy, the information provided shall include, but is not limited to, retroactive dates and extended reporting periods or tails.
- (iv) All policies shall be endorsed to provide at least thirty (30) days advance written notice of cancellation to the Council. A copy of the policy endorsement shall be provided with the Certificate of Insurance.
- (v) In case of a breach of any provision relating to Insurance Requirements or Insurance Coverage, the Council may, at the Council’s option, obtain and maintain, at the expense of the Contractor, such insurance in the name of the Contractor, or subcontractor, as the Council may deem proper and may deduct the cost of obtaining and maintaining such insurance from any sums which may be due or become due to the Contractor under this Contract.
- (vi) All policies required by this Contract shall be issued by an insurance company with an A.M. Best rating of A- VIII or better.
- (vii) The Council reserves the right to reject any policy issued by an insurance company that does not meet these requirements.

W. Insurance Coverage. The Contractor shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth above:

- (i) Commercial General Liability Insurance. Commercial general liability insurance (CGL) coverage, occurrence form, covering liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations, and personal and advertising injury, with minimum limits as follows:
 - (a) \$1,000,000.00 each occurrence;

- (b) \$1,000,000.00 personal injury and advertising injury;
- (c) \$2,000,000.00 general aggregate; and
- (d) \$2,000,000.00 products and completed operations.

The CGL policy shall include coverage for Explosion, Collapse and Underground property damage. This coverage may not be excluded by endorsement.

- (ii) Automobile Liability Insurance. Automobile liability insurance covering any auto (including owned, hired, and non-owned) with minimum limits of \$1,000,000.00 each accident combined single limit.
- (iii) Cyber Liability Insurance. Cyber liability insurance which shall be sufficiently broad to cover all duties and obligations undertaken by Contractor and shall include, but not be limited to, claims involving infringement of intellectual property, including, but not limited to, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security, with minimum limits as follows:
 - (a) \$2,000,000.00 each occurrence; and
 - (b) \$2,000,000.00 general aggregate.

Coverage shall include breach response costs, regulatory fines and penalties, and credit monitoring expenses, with limits sufficient to respond to these obligations.

- X. Publicity.** Any publicity given to the projects, programs or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor, shall identify the Council and the State of Wyoming as the sponsoring entities and shall not be released without prior written approval from the Council.
- Y. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- Z. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and Council expressly reserve sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity.

The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

AA. Taxes. The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.

BB. Termination of Contract. This Contract may be terminated, without cause, by the Council upon thirty (30) days written notice. This Contract may be terminated by the Council immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.

If at any time during the performance of this Contract, in the opinion of the Council, the work is not progressing satisfactorily or within the terms of this Contract, then, at the discretion of the Council and after written notice to the Contractor, the Council may terminate this Contract or any part of it. As of the termination date, the Contractor will be entitled to a pro rata payment for all work accomplished and accepted by the Council; however, the Contractor shall be liable to the Council for the entire cost of replacement services for the duration of the Contract term.

CC. Third-Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

DD. Time is of the Essence. Time is of the essence in all provisions of this Contract.

EE. Titles Not Controlling. Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.

FF. Waiver. The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

GG. Counterparts. This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Contract. Delivery by the Contractor of an originally signed counterpart of this Contract by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Council. The Contractor's failure to deliver the originally signed counterpart to the Council within twenty (20) days shall be considered a material breach and may result in immediate termination of this Contract by the Council.

9. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

COUNCIL:

Wyoming Business Council

Joshua J Dorrell, CEO

Date

Brandon Marshall, Services Director

Date

CONTRACTOR:

Advance Commercial Provider LTD

Yuh-Cherng "Chester" Chu, Board Member

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Cole R. White, Assistant Attorney General

Date

**ATTACHMENT A
TO THE CONTRACT BETWEEN WYOMING BUSINESS COUNCIL
AND ADVANCE COMMERCIAL PROVIDER LTD**

Scope of Work

The following scope describes the work to be completed by Contractor.

1. **Statement of Purpose** - Contractor is responsible for maintaining the Wyoming-Asia Pacific Trade Office in Taiwan.

Duties include, but are not limited to:

- a. Representing Wyoming export markets within Taiwan and the Asia Pacific Rim.
- b. Generating new business for Wyoming exporters into Taiwan.
- c. Promoting foreign direct investment in Wyoming.
- d. Possessing the agility to respond to new opportunities.

Target industries to expand include, but are not limited to, technology, energy solutions, manufacturing, chemicals, agriculture and bioscience.

2. **Services** – Contractor will be responsible for carrying out the following tasks:

Company Promotion

- a. Identify and report distribution channels on a quarterly basis to the WBC and Wyoming-based partners designated by WBC. The report shall include an analysis of the current export climate and determine which Wyoming products fulfill demand in Taiwan.
- b. Maintain records of qualified agents, brokers, wholesalers, dealers, distributors, and other buyers, retailers, and export management companies that comprise the Taiwan exporting network.
- c. Facilitate or advance distributor, agent, and representative relationships for Wyoming businesses upon request.
- d. Counsel Wyoming businesses on best practices and problem-resolution for exporting to Taiwan and the Asia Pacific Rim. Counseling can be conducted virtually, on trade missions, or during familiarization tours.
- e. Conduct Taiwan buyer/investor familiarization tours to Wyoming to meet with companies in an effort to better understand the products offered in Wyoming. The tours will be collaboratively coordinated through Contractor and the WBC or WBC-designated partners.

Market Intelligence

- a. Develop industry profiles for each targeted sector, which shall include basic overviews, main Taiwan companies in the targeted industry sector, and specific opportunities for Wyoming companies. Profiles shall also include summaries of trade and tariff restrictions, laws, and regulations regarding product content and labeling; market entry strategies; market development strategies; product adaptation, modification, and compliance; company ownership and other issues affecting the salability of Wyoming goods in Taiwan. Profiles shall be updated

- quarterly and provided to the WBC, as well as relevant Wyoming companies and Wyoming-based partners designated by WBC.
- b. Develop and maintain export guides for each industry that outlines the steps, timeline, and contacts necessary to ship product to Taiwan.
- c. Produce and submit an annual marketing plan to the WBC by October 1 of each year of this contract.

Investment Attraction

- a. Promote investment in Wyoming's targeted industries by attending Taiwan-based investment promotion events.
- b. Provide matchmaking services between Taiwan investors and Wyoming companies.

Trade Show/Mission Administration

- a. Attend Taiwan trade industry events or seminars as agreed upon by the WBC to generate business and secure trade leads for Wyoming companies.
- b. Assist Wyoming exporters traveling to Taiwan for trade shows, matchmaking services and/or market training in order to explore new distribution channels or identify sourcing opportunities.
- c. Conduct Wyoming exporter tours throughout Taiwan to increase market leads, generate business, and recruit Taiwan buyers to visit Wyoming

3. Deliverables- Contractor shall complete the following deliverables:

- a. Annual marketing plan to WBC.
- b. Quarterly distribution channels report.
- c. Work collaboratively with WBC-designated partners to provide Taiwan market opportunities webinars to Wyoming companies.
- d. Work collaboratively with WBC-designated partners to provide export assistance training webinars to Wyoming companies.
- e. Export guides on targeted industries.
- f. Industry Profiles on targeted industries.
- g. List of in-Taiwan trade events provided well enough in advance to provide interested Wyoming businesses the opportunity to attend or be represented by Contractor.
- h. Monthly trade and investment promotion event outcomes report. Report shall include updates on any other Contractor services in this scope of work that were conducted during the monthly reporting period.

Attachment B
FY 23-24 Budget for Operation Expenses

Items	Total (USD)
HR Function	291,200
Director	172,000
Manager	107,200
Staff (part-time)	12,000
Promotion Expenses	30,000
Exhibition expenses	15,000
Seminars/workshops	4,000
Website	4,000
Promotional flyers	3,000
Advertising	4,000
Travel Expenses	50,000
Director	28,000
Manager	12,000
Domestic travel	10,000
Operational Expenses	4,800.00
Phone/internet	2,000
Electricity	400.00
Stationery	1,000
Postage	1,400
Office Rent	12,000
Monthly	500
Number of months	24
Contingency	12,000
Upon WBC approval	
Total	400,000

At Big Lost Meadery, headquartered in Gillette, we have been working with the Wyoming-Asia Pacific Trade Office since 2019. We initially set up conversations to see if the program would be interested in pursuing agricultural-based alcoholic beverages. We then attended the Taipei Food Show in June 2019 and met with success in generating a few small orders and setting up distribution. Unfortunately, in 2020, our industry ran headfirst into the covid pandemic. We were scheduled to start moving toward larger distribution in March 2020. When Taiwan shut down during the pandemic, we lost our distributor in Taipei and were forced to start over again.

Through 2022, as Taiwan has begun reopening and moving back to full operations in the hospitality industry, we have since secured another distributor in southern Taiwan. We recently sent our first shipment for this company to start their full-scale market testing and building out their marketing program for distribution. The APTO has been beyond instrumental in finding the contacts and facilitating the new partnership. Without the APTO we would never have been able to create an export program effectively. The expertise from the Business Council, Chester, and Eva are game changers for us local Wyoming companies that lack this expertise. This particular deal is also working to greatly expand our operations both domestically and internationally.

Another significant benefit to the program has been the expansion of our operations outside of Taiwan. In the alcohol manufacturing market, credibility is a large factor in picking up domestic distribution partners. Smaller craft producers are not seen as capable enough to support distribution, while larger producers are seen as having the expertise and infrastructure to support their distribution partners in other markets. Therefore, most distributors will not look at smaller non-local producers until they have large enough of a distribution arm; it becomes a catch-22. By opening up Taiwan in 2019 (even at a small scale), it has given us substantial domestic credibility when working with other distributors. In their eyes, if we can sustain an export program, we can sustain a domestic distribution market. Thus, we have leveraged our Taiwan program to expand our domestic operations significantly. Since 2020, we have expanded our facilities, hired more staff, and doubled our investment in equipment and capital. 2020 to 2021 saw a more than 100% increase in sales and the opening of the Colorado distribution market (one of the largest in the country). As of the writing of this testimonial in June 2022, we are on pace for another 30% increase in sales and are in the process of opening up several other states (Texas, Florida, and Idaho) for distribution. We have also started the process of discussion in Argentina for further export sales. A distributor in Argentina had a contact in Wyoming who heard about our Taiwanese market and has expressed interest in bringing us into South America because we are already in the export game.

In the long run, even if our sales in Taiwan remain moderate and do not expand substantially, the effect on the overall growth of our company and bringing economic activity into Wyoming is already paying dividends. By leveraging what we have been able to accomplish in Taiwan with the driving force of the APTO, it has allowed us to open other out-of-state markets and potentially further international markets in a very successful way. A true game changer to a local Wyoming company. We look forward to working with the APTO to expand our Asian markets and progress in the years to come. I know all of us who have worked with them hope the Wyoming Legislature continues their support of the program.

Thank you,
Sam Clikeman
Owner
Big Lost Meadery
307-660-3199

**CONTRACT BETWEEN
WYOMING BUSINESS COUNCIL
AND
LEADERSHIP WYOMING**

1. **Parties.** The parties to this Contract are Wyoming Business Council (Council), whose address is: 214 West 15th Street, Cheyenne, WY 82001, and LEADERSHIP WYOMING, (Contractor), whose address is: 350 Big Horn Road, 300, Casper, WY 82601.
2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the Contractor shall design and implement an economic development leadership training program, in coordination with staff of the Council.
3. **Term of Contract.** This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from Effective Date through June 30, 2024. All services shall be completed during this term.
4. **Payment.**
 - A. The Council agrees to pay the Contractor for the services described in Attachment A, which is attached to and incorporated into this Contract by this reference. Total payment under this Contract shall not exceed two hundred twenty-five thousand dollars (\$225,000.00). Payment shall be made in one initial payment of twenty-five thousand dollars (\$25,000.00) for program design, then paid monthly as the contractor incurs costs of program implementation. Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Contractor shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this Contract.
 - B. No payment shall be made for work performed before the Effective Date of this Contract. Should the Contractor fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as the Contractor performs its duties and responsibilities to the satisfaction of Council.
 - C. Except as otherwise provided in this Contract, the Contractor shall pay all costs and expenses, including travel, incurred by Contractor or on its behalf in connection with Contractor's performance and compliance with all of Contractor's obligations under this Contract.
5. **Responsibilities of Contractor.** The Contractor agrees to:
 - A. Provide the services described in Attachment A.
6. **Responsibilities of Council.** The Council agrees to:

- A. Pay Contractor in accordance with Section 4 above.
- B. Provide necessary staff time for brainstorming, review, and feedback to LEADERSHIP WYOMING during the design process.

7. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed by all parties to this Contract.
- B. **Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. **Assignment Prohibited and Contract Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Council.
- D. **Audit and Access to Records.** The Council and its representatives shall have access to any books, documents, papers, electronic data, and records of the Contractor which are pertinent to this Contract
- E. **Availability of Funds.** Each payment obligation of the Council is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the Council at the end of the period for which the funds are available. The Council shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Council in the event this provision is exercised, and the Council shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. **Award of Related Contracts.** The Council may award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Council in all such cases.

- G. Certificate of Good Standing.** The Contractor shall provide to the Council a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Contractor is authorized to conduct business in the State of Wyoming, if required, before performing work under this Contract. Contractor shall ensure that all annual filings and corporate taxes due and owing to the Secretary of State's office are up-to-date before signing this Contract.
- H. Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Council for its release. If and when Contractor receives a request for information subject to this Contract, Contractor shall notify Council within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Council.
- J. Entirety of Contract.** This Contract, consisting of nine (9) pages; and Attachment A, Scope of Work, consisting of one (1) page, represent the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Contract and the language of any attachment or document incorporated by reference, the language of this Contract shall control.
- K. Ethics.** Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Contractor's profession.
- L. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein.
- M. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- N. Indemnification.** The Contractor shall release, indemnify, and hold harmless the State, the Council, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's failure to perform any of Contractor's duties and

obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's negligence or other tortious conduct.

- O. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Contract, the Contractor shall be free from control or direction over the details of the performance of services under this Contract. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Council or to incur any obligation of any kind on behalf of the State of Wyoming or the Council. The Contractor agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents or employees as a result of this Contract.
- P. Nondiscrimination.** The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.
- Q. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract.
- R. Notice of Sale or Transfer.** The Contractor shall provide the Council with notice of any sale, transfer, merger, or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If the Council determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Contractor's obligations under this Contract, then the Council may, at its discretion, terminate or renegotiate the Contract.
- S. Ownership and Return of Documents and Information.** Council is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract. Upon termination of services, for any reason,

Contractor agrees to return all such original and derivative information and documents to the Council in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Council's verified receipt of such information, Contractor agrees to physically and electronically destroy any residual Council-owned data, regardless of format, and any other storage media or areas containing such information. Contractor agrees to provide written notice to Council confirming the destruction of any such residual Council-owned data.

- T. Patent or Copyright Protection.** The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the Council for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- U. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Contract has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-3204(b)(iv).
- V. Insurance Requirements.**
- (i)** During the term of this Contract, the Contractor shall obtain and maintain, and ensure that each subcontractor obtains and maintains, each type of insurance coverage specified in Insurance Coverage, below.
 - (ii)** All policies shall be primary over any insurance or self-insurance program carried by the Contractor or the State of Wyoming. All policies shall include clauses stating that each insurance carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
 - (iii)** The Contractor shall provide Certificates of Insurance to the Council verifying each type of coverage required herein. If the policy is a "claims made" policy instead of an "occurrence" policy, the information provided shall include, but is not limited to, retroactive dates and extended reporting periods or tails.
 - (iv)** All policies shall be endorsed to provide at least thirty (30) days advance written notice of cancellation to the Council. A copy of the policy endorsement shall be provided with the Certificate of Insurance.

- (v) In case of a breach of any provision relating to Insurance Requirements or Insurance Coverage, the Council may, at the Council's option, obtain and maintain, at the expense of the Contractor, such insurance in the name of the Contractor, or subcontractor, as the Council may deem proper and may deduct the cost of obtaining and maintaining such insurance from any sums which may be due or become due to the Contractor under this Contract.
- (vi) All policies required by this Contract shall be issued by an insurance company with an A.M. Best rating of A- VIII or better.
- (vii) The Council reserves the right to reject any policy issued by an insurance company that does not meet these requirements.

W. Insurance Coverage. The Contractor shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth above:

- (i) Commercial General Liability Insurance. Commercial general liability insurance (CGL) coverage, occurrence form, covering liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations, and personal and advertising injury, with minimum limits as follows:
 - (a) \$1,000,000.00 each occurrence;
 - (b) \$1,000,000.00 personal injury and advertising injury;
 - (c) \$2,000,000.00 general aggregate; and
 - (d) \$2,000,000.00 products and completed operations.

The CGL policy shall include coverage for Explosion, Collapse and Underground property damage. This coverage may not be excluded by endorsement.

- (ii) Workers' Compensation and Employer's Liability Insurance. Employees hired in Wyoming to perform work under this Contract shall be covered by workers' compensation coverage obtained through the Wyoming Department of Workforce Services' workers' compensation program, if statutorily required. Employees brought into Wyoming from Contractor's home state to perform work under this Contract shall be covered by workers' compensation coverage obtained through the Wyoming Department of Workforce Services' workers' compensation program or other state or private workers' compensation insurance approved by the Wyoming Department of Workforce Services, if statutorily required.

The Contractor shall provide the Council with a Certificate of Good Standing or other proof of workers' compensation coverage for all of its employees who are to perform work under this Contract, if such coverage is required by law. If workers' compensation coverage is obtained by Contractor through the Wyoming Department of Workforce Services'

workers' compensation program, Contractor shall also obtain Employer's Liability "Stop Gap" coverage through an endorsement to the CGL policy required by this Contract, with minimum limits as follows:

- (a) Bodily Injury by Accident: \$1,000,000.00 each accident;
- (b) Bodily Injury by Disease: \$1,000,000.00 each employee; and
- (c) Bodily Injury by Disease: \$1,000,000.00 policy limit.

(iii) Unemployment Insurance. The Contractor shall be duly registered with the Department of Workforce Services and obtain such unemployment insurance coverage as required. The Contractor shall supply Council with a Certificate of Good Standing or other proof of unemployment insurance coverage.

(iv) Automobile Liability Insurance. Automobile liability insurance covering any auto (including owned, hired, and non-owned) with minimum limits of \$1,000,000.00 each accident combined single limit.

X. Publicity. Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor, shall identify the Council as the sponsoring agency and shall not be released without prior written approval from the Council.

Y. Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

Z. Sovereign Immunity and Limitations. Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and Council expressly reserve sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

AA. Taxes. The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.

BB. Termination of Contract. This Contract may be terminated, without cause, by the Council upon thirty (30) days written notice. This Contract may be terminated by the Council immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract. If at any time during the performance of this

Contract, in the opinion of the Council, the work is not progressing satisfactorily or within the terms of this Contract, then, at the sole discretion of the Council and after written notice to the Contractor, the Council may terminate this Contract or any part of it. As of the termination date, the Contractor will be entitled to a pro rata payment for all work accomplished and accepted by the Council; however, the Contractor shall be liable to the Council for the entire cost of replacement services for the duration of the Contract term.

- CC. Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.
- DD. Time is of the Essence.** Time is of the essence in all provisions of this Contract.
- EE. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.
- FF. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- GG. Counterparts.** This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Contract. Delivery by the Contractor of an originally signed counterpart of this Contract by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Council.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

9. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

COUNCIL:

Wyoming Business Council

Joshua J. Dorrell, Chief Executive Officer

Date

Brandon Marshall, Services Director

Date

CONTRACTOR:

LEADERSHIP WYOMING

Mandy Fabel, Executive Director

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

 #223045

Cole R. White, Assistant Attorney General

6-2-22

Date

**ATTACHMENT A to the CONTRACT between
WYOMING BUSINESS COUNCIL and
LEADERSHIP WYOMING**

SCOPE OF WORK

The Contractor agrees to provide the following services:

PHASE I. Design a cohort experience to support economic development leaders and stakeholders in Wyoming. Design to include structure, size, naming, curriculum, potential speakers/facilitators, and external education partners. Will also include suggestions for pricing, recruitment, application process, and selection. Plan due by year-end 2022.

PHASE II. Implement plan for economic development cohort, ideally beginning at some point in 2023. Leadership Wyoming may be the implementor of the program and may or may not subcontract with other organizations to execute the agreed upon plan. Leadership Wyoming will provide a comprehensive plan that will include all necessary elements to execute the program.

The Council Agrees to provide the following:

- Wyoming Business Council will provide necessary staff time for brainstorming, review, and feedback to Leadership Wyoming during the design process.

The Council and The Contractor will jointly:

- Following design, Leadership Wyoming and the Wyoming Business Council will evaluate the best path for Leadership Wyoming to implement the program.

CONTRACT BUDGET

PHASE I: \$25,000.00

PHASE II: up to \$200,000.00, invoiced based on costs incurred.

**CONTRACT BETWEEN
WYOMING BUSINESS COUNCIL
AND
LIGHTBOX PARENT, L.P.**

1. **Parties.** The parties to this Contract are the Wyoming Business Council (Council), whose address is: 214 West 15th Street, Cheyenne, Wyoming 82002, and LIGHTBOX PARENT, L.P. (Contractor), whose address is: 5201 California Ave, Suite 200 Irvine, CA 92617.
2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the Contractor shall provide a broadband focused commercial solution that furnishes integration and cost-effective licensing rights for key data sources needed to supplement master address data.
3. **Term of Contract.** This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is effective date through October 31, 2022. All services shall be completed during this Performance Period.

This Contract may be extended by Contract of both parties in writing and subject to the required approvals. There is no right or expectation of extension, and any extension will be determined at the discretion of the Council.

4. **Payment.**
 - A. The Council agrees to pay the Contractor for the services in section 5 below. Total payment under this contract shall not exceed two hundred fifty thousand dollars (\$250,000). The Contractor shall invoice the Council monthly in the amount of fifty thousand dollars (\$50,000) per month with the final payment of fifty thousand dollars (\$50,000) when the final product is received. Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Contractor shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this Contract.
 - B. No payment shall be made for work performed before the Effective Date of this Contract. Should the Contractor fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as the Contractor performs its duties and responsibilities to the satisfaction of Council.
 - C. Provisions for use of public funds need to be included as well as information being subject to a public records request.
5. **Responsibilities of Contractor.** The Contractor agrees to:
 - A. Provide project kickoff meetings, introductions, and presentations to Council and present project plan that Council and Contractor agree upon.
 - B. Implementation of the Mapping platform and map applications for public, private

and grant application tools.

- C. Provide SmartFabric for location and broadband serviceable location (BSL) data into the mapping platform.
- D. Provide external broadband data from federal resources; FCC 477, FCC broadband award data, RDOF, CAF, USDA and ReConnect.
- E. Identify ISP's. ISP executive contacts for broadband mapping recruiting.
- F. Initiate ISP outreach for participation, webinars, and instructions.
- G. Provide ISP NDA execution with ISP's.

6. **Responsibilities of Council.** The Council agrees to:

- A. Pay Contractor in accordance with Section 4 above.

7. **Special Provisions.**

A. Assumption of Risk. The Contractor shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Contractor's failure to comply with state or federal requirements. The Agency shall notify the Contractor of any state or federal determination of noncompliance.

B. Environmental Policy Acts. Contractor agrees all activities under this Contract will comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.

C. Human Trafficking. As required by 22 U.S.C. § 7104(g) and 2 CFR Part 175, this Contract may be terminated without penalty if a private entity that receives funds under this Contract:

- (i) Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
- (ii) Procures a commercial sex act during the period of time that the award is in effect; or
- (iii) Uses forced labor in the performance of the award or subawards under the award.

D. Kickbacks. Contractor certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this

Contract. If Contractor breaches or violates this warranty, Agency may, at its discretion, terminate this Contract without liability to Agency, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

E. Limitations on Lobbying Activities. By signing this Contract, Contractor certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by Contractor or its subcontractors in connection with lobbying member(s) of Congress, or any federal agency in connection with the award of a federal grant, contract, cooperative agreement, or loan.

F. Monitoring Activities. Agency shall have the right to monitor all activities related to this Contract that are performed by Contractor or its subcontractors. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Contract; and to observe personnel in every phase of performance of Contract related work.

G. Nondiscrimination. The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.

H. No Finder's Fees: No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract, shall be paid by either party.

I. Publicity. Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor and related to the services and work to be performed under this Contract, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval of Agency.

J. Suspension and Debarment. By signing this Contract, Contractor certifies that neither it nor its principals/agents are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction or from receiving federal financial or nonfinancial assistance, nor are any of the participants involved in the execution of this Contract suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension), 44 CFR Part 17, or 2 CFR Part 180, or are on the debarred, or otherwise ineligible, vendors lists maintained by the federal

government. Further, Contractor agrees to notify Agency by certified mail should it or any of its principals/agents become ineligible for payment, debarred, suspended, or voluntarily excluded from receiving federal funds during the term of this Contract.

K. Administration of Federal Funds. Contractor agrees its use of the funds awarded herein is subject to the Uniform Administrative Requirements of 2 C.F.R. Part 200, *et seq.*; any additional requirements set forth by the federal funding agency; all applicable regulations published in the Code of Federal Regulations; and other program guidance as provided to it by Agency.

L. Copyright License and Patent Rights. Contractor acknowledges that federal grantor, the State of Wyoming, and Agency reserve a royalty-free, nonexclusive, unlimited, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal and state government purposes: (1) the copyright in any work developed under this Contract; and (2) any rights of copyright to which Contractor purchases ownership using funds awarded under this Contract. Contractor must consult with Agency regarding any patent rights that arise from, or are purchased with, funds awarded under this Contract.

M. Federal Audit Requirements. Contractor agrees that if it expends an aggregate amount of seven hundred fifty thousand dollars (\$750,000.00) or more in federal funds during its fiscal year, it must undergo an organization-wide financial and compliance single audit. Contractor agrees to comply with the audit requirements of the U.S. General Accounting Office Government Auditing Standards and Audit Requirements of 2 C.F.R. Part 200, Subpart F. If findings are made which cover any part of this Contract, Contractor shall provide one (1) copy of the audit report to Agency and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to Agency's records.

N. Non-Supplanting Certification. Contractor hereby affirms that federal grant funds shall be used to supplement existing funds, and shall not replace (supplant) funds that have been appropriated for the same purpose. Contractor should be able to document that any reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds under this Contract.

O. Program Income. Contractor shall not deposit grant funds in an interest bearing account without prior approval of Agency. Any income attributable to the grant funds distributed under this Contract must be used to increase the scope of the program or returned to Agency.

8. General Provisions.

A. Amendments. Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed by all parties to this Contract.

- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Assignment Prohibited and Contract Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Council.
- D. Audit and Access to Records.** The Council and its representatives shall have access to any books, documents, papers, electronic data, and records of the Contractor which are pertinent to this Contract.
- E. Availability of Funds.** Each payment obligation of the Council is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the Council at the end of the period for which the funds are available. The Council shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Council in the event this provision is exercised, and the Council shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. Award of Related Contracts.** The Council may award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Council in all such cases.
- G. Certificate of Good Standing.** The Contractor shall provide to the Agency a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Contractor is authorized to conduct business in the State of Wyoming, if required, before performing work under this Contract. Contractor shall ensure that all annual filings and corporate taxes due and owing to the Secretary of State’s office are up-to-date before signing this Contract.
- H. Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.

- I. Confidentiality of Information.** Except when disclosure is required by the Wyoming Public Records Act or court order, all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Council for its release. If and when Contractor receives a request for information subject to this Contract, Contractor shall notify Council within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Council.
- J. Entirety of Contract.** This Contract, consisting of twelve (12) pages represent the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and Contracts, whether written or oral. In the event of a conflict or inconsistency between the language of this Contract and the language of any attachment or document incorporated by reference, the language of this Contract shall control.
- K. Ethics.** Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Contractor's profession.
- L. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the Council and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Contract or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Contract.
- M. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- N. Indemnification.** Each party to this Contract shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
- O. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming or Council for any purpose. Consistent with the express terms of this Contract, the Contractor shall be free from control or direction over the details of the performance of services under this Contract. The Contractor shall

assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Council or to incur any obligation of any kind on behalf of the State of Wyoming or the Council. The Contractor agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents or employees as a result of this Contract.

- P. Nondiscrimination.** The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.
- Q. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract.
- R. Notice of Sale or Transfer.** The Contractor shall provide the Agency with notice of any sale, transfer, merger, or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If the Agency determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Contractor's obligations under this Contract, then the Agency may, at its discretion, terminate or renegotiate the Contract.
- S. Ownership and Return of Documents and Information.** Agency is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract. Upon termination of services, for any reason, Contractor agrees to return all such original and derivative information and documents to the Agency in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Agency's verified receipt of such information, Contractor agrees to physically and electronically destroy any residual Agency-owned data, regardless of format, and any other storage media or areas containing such information. Contractor agrees to provide written notice to Agency confirming the destruction of any such residual Agency-owned data.

- T. Patent or Copyright Protection.** The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Contractor, or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the Agency for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- U. Prior Approval.** This Contract shall not be binding upon either party, and the Wyoming State Auditor shall not draw warrants for payment, until this Contract has been fully executed and approved as to form by the Office of the Attorney General.
- V. Insurance Requirements.**
- (i)** During the term of this Contract, the Contractor shall obtain and maintain, and ensure that each subcontractor obtains and maintains, each type of insurance coverage specified in Insurance Coverage, below.
 - (ii)** All policies shall be primary over any insurance or self-insurance program carried by the Contractor or the State of Wyoming. All policies shall include clauses stating that each insurance carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
 - (iii)** The Contractor shall provide Certificates of Insurance to the Council verifying each type of coverage required herein. If the policy is a “claims made” policy instead of an “occurrence” policy, the information provided shall include, but is not limited to, retroactive dates and extended reporting periods or tails.
 - (iv)** All policies shall be endorsed to provide at least thirty (30) days advance written notice of cancellation to the Council. A copy of the policy endorsement shall be provided with the Certificate of Insurance.
 - (v)** In case of a breach of any provision relating to Insurance Requirements or Insurance Coverage, the Council may, at the Council’s option, obtain and maintain, at the expense of the Contractor, such insurance in the name of the Contractor, or subcontractor, as the Council may deem proper and may deduct the cost of obtaining and maintaining such insurance from any sums which may be due or become due to the Contractor under this Contract.
 - (vi)** All policies required by this Contract shall be issued by an insurance company with an A.M. Best rating of A- VIII or better.
 - (vii)** The Council reserves the right to reject any policy issued by an insurance company that does not meet these requirements.

W. Insurance Coverage. The Contractor shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth above:

- (i) Commercial General Liability Insurance. Commercial general liability insurance (CGL) coverage, occurrence form, covering liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations, and personal and advertising injury, with minimum limits as follows:
 - (a) \$1,000,000.00 each occurrence;
 - (b) \$1,000,000.00 personal injury and advertising injury;
 - (c) \$2,000,000.00 general aggregate; and
 - (d) \$2,000,000.00 products and completed operations.

The CGL policy shall include coverage for Explosion, Collapse and Underground property damage. This coverage may not be excluded by endorsement.

- (ii) Workers' Compensation and Employer's Liability Insurance. Employees hired in Wyoming to perform work under this Contract shall be covered by workers' compensation coverage obtained through the Wyoming Department of Workforce Services' workers' compensation program, if statutorily required. Employees brought into Wyoming from Contractor's home state to perform work under this Contract shall be covered by workers' compensation coverage obtained through the Wyoming Department of Workforce Services' workers' compensation program or other state or private workers' compensation insurance approved by the Wyoming Department of Workforce Services, if statutorily required.

The Contractor shall provide the Council with a Certificate of Good Standing or other proof of workers' compensation coverage for all of its employees who are to perform work under this Contract, if such coverage is required by law. If workers' compensation coverage is obtained by Contractor through the Wyoming Department of Workforce Services' workers' compensation program, Contractor shall also obtain Employer's Liability "Stop Gap" coverage through an endorsement to the CGL policy required by this Contract, with minimum limits as follows:

- (a) Bodily Injury by Accident: \$1,000,000.00 each accident;
- (b) Bodily Injury by Disease: \$1,000,000.00 each employee; and
- (c) Bodily Injury by Disease: \$1,000,000.00 policy limit.

- (iii) Unemployment Insurance. The Contractor shall be duly registered with the Department of Workforce Services and obtain such unemployment insurance coverage as required. The Contractor shall supply Council with a Certificate of Good Standing or other proof of unemployment insurance coverage.

- X. Publicity.** Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, shall identify the Council as the sponsoring agency.
- Y. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- Z. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming, the Council and the Contractor expressly reserve sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.
- AA. Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- BB. Termination of Contract.** This Contract may be terminated, without cause, by the Council upon thirty (30) days written notice. This Contract may be terminated by the Council immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.
- CC. Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.
- DD. Time is of the Essence.** Time is of the essence in all provisions of this Contract.
- EE. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.
- FF. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

GG. Counterparts. This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Contract. Delivery by the Contractor of an originally signed counterpart of this Contract by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Council.

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9. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

COUNCIL:

Wyoming Business Council

Josh Dorrell, Chief Executive Officer

Date

Brandon Marshall, Services Director

Date

CONTRACTOR:

LIGHTBOX PARENT, L.P.

William Price

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Cole R. White, Assistant Attorney General

Date

Chapter 4

Connect Wyoming Program

Section 1. Authority. These rules are promulgated by the Wyoming Business Council (“WBC”) pursuant to 2021 Session Laws, Chapter 92.

Section 2. Purpose. These rules are promulgated for the purpose of providing a regulatory framework for broadband development projects funded by the Connect Wyoming program.

Section 3. Definitions.

(a) In addition to the definitions set forth in Chapter 1, as used in this program:

(i) “Broadband Infrastructure” means terrestrial signal transmission facilities and associated network equipment and accessories deployed for the provision of broadband service to residential, business, and government customers.

(ii) “Connect Wyoming” means the program established by 2021 Session Laws, Chapter 92.

Section 4. Eligible Applicants.

(a) As used in this program, an eligible applicant:

(i) Means as defined in W.S. 9-12-1501(c)(i);

(ii) Must submit coverage maps of their entire service area in Wyoming to the Broadband Map prior to the date of their application. This submission must be evidenced on each project application submitted pursuant to this section and performed according to the Broadband Map Guidance; and

(iii) Must offer mass market retail services by wireline or terrestrial fixed wireless technology which provides the capability to transmit and receive data from all or substantially all internet end points, but excluding dial-up internet access service; and must commit to maintaining any Broadband Infrastructure constructed through funds provided under this Chapter of these Rules at the applicant’s own expense for a 15-year period for Fixed Wireless and a 20-year period for fiber.

Section 5. Eligible Projects. An eligible project must:

(a) Include the construction and deployment of a broadband infrastructure projects. “Broadband Infrastructure Projects” are eligible for funding if the infrastructure is designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical download and upload speeds of 100 Mbps. If it would be impracticable, because of geography, topography, or excessive cost, for a Broadband Infrastructure Project to be designed to deliver services at

such a speed, the Project must be designed so that it reliably meets or exceeds 100 Mbps download speeds and between 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds. Broadband infrastructure investment will be installed, owned and operated by an eligible applicant;

(b) Meet federal funding criteria, which is designed to address key areas of public health and safety by improving opportunities to telework, facilitate distance learning, and improve public safety;

(c) Be a project which does not overbuild existing adequate broadband service. The Council shall not consider Applications for projects in areas with reliable speeds of at least one hundred (100) Megabits per second (Mbps) download and twenty (20) Megabits per second (Mbps) upload, nor shall it consider projects for areas in which written agreements to develop services at or above this level prior to December 31, 2024, exist; and

(d) Include Broadband Infrastructure and equipment costs meeting federal funding criteria which include:

(i) Middle-mile fiber-optic infrastructure, the primary purpose of which is to connect last-mile infrastructure and networks to network service providers; or

(ii) Last-mile fixed terrestrial infrastructure, the primary purpose of which is to provide broadband internet service to end users or end-user devices, including households, businesses, public safety entities and community facilities.

Section 6. Eligible Costs. Eligible Costs include but are not limited to;

- (a) Construction and Materials;
- (b) New and rehabilitative construction contracts;
- (c) Architect and engineering services and legal and professional services, if required to complete the project;
- (d) Permitting fees;
- (e) Acquisition of Broadband Infrastructure equipment; and
- (f) Equipment installation.

Section 7. Ineligible Costs. The following are Ineligible Costs for which funds may not be used:

- (a) General broadband planning not associated with the project;
- (b) Ongoing overhead, operating costs, or staff costs to include bonuses of any kind;

- (c) Political activities or lobbying; and

Section 8. Application Process.

(a) The Council shall provide an application form and website which shall include instructions and the scoring matrix against which applications shall be evaluated.

(i) Applicants shall complete and submit the application, which shall include the following minimum information:

(A) Information which establishes the applicant's eligibility as set forth in Section 4(a) of this Chapter;

(B) Information which establishes the eligibility of the proposed project as set forth in Section 5 of this Chapter;

(C) A breakdown of eligible costs associated with the eligible project;-

(D) A timeline for completion of the eligible project; and

(E) A breakdown showing the amount of federal loans, grants, or aid provided for COVID-19 related purposes, including from the CARES Act, or other similarly purposed federal act, including funds from the Wyoming Community Development Authority funded by the CARES Act for which the applicant:

(I) Believes they are eligible;

(II) Has applied; or

(III) Has received.

(ii) Each applicant shall file its application(s) electronically using the form(s) and website prescribed by the Council. Applications submitted via other means may be disqualified.

(iii) Applicant should ensure that the grant funding will not be used for costs that will be reimbursed by the other federal or state funding stream(s). The grant funds must be used only for complementary purposes. Applicants must ensure there is additional public benefit and a justification for using additional public funding to deploy to those locations. Treasury encourages Applicants to use all available federal and state datasets when making these determinations.

Section 9. Funding Terms and Conditions.

(a) Applicants may be required to have or provide matching funds, ~~not~~ or letters of support.

(b) The Council shall create and utilize a uniform Contract for funding awards made under this program. All funds awarded under this program shall be contingent on the applicant's acceptance and execution of the Contract and strict compliance with all terms and conditions contained therein.

Section 10. Project Review, Prioritization, and Recommendation.

(a) Each proposed service/project area must have its own application, and Applicants shall submit no more than one (1) application per proposed service/project area.

(b) Applicants may submit applications for multiple proposed service/project areas.

(c) Applications shall be received only during application periods to be specified by the Council.

(d) Applications which do not include all minimum required information shall be afforded ten (10) working days from notification to correct the deficiency. Applications which remain deficient after this period shall be disqualified.

(e) Complete applications shall be evaluated by a committee to include the Council and Governor's Office staff, and other participants as deemed necessary and according to the scoring matrix outlined in the application.

(f) Priority shall be given to projects that achieve last-mile connections or support new and/or improved last-mile service. Priority shall also be given to investments in fiber-optic infrastructure and/or projects that involve broadband networks owned/operated/affiliated with local governments, non-profits, and cooperatives-providers with less pressure to generate profits and with a commitment to serving entire communities.

(g) In situations where the Council receives multiple applications for any single project area, priority shall be afforded to applications proposing fiber-optic infrastructure over applications proposing fixed wireless infrastructure and to the applicant proposing the fastest broadband speeds. Such applications shall be scored according to cost and demonstrated ability to complete the project.

(h) All completed projects must reliably deliver minimum speeds of one hundred megabits per second (Mbps) download and one hundred (100) Mbps upload. In cases where it is not practicable due to geography, topography, or financial cost to meet those standards, projects must reliably deliver at least one hundred (100) Mbps download speed and at least twenty (20) Mbps upload speed, and be scalable to a minimum of one hundred (100) Mbps download speed and one hundred (100) Mbps upload speed.

(i) The review committee shall rank eligible project applications and shall forward recommended contracts ~~these~~ to the Board for consideration.

Section 11. Award and Challenges

(a) At least thirty (30) days prior to making any award under this program, the Council shall publicly post the proposed project areas via the Broadband Map.

(b) Each posting for a proposed project area shown on the Broadband Map shall provide a mechanism by which a Challenge may be filed and processed as set forth in Chapter 1.

(c) Challenges brought by any broadband provider on the basis of overbuild shall only be considered where the Challenging provider has submitted .shp or .kml files of their entire service area in Wyoming to the Broadband Map.

Section 12. Certification. By applying under this program, each applicant certifies that:

(a) The statements contained in the application are true, complete, and accurate to the best of their knowledge;

(b) The funds shall be used to fund projects that create and retain local jobs and result in purposeful outcomes, including distance learning, telehealth public safety, commerce, and overall well-being;

(c) The applicant understands and acknowledges that failure to comply with these rules and/or the terms of any Contract(s) awarded under this program may result in the Council requiring a total or partial refund of the awarded funds and may affect applicant's eligibility for future funding under this or other Council programs; and

(d) The applicant understands that the award of any contract(s) under this program is contingent upon the receipt of funding from the U.S. Department of Treasury or appropriation of funding by the Legislature of the State of Wyoming, and assumes risk of any loss in submitting application(s) under this program.

Chapter 4

Connect Wyoming Program

Section 1. Authority. These rules are promulgated by the Wyoming Business Council (“WBC”) pursuant to 2021 Session Laws, Chapter 92.

Section 2. Purpose. These rules are promulgated for the purpose of providing a regulatory framework for broadband development projects funded by the Connect Wyoming program.

Section 3. Definitions.

(a) In addition to the definitions set forth in Chapter 1, as used in this program:

(i) “Broadband Infrastructure” means terrestrial signal transmission facilities and associated network equipment and accessories deployed for the provision of broadband service to residential, business, and government customers. ~~This definition explicitly excludes satellite-based infrastructure~~

(ii) “Connect Wyoming” means the program established by 2021 Session Laws, Chapter 92.

(iii) ~~“Unserved or Underserved area” means an area where any delivery points contained therein do not have access to wireline broadband service offered with a download speed of at least twenty-five (25) Megabits per second (Mbps) and an upload speed of three (3) Megabits per second (Mbps) or more.~~ The construction and deployment of broadband infrastructure projects (“Broadband Infrastructure Projects”) are eligible for funding if the infrastructure is designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical download and upload speeds of 100 Mbps. If it would be impracticable, because of geography, topography, or excessive cost, for a Broadband Infrastructure Project to be designed to deliver services at such a speed, the Project must be designed so that it reliably meets or exceeds 100 Mbps download speeds and between 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.

Section 4. Eligible Applicants

(a) As used in this program, an eligible applicant:

(i) Means as defined in W.S. 9-12-1501(c)(i); ~~and~~

(ii) Must submit coverage maps of their entire service area in Wyoming to the Broadband Map prior to the date of their application. This submission must be evidenced on each project application submitted pursuant to this section and performed according to the Broadband Map Guidance; ~~and~~

(iii) Must offer mass market retail services by wireline or terrestrial fixed wireless technology which provides the capability to transmit and receive data from all or substantially all internet end points, but excluding dial-up internet access service; and

Must commit to maintaining any Broadband Infrastructure constructed through funds provided under this Chapter of these Rules at the provider's own expense for a 15-year period for Fixed Wireless and a 20-year period for fiber.

Section 5. Eligible Projects. ~~The~~ An eligible project must:

(a) Be a Broadband Infrastructure investment which provides broadband access to Unserved or Underserved area(s), and which shall be installed, owned, and operated by an Eligible Applicant.

(b) Meet federal funding criteria, which is designed to address key areas of public health and safety by improving opportunities to telework, facilitate distance learning, and improve public safety.

(c) Be a project which serves an Unserved or Underserved area(s) and which does not overbuild existing adequate broadband service. The Council shall not consider Applications for projects in areas with reliable speeds of at least one hundred (100) Megabits per second (Mbps) download and twenty (20) Megabits per second (Mbps) upload, nor shall it consider projects for areas in which written agreements to develop services at or above this level prior to December 31, 2024, exist.

(d) Include Broadband Infrastructure and equipment costs meeting federal funding criteria which include:

(i) Middle-mile fiber-optic infrastructure, the primary purpose of which is to connect last-mile infrastructure and networks to network service providers; and

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Section 6. Eligible Costs. Eligible Costs include but are not limited to;

(a) Construction and Materials;-

(b) New and rehabilitative construction contracts;-

(c) Architect and engineering services and legal and professional services, if required to complete the project;-

(d) Permitting fees;-

(e) Acquisition of Broadband Infrastructure equipment; and-

- (f) Equipment installation.

Section 7. Ineligible Costs. The following are Ineligible Costs ~~and for which~~ funds may not be used: ~~for~~;

- (a) General broadband planning not associated with the project;:-
- (b) Ongoing overhead, operating costs, or staff costs to include bonuses of any kind;:-
- (c) Political activities or lobbying; and:-
- ~~(d) Matching other Federal Awards, unless specifically allowed by /in .~~

Section 8. Application Process.

(a) The Council shall provide an application form and website which shall include instructions and the scoring matrix against which applications shall be evaluated.

(i) Applicants shall complete and submit the application, which shall include the following minimum information:

(A) Information which establishes the applicant's eligibility as set forth in Section 4(a) of this Chapter;:-

(B) Information which establishes the eligibility of the proposed project as set forth in Section 5 of this Chapter;:-

(C) A breakdown of eligible costs associated with the eligible project;:-

(D) A timeline for completion of the eligible project; and:-

(E) A breakdown showing the amount of federal loans, grants, or aid provided for COVID-19 related purposes, including from the CARES Act, or other similarly purposed federal act, including funds from the Wyoming Community Development Authority funded by the CARES Act for which the applicant:

(I) Believes they are eligible;

(II) Has applied; or

(III) Has received.

(ii) Each applicant shall file its application(s) electronically using the form(s) and website prescribed by the Council. Applications submitted via other means may be disqualified.

Section 9. Funding Terms and Conditions.

(a) Applicants ~~shall not be required~~ may be required to have or provide matching funds, ~~not~~ or letters of support.

(b) The Council shall create and utilize ~~provide~~ a uniform Contract for funding awards made under this program. All funds awarded under this program shall be contingent on the applicant's acceptance and execution of the Contract and strict compliance with all terms and conditions contained therein.

Section 10. Project Review, Prioritization, and Recommendation.

(a) Each proposed service/project area must have its own application, and Applicants shall submit no more than one (1) application per proposed service/project area.

(b) Applicants may submit applications for multiple proposed service/project areas.

(c) Applications shall be received only during application periods to be specified by the Council.

(d) Applications which do not include all minimum required information shall be afforded ten (10) working days from notification to correct the deficiency. Applications which remain deficient after this period shall be disqualified.

(e) Complete applications shall be evaluated by a committee to include Council and Governor's Office staff, and other participants as deemed necessary and according to the scoring matrix outlined in the application.

(f) ~~Projects which develop communities of two thousand (2,000) persons population or less and/or unincorporated areas shall receive first priority. Priority shall be given to projects that achieve last-mile connections or support new and/or improved last-mile service. Priority shall also be given to investments in fiber-optic infrastructure and/or projects that involve broadband networks owned/operated/affiliated with local governments, non-profits, and cooperatives-providers with less pressure to generate profits and with a commitment to serving entire communities.~~

(g) In situations where the Council receives multiple applications for any single project area, priority shall be afforded to applications proposing fiber-optic infrastructure ~~shall be afforded priority over applications proposing fixed wireless infrastructure, and to the applicant proposing the fastest broadband speeds. Such Applications proposing similar technology will~~ be scored according to cost and demonstrated ability to complete the project.

(i) ~~In situations where the Council receives multiple applications for any single project area proposing comparable infrastructure, priority shall be afforded to the applicant proposing the fastest broadband speeds.~~

(h) All completed projects must reliably deliver minimum speeds of one hundred megabits per second (Mbps) download and one hundred (100) Mbps upload. In cases where it is not practicable due to geography, topography, or financial cost to meet those standards, projects must reliably deliver at least one hundred (100) Mbps download speed and at least twenty (20) Mbps upload speed, and be scalable to a minimum of one hundred (100) Mbps download speed and one hundred (100) Mbps upload speed.

(i) The review committee shall rank eligible project applications and shall forward recommended contracts these to the Board for consideration. ~~with a recommendation of “fund” or “do not fund.”~~

Section 11. Award and Challenges

(a) At least thirty (30) days prior to making any award under this program, the Council shall publicly post the proposed project areas via the Broadband Map.

(b) Each posting for a proposed project area shown on the Broadband Map shall provide a mechanism by which a Challenge may be filed and processed as set forth in Chapter 1.

(c) Challenges brought by any broadband provider on the basis of overbuild shall only be considered where the Challenging provider has submitted .shp or .kml files of their entire service area in Wyoming to the Broadband Map.

~~(d) The Board shall consider the recommendations of the evaluation committee and make awards at a public meeting held pursuant to the Wyoming Public Meetings Act.~~

Section 12. Certification. By applying under this program, each applicant certifies that:

(a) The statements contained in the application are true, complete, and accurate to the best of their knowledge;:-

(b) The funds shall be used to fund projects that create and retain local jobs and result in purposeful outcomes, including distance learning, telehealth public safety, commerce, and overall well-being;:-

(c) The applicant understands and acknowledges that failure to comply with these rules and/or the terms of any Contract(s) awarded under this program may result in the Council requiring a total or partial refund of the awarded funds and may affect applicant's eligibility for future funding under this or other Council programs;:-

(d) The applicant understands that the award of any contract(s) under this program is contingent upon the receipt of funding from the U.S. Department of Treasury, or appropriation of funding by the Legislature of the State of Wyoming, and assumes risk of any loss in submitting application(s) under this program; and:-

~~(e) — Any other certification required by the Council.~~



Investments Standing Committee

WYOMINGBUSINESS.ORG

**AMENDMENT FIVE TO THE PROFESSIONAL SERVICES CONTRACT BETWEEN
WYOMING BUSINESS COUNCIL
AND
MARKEE ESCROW SERVICES, INC.**

1. **Parties.** This Amendment is made and entered into by and between the Wyoming Business Council (Agency), whose address is: 214 West 15th Street, Cheyenne, WY 82002 and Markee Escrow Services, Inc. (Contractor), whose address is: 525 Randall Avenue, Cheyenne, WY 82001.
2. **Purpose of Amendment.** This Amendment shall constitute the fifth amendment to the Contract between the Agency and the Contractor. The purpose of this Amendment is to: a) extend the term of the Contract through June 30, 2024; and b) increase the Contract dollar amount by fifty thousand dollars (\$50,000.00) to three hundred fifty thousand dollars (\$350,000.00).

The original Contract, dated June 24, 2019, required the Contractor to administer the Partnership Challenge Loan Program, the Wyoming Seed Capital Loan Program, Business Ready Community Loans, and the loan programs previously known as the Amendment IV Loan Program, along with any other current or potential new loan programs for a total Contract amount of eighty thousand dollars (\$80,000.00) with an expiration date of June 30, 2020.

Amendment One, dated June 23, 2020, amended the original Contract to: a) increase the total Contract dollar amount by fifteen thousand dollars (\$15,000.00) to ninety-five thousand dollars (\$95,000.00); and b) extend the term of the Contract through June 30, 2021.

Amendment Two, dated March 12, 2021, amended the original Contract to increase the total Contract dollar amount by sixty-five thousand dollars (\$65,000.00) to one hundred sixty thousand dollars (\$160,000.00).

Amendment Three, dated June 30, 2021, amended the original Contract to extend the term of the Contract through September 30, 2021.

Amendment Four, dated September 30, 2021, amended the original Contract to: a) extend the term of the Contract through June 30, 2022; b) increase the total Contract dollar amount by one hundred forty thousand dollars (\$140,000.00) to three hundred thousand dollars (\$300,000.00); and c) to establish servicing fees payable to the Contractor.

3. **Term of the Amendment.** This Amendment shall commence upon the date the last required signature is affixed hereto, (Effective Date), and shall remain in full force and effect through the term of the Contract, as amended, unless terminated at an earlier date pursuant to the provisions of the Contract, or pursuant to federal or state statute, rule, or regulation.

Amendment Five to the Professional Services Contract between Wyoming Business Council
and Markee Escrow Services, Inc.

4. **Amendments.**

- A. The second sentence of Section 3 of the original Contract is hereby amended to read as follows:

“The term of this Contract is from June 24, 2019 through June 30, 2024.”

- B. The second sentence of Section 4(A) of the original Contract is hereby amended to read as follows:

“The total payment under this Contract shall not exceed three hundred fifty thousand dollars (\$350,000.00).”

5. **Amended Responsibilities of the Contractor.** Responsibilities of the Contractor have not changed.

6. **Amended Responsibilities of the Agency.** Responsibilities of the Agency have not changed.

7. **Special Provisions.**

- A. **Same Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the original Contract, and any previous amendments, between the Agency and the Contractor, including but not limited to sovereign immunity, shall remain unchanged and in full force and effect.

- B. **Counterparts.** This Amendment may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Amendment. Delivery by the Contractor of an originally signed counterpart of this Amendment by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Agency.

8. **General Provisions.**

- A. **Entirety of Contract.** The original Contract, consisting of eleven (11) pages; Amendment One, consisting of three (3) pages; Amendment Two, consisting of three (3) pages; Amendment Three consisting of three (3) pages; Amendment Four consisting of three (3) pages; and this Amendment Five consisting of three (3) pages represent the entire and integrated agreement between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral.

Amendment Five to the Professional Services Contract between Wyoming Business Council
and Markee Escrow Services, Inc.

9. **Signatures.** The parties to this Amendment, through their duly authorized representatives, have executed this Amendment on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Amendment.

This Amendment is not binding on either party until approved by A&I Procurement and the Governor of the State of Wyoming or his designee, if required by Wyo. Stat. § 9-2-3204 (b)(iv).

AGENCY:
Wyoming Business Council

Joshua J. Dorrell, Chief Executive Officer

Date

Bert Adam, Investments Director

Date

CONTRACTOR:
Markee Escrow Services, Inc.

Teresa Bertagnolli, President

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

 #122052

Cole R. White, Assistant Attorney General

6-3-22

Date

Amendment Five to the Professional Services Contract between Wyoming Business Council
and Markee Escrow Services, Inc.

STATE OF WYOMING
WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 1 – GENERAL PROVISIONS

Section 1. Purpose.

(a) These rules are adopted in order to implement W.S. 9-12-301 through 9-12-308, which provide for the making of loans to eligible community development organizations, state development organizations, and businesses. The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of loans, and a hearing process;

(b) Language in this chapter applies to all chapters 1-11 unless otherwise specified.

Section 2. Authority.

(a) Authority for the promulgation of these rules is granted in W.S. 9-12-302.

Section 3. Definitions.

(a) “Applicant” means all eligible entities that can apply for loans and then using that term where both CDO/SDO and businesses have the same requirements.

(b) “Board of Directors” means the Board of Directors of the Council;

(c) “Borrower” means the community development organization, state development organization, or business which applies for, commits to, and is responsible for repayment of funds provided under this program;

(d) “Business” means any existing enterprise, incorporated in the state, which employs people within the state, provides services within the state, uses resources within the state or otherwise adds economic value to goods, services or resources within the state, and includes farm and ranch operations;

(e) “Cash or cash equivalent” means liquid assets including savings, checking and money market accounts, CDs, stocks, bonds or cash value life insurance or other similar assets. Equity in real estate holdings and other fixed assets is not to be considered liquid assets;

(f) “Community development organization (CDO)” means a group of private citizens organized as a business entity authorized to do business in this state for the purpose of providing financing for new, existing, or expanding businesses and other economic or community development purposes in Wyoming, and which may take equity positions and shall take security

positions in its borrowers' businesses and appropriate personal guarantees from the owners thereof;

(g) "Commercial Lender" means commercial institutions that loan money, including banks, credit unions, mutual savings banks, savings and loan associations, stock savings banks, or trust companies;

(h) "Contract Financing" means a provision of financing for a business to gain liquidity and in which the business assigns the proceeds of a valid contract as collateral for the financing;

(i) "Council" means the Wyoming Business Council;

(j) "Council staff" means the staff of the Wyoming Business Council;

(k) "Economic development account" means the economic development enterprise account within the revolving investment fund created under article XVI, section 12 of the Wyoming constitution. The account shall consist of funds from payments as provided in W.S. 9-12-306 and other funds as provided by law;

(l) "Economic Disaster Area" means as defined in W.S. 9-12-301 (a)(v);

(m) "Economic Disaster Loan(s)" means loans made to eligible businesses, up to a maximum of five hundred thousand dollars (\$500,000.00) where such loans are funded by the Challenge Loan Program;

(n) "Fifty-fifty (50-50) financing program" means a provision of financing for that portion of the total project cost that is calculated by subtracting from the total project cost the sum of the business's debt. The Council shall not consider a proposal in which the fifty-fifty (50-50) financing component exceeds fifty percent (50%) of the total project cost or two million five hundred thousand dollars (\$2,500,000.00), whichever is less; or the business contributes less than fifteen percent (15%) of the total project cost;

(o) "Financial Records" means an applicant's financial statements, balance sheets, income statements, tax returns, or any other financial records deemed necessary for review;

(p) "Guarantee loan participation" means a provision of financing by the Council in which the Council participates with a bank that has secured a federal guaranteed loan to guarantee repayment of a loan made to a business. The maximum participation by the Council shall be fifty percent (50%) of the loan or two million dollars (\$2,000,000), whichever is less. The council shall not participate in a new guarantee loan participation under this article on or after July 1, 2022 as provided in W.S. 9-12-304 (e);

(q) "Land development loan" means an extension of credit for the purpose of improving unimproved real property prior to the erection of structures. The improvement of

unimproved real property may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(r) “Large Project Loan Program” means a provision of financing for a business to promote a stable, balanced, and diversified economy. The project must have a minimum project cost of five million dollars (\$5,000,000.00), a high likelihood of completion, create jobs, increase sales and property taxes, and demonstrate a significant increase in the assessed valuation of the county or counties in which the project is located;

(s) “Loan guarantee” means a provision of financing by the Council in which the Council guarantees a portion of a bank loan made to a business. The council shall not issue a loan guarantee under this article on or after July 1, 2022 as provided in W.S. 9-12-304 (f).

(t) “Loan Review Committee” means a Committee comprised of the Governor or his designee, the Treasurer or his designee, and a member of the Council who has expertise in banking or experience in the banking industry designated by the Chief Executive Officer of the Wyoming Business Council.

(u) “Lost revenues” shall only include actual losses incurred and shall not include any future losses;

(v) “Natural gas fueling infrastructure loan” means a loan issued by the Council for the costs of the engineering, design, real property, equipment, and labor necessary to install a functioning natural gas filling station to fuel motor vehicles, which operate on natural gas as a transportation fuel;

(w) “Owners” means an individual/entity possessing an interest in the applicant’s business, at or more than twenty percent (20%) and/or a guaranteeing entity;

(x) “Participant” means any Financial Institution(s) sharing a portion of the loan with the Wyoming Business Council through a participation agreement;

(y) “Partnership Challenge Loan Program” means a provision of financing to be used to assist any community development organization, as defined in Section 3(f), or state development organization, as defined in Section 3(aa), to build, acquire, purchase, or complete projects for the purpose of economic or community development purposes within the State of Wyoming;

(z) “Recipient” means a proposed or existing enterprise who has been awarded funds under any of the following loan programs;

(aa) “Renovation” means construction or reconstruction-type work on a building including: façade, roof, exterior wall assembly, foundation, windows, doors, cornice treatment, awnings and canopies;

(bb) “Servicing agent” means the qualified entity contracted by the Council to service the loans in the portfolio and to provide administrative services for the program;

(cc) “State development organization (SDO)” 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;

(dd) “Succession financing” means a provision of financing to be used to assist in the transition or succession of a that has been in existence for not less than seven (7) years immediately before the transfer or succession business from the business’s current owner or owners to a new owner of the business;

(ee) “Third-party loan(s)” means loans made by a community development organization or a state development organization to a business, where such loans are funded partially by the Challenge Loan Program;

(ff) “Wyoming main street loan participation” means a provision of financing by the council in which the council participates with a Commercial Lender that has made a loan to a business for building improvements to maintain the structure’s historical character. The maximum participation by the Council shall be seventy-five (75%) of the loan or one hundred thousand dollars (\$100,000), whichever is less;

Section 4. Eligible Applicants.

(a) Any of the following applicants are eligible under their respective section(s). All applications shall be reviewed by Council Staff and a recommendation shall be made to the Board of Directors, as defined by legislation. The Council shall not consider incomplete applications;

(i) Any community development organization, as defined in Section 3(f) or state organization, as defined in Section 3(aa) requesting financing utilizing the Partnership Challenge Loan Program as defined in Section 3(w);

(ii) Any business requesting Fifty-Fifty (50-50) financing as defined under Section 3(m);

(iii) Any business(es) requesting Economic Disaster Loan financing as defined in Section 3(l);

(iv) Any business requesting Loan Guarantee financing as defined in Section 3(r);

- (v) Any business requesting Large Project Loan financing as defined in Section 3(q);
- (vi) Any business requesting Guaranteed Loan Participation Loan financing as defined in Section 3(o);
- (vii) Any business requesting Contract Financing as defined in Section 3(h);
- (viii) Any business requesting Succession Financing as defined in Section 3(cc);
- (ix) Any business requesting Wyoming Main Street Loan Participation as defined in Section 3(ee);
- (x) Any business requesting a Natural Gas Fueling Infrastructure loan as defined in Section 3(u);

Section 5. Default Application Process.

- (a) All applications for loans shall be submitted on the required forms. Applications will be accepted at any time and scheduled for final review and recommendation by the Board of Directors on a first-come, first-served basis.
- (b) One (1) copy of the application shall be submitted to the Council offices at:

Wyoming Business Council
214 West 15th Street
Cheyenne, Wyoming 82002
- (c) Every application for a community development organization, state development organization shall include, unless waived by the Council:
 - (i) Three (3) years of financial statements (of the community development organization or state development organization and business receiving the third-party loan), plus current financial statements;
 - (ii) Pro-forma financial projections (income statement, balance sheet, and cash-flow statement) of the community development organization or state development organization, and the recipient of the third-party loan(s) for two (2) years;
 - (iii) A certificate of incorporation of the community development organization, state development organization;
 - (iv) By-laws of the community development organization, state development organization;

(v) A resolution to borrow by the community development organization, state development organization;

(vi) In the case of a community development organization, the use of funds will stimulate economic development in the community or county, or in the case of a state development organization, the use of funds will stimulate economic or community development throughout the state of Wyoming, and that such funds for financing the Business(es) are not available from the private-sector or in the case of a business(es) a letter of recommendation from the city, county or economic development organization where they are located;

(vii) The business plan of the community development organization, state development organization, or the ultimate recipient of the third-party loan(s);

(viii) In the case of a community development organization, a resolution of support from the legislative body of its municipality or county, or in the case of a state development organization, a resolution of support from the Council;

(ix) A certification by the community development organization or state development organization that all statutory requirements will be met;

(x) A certification that the community development organization or state development organization will contribute an amount of cash or cash equivalent not less than twenty percent (20%) of the amount of the loan it receives, plus documented evidence of the cash or cash equivalent reserves which will be pledged for such matching;

(xi) An itemized list of the proposed collateral and collateral value, not to exceed a loan to value of 85%;

(xii) A detailed proposal explaining how the community development organization or state development organization will use any loan funds. If the development organization intends to use loan funds to refinance existing debt, the proposal shall reflect that less than fifty percent (50%) of the funds received can be devoted to this purpose;

(xiii) Proposed personal guarantees; and

(xiv) A certification that the business will allow an examination of its books and records as required in W.S. 9-12-306(a).

(d) With the exception of the Large Loan Program in Chapter 9, all applications shall include, unless waived by the Council:

(i) A complete copy of the originating lender's analysis, recommendation and approval;

(ii) Three (3) years of financial and tax statements (or in the case of a new business the most recent statements available since start-up), plus detailed and complete current financial statements of the Business and owner(s);

(iii) Pro-forma cash flow statement projections, if required by the commercial lender, of the Business for a minimum of two (2) years;

(iv) An itemization of any proposed collateral and the collateral value;

(v) A detailed proposal explaining how the business will use any loan funds. If the business intends to use loan funds to refinance existing debt, the proposal shall reflect that less than fifty percent (50%) of the funds received can be devoted to this purpose;

(vi) Proposed personal guarantees;

(vii) In the case of a “guaranteed loan participation” as defined in section 3(o), certification that the loan will be guaranteed by a federal program;

(viii) Certification by the lender and business that all statutory requirements will be met;

(ix) Certification that the business will allow an examination of its books and records as required in W.S. 9-12-306(a); and

(x) Certification that the business will report jobs, wages, and capital expenses at the request of the Council.

Section 6. Default Review and Recommendation.

(a) Completed applications shall be reviewed by Council staff to determine eligibility, completeness, and credit-worthiness.

(b) Council staff shall provide to the applicant of any application determined to be incomplete an explanation of their findings in writing prior to denial of the loan;

(c) Council staff shall formulate a recommendation for complete applications to the Board of Directors utilizing the criteria in W.S. 9-12-303 and 9-12-304, including findings as to whether;

(i) The total loan amount to a single community development organization does not exceed one million dollars (\$1,000,000.00) or three million five hundred thousand dollars (\$3,500,000.00) to a state development organization;

(ii) The total loan amount to a business applying for “fifty-fifty (50-50) financing” does not exceed fifty percent (50%) of the total project costs or two million five hundred thousand (\$2,500,000.00) whichever is less or a loan to a business qualifying for a

“guarantee loan participation” shall not exceed 50% of the loan or two million dollars (\$2,000,000), whichever is less;

(iii) The total loan amount to a business applying for “economic disaster loan” financing does not exceed five hundred thousand dollars (\$500,000.00);

(iv) The total loan amount to a business applying for “loan guarantee” financing does not exceed one hundred thousand dollars (\$100,000.00);

(v) The total loan amount to a business applying for a “contract financing” loan does not exceed two hundred thousand dollars (\$200,000.00), if the total amount of all “contract financing” loans issued do not exceed one million dollars (\$1,000,000.00) at any given time;

(vi) The total loan amount to a business applying for a “succession financing” loan does not exceed five hundred thousand dollars (\$500,000.00);

(vii) The total loan amount to a business applying for a “Wyoming main street loan participation” loan does not exceed one hundred thousand dollars (\$100,000.00);

(viii) The total loan amount to a business applying for a “natural gas fueling infrastructure loan” does not exceed 75% of the total costs of land building and equipment or one million dollars (\$1,000,000), whichever is less, if the total amount of all “natural gas fueling infrastructure loans” issued do not exceed five million dollars (\$5,000,000) at any given time;

(ix) There are sufficient funds in the economic development enterprise account to fully fund the instant proposal and all other outstanding commitments and loans;

(x) Funds provided by the state would be adequately collateralized. The adequacy of the collateral shall be determined by Council staff at no more than 85% loan to value;

(xi) The application for the loan or loan commitment is submitted on or after July 1, 2022;

(xi) All appropriate legal documents are executed;

(xii) The community development organization or state development organization contributes an amount of cash or cash equivalent not less than twenty percent (20%) of the loan it receives to a program of investment in its local economic development;

(xiii) The community development organization or state development organization has consolidated the loan it receives and its required contribution and makes Third-party loans to Businesses and investments in support of Wyoming business;

(xiv) The Board of Directors has taken into consideration that the Third-party loan does not cause unfair competition with existing businesses in the area;

(xv) The Board of Directors has taken into consideration that the Third-party loan does not cause unfair competition with existing lenders in the area;

(xvi) The Board of Directors has taken into consideration the likelihood that the Borrower will be able to make sound underwriting decisions in its provision of the Third-party loans, and the Borrower's ability to ultimately repay the loan.

(d) Council staff shall notify applicants of the time and place of the Board of Directors meeting at which time their application will be evaluated.

(e) At the meeting, the Board of Directors shall consider each application, allowing for comments from the applicant and Council staff. The Board of Directors shall then approve or deny each application subject to the terms and conditions considered necessary by the Board of Directors. In the event the application is denied the Board of Directors will disclose to the applicant the reason for denial in writing and any remedial steps for the application to be reconsidered.

Section 7. Default Terms, Conditions, and Repayment.

(a) In making loans, the Council shall:

(i) Establish an up-front fee of at least one percent (1%) each of the total loan amount;

(ii) Establish a commitment period for disbursement of loan proceeds not to exceed three (3) years;

(iii) Set an interest rate (minimum 3% per annum) for all loans, except Large Project Loan(s) in Chapter 9, after considering:

(A) The proposed source(s) and use(s) of the funds, and specifically, the percentage of owner's equity;

(B) Other interest rates associated with total project financing;

(C) Projected cash flows and business plan of the Borrower as well as the Business;

(D) Credit risk of the community development organization or state development organization and the underlying third-party loans;

(E) Current and projected market interest rates; and

(F) Collateral and security package.

(iv) Establish the terms of repayment of the loan, not to exceed ten (10) years, with an additional ten (10) year renewal period upon approval by the Board of Directors of the Council, except for Large Project Loans in Chapter 9;

(v) Establish an amortization not to exceed twenty (25) years;

(vi) Establish that whenever a draw-down of funds is requested by the Borrower, provide to the Council for each third-party loan under consideration by the Borrower, a written loan application made by the Borrower and approved by its board, which is a detailed due-diligence analysis on the creditworthiness of the proposed third-party loan. Such loan application shall at a minimum address and analyze the proposed sources of financing: sources and uses of funds, commercial viability of the business/project, risks and mitigants, rationale for lending, economic development impact, the collateral package, terms of the security agreement, and terms and conditions of the third-party loan;

(vii) Establish that whenever a draw-down of funds is requested by the Borrower, provide to the Council for each third-party loan under consideration by the Borrower, unless waived by the Council, the Business' business plan, three (3) years of historical financial statements and current year-to date financial statements; three (3) years of tax statements; and pro-forma financial projections including the Borrower's income statement, balance sheet, and cashflow statement;

(viii) Establish other terms and conditions determined to be necessary by the Board of Directors prior to the release of funds to the Borrower, as well as other customary and prudent terms and conditions;

(ix) Require written permission from the Borrower agreeing to allow the Wyoming Department of Audit and an auditor designated by the Board of Directors to examine its books and records, upon request;

(x) Reserve the right to terminate the agreement to ensure funds loaned or committed are invested by the community development organization or state development organization in local economic development within thirty-six (36) months; and

(xi) Require all statutory requirements applicable to the loan be met.

Section 8. Servicing Agents.

(a) The Council may undertake to act either directly or to contract for that service through a Servicing Agent.

(b) The Servicing agent may be responsible for loan packaging, closing, documentation, loan portfolio management, collection and reporting, and other duties as required under the loan servicing agreement.

(c) It will remain the responsibility of the Council to monitor the performance of the portfolio through frequent meetings with the Servicing agent.

Section 9. Board of Directors Meeting.

(a) The Board of Directors shall conduct application reviews at a meeting of the Board of Directors.

(b) No requests for changes in loan commitments shall be granted without a vote by the Board of Directors approving the change.

(c) The Board of Directors reserves the right to declare a moratorium upon the acceptance of applications.

Section 10. Reporting and Audit.

(a) The Council shall submit to the State Banking Commissioner a portfolio report of all loans as of December 31 no later than January 15. The State Banking Commissioner shall schedule an audit of the loan portfolio report on or before April 1 with a completed audit report presented to the Council on or before May 1.

(b) On or before July 15 of each year, the Council shall submit a written report to the Joint Minerals, Business and Economic Development Interim Committee reviewing rules adopted by the Council during the reporting period, presenting a portfolio of loans made under the programs and presenting a risk analysis of the portfolio of loans prepared by the State Banking Commissioner.

STATE OF WYOMING
WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 2 – PARTNERSHIP CHALLENGE LOANS

Section 1. Special Requirements.

(a) The total loan amount to a single community development organization shall not exceed one million dollars (\$1,000,000.00) or three million five hundred thousand dollars (\$3,500,000.00) to a state development organization as referenced in Chapter 1, Section 6(c)(i) of these Rules.

(b) The community development organization or the state development organization shall contribute not less than twenty percent (20%) of a partnership challenge loan per Chapter 1, Section 6(c)(xii) of these Rules.

STATE OF WYOMING
WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 3 – 50/50 FINANCING PROGRAM

Section 1. Special Requirements.

(a) For any applicant under Chapter 1, Section 4(ii) of these Rules, the maximum participation amount is fifty percent (50%) of the project cost(s), not to exceed two million five hundred thousand dollars (\$2,500,000.00).

STATE OF WYOMING
WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 4 - ECONOMIC DISASTER LOANS

Section 1. Special Requirements.

(a) Any business or group of businesses may apply to the Council for designation of an area of the state as an area in which an economic disaster as defined in W.S. 9-12-301(a)(v) has occurred, through the submission of an application to the Council, as defined by legislation. Only complete applications shall be submitted to the Council.

(b) Any business which has been directly impacted in the form of lost revenues, by an economic disaster, as determined by the Council to have occurred in Wyoming, may apply for an Economic Disaster Loan, through the submission of an application to the Council or its Servicing agent, as defined by legislation. Only complete applications shall be submitted to the Council.

(c) Completed requests for declaration of an Economic Disaster Area shall be reviewed by Council staff to determine eligibility and completeness. The Council may require whatever documentation is necessary to verify the extent of the economic impact, and may use good faith estimates of lost revenues to Businesses in determining whether an event qualifies as an economic disaster.

(d) In addition to the requirements of Chapter 1, Section 5, every application shall include:

(i) A detailed description of the economic disaster event which has occurred, which has resulted in lost revenues to directly affected Businesses;

(ii) Documentation that substantiates the applicant's lost revenue, the geographic area in which the economic disaster occurred, and that the event was not within the control of the affected businesses;

(iii) A statement that such funds for the Economic disaster loan are not available from the private-sector at a like term and interest rate;

(iv) A credit report and personal reference letter from financial institution of borrower;

(v) Commitment from a financial institution to renew the operating line of credit or other debt instrument associated with the borrower for a minimum of one (1) year following the closing of the economic disaster loan;

(vi) Documentation establishing the terms of repayment, not to exceed 10 years; and

(vii) Documentation establishing other terms and conditions determined to be necessary by the Board of Directors, including as well as other customary and prudent terms and conditions, negative and affirmative covenants, cross-default, conditions precedent, security.

STATE OF WYOMING
WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 5 - LOAN GUARANTEE PROGRAM

Section 1. Special Requirements. No loans shall be originated utilizing the Loan Guarantee Program after July 1, 2022;

STATE OF WYOMING

WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 6 – GUARANTEE LOAN PARTICIPATION PROGRAM

Section 1. Special Requirements. No loans shall be originated utilizing the Guarantee Loan Participation Program after July 1, 2022;

STATE OF WYOMING

WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 7 - WYOMING MAIN STREET LOAN PARTICIPATION

Section 1. Special Requirements.

(a) The maximum loan amount in the Wyoming main street loan participation program is one hundred thousand dollars (\$100,000.00); and

(b) The Wyoming Business Council's maximum participation in a Wyoming main street loan participation loan shall be seventy-five percent (75%) of the proposed total loan amount.

STATE OF WYOMING

WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 8 - NATURAL GAS FUELING INFRASTRUCTURE LOANS

Section 1. Special Requirements.

(a) The maximum loan amount utilizing the natural gas fueling infrastructure loan program shall be one million dollars (\$1,000,000.00);

(b) There shall be no more than five million dollars (\$5,000,000.00) of total outstanding loans in the natural gas fueling infrastructure loan program portfolio;

(c) The maximum loan amount for loans made under this Chapter of these Rules is the lesser of seventy-five percent (75%) of the project cost or the appraised value of the completed project;

(d) Loans made under this Chapter of these Rules shall not require interest or principal payments for the first two (2) years of the loan term. All deferred interest during the first two (2) years shall, however, be added to the principal balance; and

(e) The minimum interest rate for loans made under this Chapter of these Rules shall be four percent (4%) per annum.

STATE OF WYOMING

WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 9 – LARGE PROJECT LOAN PROGRAM

Section 1. Special Requirements. The Large Project Loan Program is funded by a different appropriation fund than the Partnership Challenge Loan Program(s). Therefore, the special requirements are listed below in accordance with the legislation unique to this program.

Section 2. Authority. These rules are promulgated in accordance with the Wyoming Administrative Procedure Act, Wyoming Statute 16-3-101 through 16-3-115 and the Wyoming Business Council's rule-making authority in W.S. 9-12-308(m).

Section 3. Purpose. These rules are intended to provide detailed procedures by which the applicants for large project loans or loan guarantees shall apply for such loans or loan guarantees.

Section 4. Materials Required for Review.

(a) Project application. Applicants seeking a loan or loan guarantee under this program must submit a project application in compliance with this Chapter of these Rules to Council staff. This project application must contain the following comprehensive information:

(i) Tab A - A detailed overview of the applicant's business entity, including identification of all principal management and owners.

(ii) Tab B - A detailed description of the project to be financed, including all costs to be funded and a specific explanation of how the project satisfies the criteria set forth in W.S. 9-12-308(f);

(iii) Tab C - A business plan accurately describing the existing business and its history, future business endeavors, and all characteristics of the project to be funded through the loan or the financing secured by the loan guarantee. The business plan must address, but should not be limited to, the following components:

(A) The total cost of the project, the amount of financing sought and what costs and expenses for the project will be covered by such financing;

(B) The source of the applicant's required private funds, as described in Section 7(h) of this Chapter, to be used in the completion of the project in an amount which is at least twenty-five percent (25%) of the total cost of the project.

(C) The collateral offered to secure the loan or the loan guarantee, including documentation establishing that the collateral is the property of the applicant and is unencumbered with any other financing or an indication that any such financing will be paid off with proceeds from the loan or the financing obtained in connection with the loan guarantee;

(D) The proposed term of financing, including loan amount, term of the loan, amortization, interest rate, and/or private bank participation; and

(E) Any other information reasonably necessary to inform the Wyoming Business Council staff about the project to be financed, the nature of which may vary depending upon the type of business and facilities at issue;

(iv) Tab D - A comprehensive chart and detailed description identifying all business entities related to the applicant, whether by contract or through corporate affiliations;

(v) Tab E – The applicant’s financial records for five (5) years or the life of the applicant, whichever is less, including tax returns;

(vi) Tab F - A balance sheet and projected cash flow for the project for the anticipated term of the loan or loan guarantee evidencing the applicant’s ability to repay the loan or the financing guaranteed by the loan guarantee on or prior to maturity;

(vii) Tab G - Existing short-term and long-term financing for property associated with the project to be financed through the loan or loan guarantee;

(x) Tab H - Records concerning the environmental compliance with the applicable environmental regulations of facilities and underlying real property associated with the project and completion of an environmental questionnaire provided by the Wyoming Business Council staff with regards to such property which will serve as collateral. If the environmental questionnaire indicates any environmental problems with the property, then further due diligence may be required, such as a Phase 1 and possibly Phase 2 environmental report;

(xi) Tab I - Notice and identification of any threatened or pending litigation involving the anticipated project or property offered as collateral and/or the applicant (or such entity that will be the borrower) and any guarantor as provided in Section 7(j) below;

(xii) Tab J - Industry-specific information and documentation concerning the applicant's business activities within that industry, including without limitation, regulatory information related to the project to be undertaken; and

(xiii) Tab K - Any relevant ongoing or new information that arises any time after applicant’s initial submission of the above information which may influence or bear upon the review of the proposed loan or loan guarantee, including without limitation, new or altered

financing arrangements, statutory, rule or regulatory changes which may impact applicant's project or operations or the proposal thereof, or changes in ownership.

(b) Additional information. In addition to information in the project application, the Wyoming Business Council staff may ask for additional information necessary for the Wyoming Business Council staff to conduct its due diligence and review of the project. Applicants shall respond to such requests in a timely manner with complete and current information. Any documents, materials or information provided to Council staff in connection with its review of the loan or loan guarantee may be shared with any other State agency, including without limitation, the Governor's Office, the Wyoming State Treasurer's Office, and the Wyoming Attorney General's Office. Applicant shall also provide updated information pertinent to the comprehensive information required in Section 4(a)(i)–(xiii) of this Chapter should any of that information change at any point during the application process.

(c) Collateral. Based on the appraisals and information provided by the applicant for the collateral securing the loan or loan guarantee, Council staff shall determine if such collateral is adequate based on the requirements of W.S. 9-12-308. Council staff shall secure a first security interest in the entire project which is the subject of the financing and must approve any subsequent financing which is to exist at the time of closing or which applicant enters into after closing of the loan or loan guarantee. If the applicant shows good cause why the applicant cannot grant the State a first security interest in the entire project, then the applicant must propose substitute collateral which Council staff deems to be sufficient to repay the loan or loan guarantee in the case of a default and in which the Council's interest is before the interest of any and all other lenders in such substitute collateral (if such other lenders have been previously approved by the Council as provided in Section 7(b) of this Chapter).

(d) Value of collateral. Loans or loan guarantees shall be adequately collateralized, such that Council staff may obtain appraisals to assess the value of existing facilities, collateral, and other real or personal property used as collateral.

(i) LTV Table

Loan Category	Loan-to-Value Limit (percent)
Raw Land	65
Land Development	75
Construction	75
Commercial, Multifamily, and other non-residential	80

1- to 4-family residential	85
Improved Property	85
Equipment	80

(e) Fee and Experts. The Council shall charge the applicant a loan origination fee or loan guarantee fee in the amount of one percent (1%) of the total loan or guaranteed loan amount. This fee shall be used to pay for the costs of any experts hired by Council staff to aid in conducting the due diligence of the project, including, without limitation, appraisers, accountants, environmental engineers and attorneys. If the cost of such experts exceeds the amount of the origination or guarantee fee, then the applicant shall pay any such excess costs. Regardless whether the applicant closes on the loan or loan guarantee, the applicant shall pay for, or reimburse the State for, all costs incurred by the Council to review the project and the loan or loan guarantee and to conduct the due diligence necessary for such review, including, without limitation, the costs of such experts.

Section 5. Program Review and Approval Process; Due Diligence; Closing.

(a) Steps of process. The steps necessary to obtain approval of a loan or loan guarantee under the large project program are as follows:

(i) The applicant shall first submit five (5) copies of the complete project application to Council staff, including materials required by Council staff in addition to those items described in Section 4(a) of this Chapter for review.

(ii) After receiving an application, Council staff shall review the project application to ensure completeness under Section 4(a) of this Chapter. Once Council staff ascertain that a submitted application is complete, Council staff shall deliver one (1) copy each of the project application to the Governor or his designee, to the State Treasurer or his designee and to the Wyoming Attorney General's Office. The remaining two (2) copies shall be retained at the Council's main office.

(iii) Council staff shall next review the project application under the process set forth in W.S. 9-12-601 through W.S. 9-12-603. Within sixty (60) calendar days of receipt of a complete application, Council staff and participants (if applicable) shall present the project, the proposed loan or loan guarantee, and its terms to the Loan Review Committee. The Loan Review Committee shall adopt a recommendation and may accept or deny the proposed loan or amend its terms in that recommendation.

(iv) Council staff shall provide electronic notice to all Wyoming financial institutions of the recommended loan terms and shall allow not less than fifteen (15) business

days to respond with expressions of interest relating to participation. If multiple financial institutions express interest in participating in the proposed loan, council staff shall share proposed terms with the applicant. The applicant shall choose from the provided proposals, and Council staff shall notify the interested financial institutions of the applicant's choice for participation.

(v) Following the favorable recommendation of the Loan Review Committee, the project shall be submitted to the Board of Directors for a vote to accept or reject that recommendation at the next scheduled Board of Directors meeting.

(vi) Upon the recommendation by the Board of Directors, the Wyoming Business Council shall forward its recommendation to the Wyoming State Loan and Investment Board at the next available meeting for its final approval, or rejection, of the loan or loan guarantee.

(vii) If the Wyoming State Loan and Investment Board grants final approval of the application, the application shall return to Council staff to close the loan or loan guarantee in conjunction with participating financial institution(s), if applicable.

(b) Information review. Nothing in these rules shall be interpreted to prevent the Governor or his designee, the State Treasurer or his designee, the Council, the Loan Review Committee or the Wyoming State Loan and Investment Board from evaluating or reviewing any and all other relevant information when that information is available.

(c) Final agency action is subject to judicial review of administrative action under Wyoming Statute Ann. 16-3-114 and Rule 12 of the Wyoming Rules of Appellate Procedure.

(d) Material change or new information. After the Wyoming State Loan and Investment Board's final approval of the loan or loan guarantee, the Wyoming Business Council staff may request from the applicant any materials or information the Wyoming Business Council staff deems necessary to close the loan or loan guarantee. If, after the Wyoming State Loan and Investment Board's final approval of the loan or loan guarantee, new information is revealed that Council staff reasonably determines should have been provided, or Council staff determines that previously provided material information is no longer accurate or sufficient, the Council shall not allow the loan or loan guarantee to proceed to closing, and the applicant shall be required to reapply under Section 5(a) above if the applicant desires to proceed with the loan or loan guarantee.

(e) Attorney General's opinion. No loan or loan guarantee shall be made until Attorney General's Office provides a written opinion certifying the legality of the transaction and all documents connected therewith, including without limitation, the Financing Agreement and the Mortgage or any other document which creates a security interest in the applicant's property in favor of the Council.

(f) Closing. The applicant is required to close the loan or loan guarantee with Council staff within twelve (12) months of the final approval of the Wyoming State Loan and Investment Board. The applicant may request an extension of the closing deadline in writing and shall demonstrate good cause why the deadline should not apply and why a new deadline should be set. The Board of Directors may agree to extend the closing deadline, but in no event shall the Council provide an extension which would allow the loan or loan guarantee to close more than two (2) years after the final approval of the Wyoming State Loan and Investment Board without resubmitting the request for the loan or the loan guarantee. If greater than two (2) years has passed or would pass between the date of final approval and the closing, the applicant shall resubmit the application for approval.

Section 6. Determination of Eligibility.

(a) Eligible projects and expenses. Eligible projects shall consist of an applicant's prospectively planned and well-defined business endeavor, and the project shall have a set beginning and completion date. A loan or loan guarantee issued pursuant to this Chapter shall not be used to fund past business or past construction expenditures. Expenses eligible for reimbursement from loan proceeds following execution of applicable loan or loan guarantee documents shall relate back no earlier than the submission of the request for the loan or loan guarantee to Council staff. Financing issued under this Chapter shall not primarily serve as a refinance mechanism or otherwise serve to substitute the loan or loan guarantee for an applicant's current lenders.

(b) Examples of eligible projects. The following economic development projects, to the extent they otherwise satisfy the criteria set forth in W.S. 9-12-308 and these rules, may be eligible for large project fund financing:

- (i) Manufacturing, fabrication or other industrial production facilities;
- (ii) Agricultural development or food processing;
- (iii) Development of, or improved utilization of, natural resources;
- (iv) Research and development projects that will add economic value to goods, services or resources within or outside the State;
- (v) Destination facilities, other than retail or food service businesses;
- (vi) Product distribution and/or warehousing facilities;
- (vii) Transportation or freight facilities;
- (viii) Scientific testing including, but not limited to, medical, clinical or engineering testing services;

- (ix) Utilities;
- (x) Facilities associated with the management of waste; and
- (xi) Other activities that represent a new technology or type of economic enterprise.

(c) Large project. All loans and loan guarantees issued under this large project program must meet the requirements of a large project as described in W.S. 9-12-308(b). In addition, for a loan or loan guarantee to be eligible for the large project program, project costs must exceed \$5,000,000. If the character, scope or size of the project changes at any time after its approval by the Wyoming State Loan and Investment Board, the project shall be resubmitted for approval as revised or modified.

(d) Non-disclosed litigation or threats of litigation. A request for a loan or loan guarantee made under this Chapter shall be ineligible if pending litigation or threats of litigation are not disclosed with the project application or immediately thereafter.

(e) Twelve-Month deadline. A submission shall become ineligible for a loan or loan guarantee under this Chapter if the applicant is unable to close, or if the applicant is unable to obtain a written extension from the Board of Directors, on all loan or loan guarantee documents with the Council within the twelve (12) month closing deadline set forth in Section 5(f) of this Chapter.

Section 7. Risk Analysis.

(a) Interest rate. The interest rate for any loan under this program shall be consistent with Wall Street Journal Prime (WSJP) as of the date of the application with a floor of WSJP minus one percent (1%) and a ceiling of WSJP plus seven percent (7%). The interest rate shall be proposed by Council staff to the loan review committee for approval, and State Land and Investment Board for approval, after considering applicable risk factors and the economic impact of the project.

(b) Subordinate financing. The loan or loan guarantee documents shall require that the State maintain a first priority lien on all collateral, and no collateral securing the loan or loan guarantee may be used to obtain subordinate financing without the written consent of the Council.

(c) Insurance requirements. Insurance requirements shall vary based on the type of project which is the subject of the loan or loan guarantee but, at a minimum, general liability and property insurance shall be required in amounts and with terms that are acceptable Council staff naming the State as a lien holder. At the discretion of Council staff, other types of insurance may be required based on the type of project being financed and/or the property that serves as collateral for the loan or loan guarantee, such as business interruption, flood, earthquake, or other

insurance class as applicable.

(d) Financial covenants. Council staff may require that the loan or loan guarantee documents include financial covenants with which the applicant must comply for the term of the loan or loan guarantee. Such covenants may include standards relating to debt service coverage, debt limitations, net worth, leverage, interest coverage or any other financial metrics determined by Council staff necessary to ensure the strength and performance of the applicant.

(e) Acceleration upon closure of Wyoming facility or applicant's relocation outside the State. The loan documents may provide that, if the applicant closes the facility or operation that is the subject of the loan or loan guarantee or relocate such facility or operation outside the State of Wyoming prior to maturity of the loan or the applicant's actions indicate that applicant intends to so close or relocate the facility or operation, the outstanding balance of the loan shall be immediately due and payable including all interest accrued to the date of such payment and any and all fees and expenses due and owing. If the State has guaranteed financing pursuant to this Chapter, the guarantee documents shall provide that the guarantee shall terminate immediately and irrevocably as of the decision to close, or relocate the facility or operation or the commencement of any actions indicating a future closure or relocation.

(f) Commencement of project. The loan documents shall require that the applicant commence construction of the project within one (1) year after closing of the loan or loan guarantee. If the applicant fails to commence construction within that time, the outstanding balance of the loan shall become immediately due and payable, including all interest accrued to the date of such payment and any and all fees and expenses due and owing. If the State has guaranteed financing pursuant to this Chapter, the guarantee documents shall provide that the guarantee shall terminate immediately and irrevocably after one (1) year if construction of the project has not commenced.

(g) Other covenants. Council staff may include terms in the documents for the loan or loan guarantee to protect the State's interest, such as:

- (i) Escrow accounts;
- (ii) Cash sweeps;
- (iii) Pledge rights;
- (iv) Corporate approval rights;

(v) Acceleration rights for facility closure, failure to meet job creation and tax base requirements and failure to continue to satisfy any requirements necessary to qualify for eligibility for the large project program; and

- (vi) Other mechanisms Council staff deems appropriate.

(h) Private funds. Prior to closing a loan or loan guarantee, an applicant must certify to Council staff that the applicant has committed private funds from funding sources not provided by the state of Wyoming in an amount which is at least twenty-five percent (25%) of the total cost of the project and that such private funds may be spent on eligible project costs which may include, but are not limited to, buildings, equipment, and direct project infrastructure. Council staff may require additional information, documentation, escrow of funds, implementation of processes and procedures or any other reasonable materials or terms, to evidence this commitment of private funds.

(j) Guarantees by affiliates. Council staff may determine that, upon examination and review of applicant's due diligence materials and the proposed collateral for the loan or loan guarantee, additional collateral in the form of loan guarantees from affiliates of the applicant may be necessary to provide sufficient security to the State for repayment of the loan or loan guarantee.

Section 8. Post-closing.

(a) Subsequent requirements. Council staff shall continue to monitor the loan or loan guarantee after the closing. The documents shall contain periodic reporting and compliance requirements that the applicant shall be required to satisfy. Each recipient shall provide to Council staff an annual progress report updating the status of the project being financed by the loan or loan guarantee. These reporting and compliance requirements may additionally include, but are not limited to:

- (i) An as-built survey;
- (ii) Notification of other debt(s);
- (iii) Annual financial statements;
- (iv) Copies of tax returns;
- (v) A report of the number and types of jobs created due to the project financed under this Chapter;
- (vi) Property valuation of the project for property tax purposes; and
- (vii) Notice of any regulatory violations.

(b) Subsequent disbursements. Loan proceeds will be disbursed only after project expenses have been incurred and/or documented. Each recipient shall provide a disbursement request to Council staff prior to closing for loan proceeds to be disbursed at closing, and loan proceeds shall be disbursed only for expenses related to the project and incurred and/or documented after the date applicant first submitted the project to Council staff for preliminary recommendations. Any loan proceeds which are not disbursed on the day of closing will be held

by the Council until applicant submits a disbursement request and proof of eligible expenses as shall be provided in the loan documents and approved by Council staff.

Section 9. Confidentiality. Information and any other documentation submitted in support of a request for a loan or loan guarantee pursuant to the large project program, once submitted to a State agency or official, shall be governed by the Public Records Act, W.S. 16-4-201 through 205, as amended. Upon receipt of a request to disclose an application for a loan or loan guarantee or supporting information, the Council shall make a determination as to whether the information must be disclosed pursuant to that Act. The Council, before it makes said determination or discloses an applicant's information, shall inform the applicant of its determination. Should the applicant object to the disclosure of any record the Council has determined must be disclosed under the Act, the applicant shall justify its request to withhold records under the Act or any other authority to the Council in writing. The Council shall not disclose said information if disclosure is likely to result in the impairment of the government's future ability to obtain necessary information and/or result in substantial harm to the competitive position of the recipient that provided the information to the Council.

STATE OF WYOMING
WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 10 – CONTRACT FINANCING LOANS

Section 1. Special Requirements.

- (a) The maximum loan amount of loans made under this Chapter of these Rules shall be two hundred thousand dollars (\$200,000.00);
- (b) There may be no more than one million dollars (\$1,000,000.00) in total obligations in the Wyoming Partnership Challenge Loan Program loan portfolio at any given time;
- (c) A borrower under the Wyoming Partnership Challenge Loan Program shall contribute no less than ten percent (10%) of the total cost to acquire the raw material(s) used in the contract;
- (d) The borrower shall have no other available assets to collateralize the loan request;
- (e) The borrower must acquire and produce with its applications no less than two (2) denial letters from financial institutions;
- (f) The Wyoming Business Council shall be listed as a co-payee on the contract alongside the borrower;
- (g) The maximum loan term of a loan made under this Chapter of these Rules is two (2) years, unless this provision is specifically waived by a motion of the Board of Directors in a public meeting and a new loan term is established in writing;
- (h) Interest shall accrue from the date of loan origination; and
- (i) Upon payment of the contract from the payor, borrower shall pay off all principal and accrued interest within fifteen (15) calendar days.

**STATE OF WYOMING
WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM**

Rules and Regulations

CHAPTER 11 – SUCCESSION FINANCING LOANS

Section 1. Special Requirements.

(a) The maximum loan amount from the Council under this Chapter of these Rules is the lesser of fifty percent (50%) of the total loan amount or five hundred thousand dollars (\$500,000.00); and

(b) The business applying for funding shall have been operating for no less than seven (7) years immediately preceding the application for the loan.

STATE OF WYOMING
AGRICULTURAL PROCESSING REVENUE BOND PROGRAM

Rules and Regulations

CHAPTER 1

Section 1. Purpose.

(a) These rules are adopted in order to implement W.S. 9-12-109 (b), which allows the Wyoming Business Council to issue revenue bonds as specified for agriculture processing projects; specifying that municipal, county, and joint powers board industrial development projects and purposes include agricultural and agricultural-related projects. The rules provide for a method of application, review and recommendation, limiting bond eligibility, and hearing process.

(b) Language in this chapter applies to all chapters unless otherwise specified.

Section 2. Authority.

(a) Authority for the promulgation of these rules is granted in W.S. 9-12-109.

Section 3. Definitions.

(a) “Applicant” means all existing or proposed businesses applying for bond allocation;

(b) “Board of Directors” means the Board of Directors of the Council;

(c) “Bond Counsel” means an attorney or a firm of attorneys with expertise in bonding of projects;

(d) “Borrower” means the business which applies for, commits to, and is responsible for repayment of funds provided under this program;

(e) “Business” means any existing enterprise, incorporated in the state, which employs people within the state, provides services within the state, uses resources within the state, or otherwise adds economic value to goods, services, or resources within the state, and includes farm and ranch operations;

(f) “Cash or cash equivalent” means liquid assets including savings, checking and money market accounts, CDs, stocks, bonds, or cash value life insurance or similar assets. Equity in real estate holdings and other fixed assets is not to be considered liquid assets;

(g) “Commercial Lender” means commercial institutions that loan money, including banks, credit unions, mutual savings banks, savings and loan associations, stock savings banks, or trust companies;

(h) “Council” means the Wyoming Business Council;

(i) “Council staff” means the staff of the Wyoming Business Council;

(j) “Financial records” means an applicant’s financial statements, balance sheets, income statements, tax returns, or any other financial records deemed necessary for review;

(k) “Land development loan” means an extension of credit for the purpose of improving unimproved real property prior to the erection of structures. The improvement of unimproved real property may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(l) “Issuing Authority” means the state agency responsible for issuing the bond allocation;

(m) “Owners” means an individual/entity possessing an interest in the applicant’s business, at or more than twenty percent (20%) or a guaranteeing entity;

(n) “Parent Company” means an entity possessing an interest in the applicant’s business, at or more than ten percent (10%) or a guaranteeing entity;

(o) “Project” means any land, building, pollution control facility or other improvement and all necessary and appurtenant real and personal properties, whether or not in existence, suitable for manufacturing, industrial, commercial or business enterprises, for manufacturing, processing or assembling agricultural or agricultural-related products.

(p) “Recipient” means a proposed or existing enterprise who has been awarded funds under the Agricultural Processing Revenue Bond Program;

(q) “Renovation” means construction or reconstruction-type work on a building including: façade, roof, exterior wall assembly, foundation, windows, doors, cornice treatment, awnings and canopies;

(r) “Servicing agent” means the qualified entity contracted by the Council to service the loans in the portfolio and to provide administrative services for the program;

(s) “State Loan and Investment Board” means the approving body of a proposed bond issuance comprised of the State of Wyoming’s Governor, Secretary of State, Auditor, Treasurer, and Superintendent of Public Instruction.

Section 4. Eligible Applicants. Any existing or proposed business entity is eligible. All applications shall be reviewed by Council Staff and a recommendation shall be made to the

Board of Directors, with final approval by the State Loan and Investment Board, as defined by legislation. The Council shall not consider incomplete applications.

Section 5. Default Application Information.

(a) All applications for bond issuances shall be submitted on the required forms. Applications will be accepted at any time and scheduled for staff review and recommendation by the Board of Directors, and final approval by the State Loan and Investment Board on a first-come, first-served basis;

(b) One (1) copy of the application shall be submitted electronically via email or physically to the Council offices located at:

Wyoming Business Council
214 West 15th Street
Cheyenne, WY 82002

(c) Every application for the proposed project shall include, unless waived by the Council:

(i) The name, title and address of the person to whom notices should be sent and from whom information can be obtained;

(ii) Five (5) years of financial statements (of the existing business and parent company, if applicable, receiving the bond issuance), plus current financial statements;

(iii) Pro-forma financial projections (income statement, balance sheet, and statement of cash flows) of the existing or proposed business, and parent company, if applicable, receiving the bond issuance for three (3) years;

(iv) A certificate of incorporation of the existing or proposed business receiving the bond issuance;

(v) A certificate of good standing from the Wyoming Secretary of State's office;

(vi) By-laws of the borrower and parent company, if applicable, or a copy of the Borrower's operating agreement demonstrating borrowing authority of the existing or proposed business;

(vii) The business plan of the existing or proposed business;

(viii) An itemized list of the proposed collateral and collateral value;

(ix) A detailed proposal explaining how the bond proceeds will be utilized;

(x) Certification that the business will allow an examination of its books and records at the request of the Council;

(xi) Certification that the business will report jobs, wages, and capital expenses at the request of the Council;

(xii) The issuing authority;

(xiii) The date of adoption of the initial intent;

(xiv) The name and address of bond counsel;

(xv) The amount of the general allocation pool the applicant is requesting;

(xvi) A statement summarizing the benefit of the project to the state or local community, the impact of the project on other businesses in the state or local community and the ability of the project to meet the objectives set forth in W.S. 15-1-701 (b);

(xvii) A proposed starting date and estimated completion date of construction of the project;

(xviii) Information relating to the feasibility of the proposed project, showing that the project will generate revenues and cash flow sufficient to make payments to pay debt service on the bonds;

(xix) The amount, source, type and terms and conditions of all capital that will be used for the project in addition to bond financing;

(xx) Actions that have been taken in anticipation of the bond issue and the anticipated date of bond issuance;

(xxi) An explanation of the impact on the project if the total allocation is not received; and

(xxii) Statement of any significant risks to the project or the project's financing and any mitigating factors to those risks.

Section 6. Default Attachments to Application. A letter shall be attached from bond counsel for the issuing authority, with supporting citations to state law, the act, and any federal regulations, stating that the bonds are eligible for an allocation and that the issuing authority is authorized under the laws and constitution of the state to issue such bonds. The letter shall be signed by the attorney authoring the letter and shall explain the specific basis for bond counsel's opinion that the bonds qualify for an allocation from the state. If applicable, the letter shall also set forth and explain all calculations for funding the portion of the project that qualifies for an allocation, if the entire project does not qualify.

Section 7. Default Approval Process and Approval.

(a) Steps of process. The steps necessary to obtain approval of a bond allocation under the agricultural processing revenue bond program are as follows:

(i) The applicant shall first submit a completed application as referenced in Section 5(c) of this Chapter to Council staff for review.

(ii) After receiving a complete application, the council staff shall review the application for completeness. Once Council staff ascertain that the application is complete, council staff shall notify members of the State Loan and Investment Board immediately and provide one (1) copy of the completed application to each member of the State Loan and Investment Board.

(iii) Council staff shall structure the bond with initial pricing guidance. This practice will determine breakeven points in the proposed project, including, but not limited to, the bond term, yield rate, and collateral value. The initial pricing guidance does not indicate the final pricing structure and grading of the bond upon issuance in the secondary market.

(iv) Council staff shall present the proposed project to the Board of Directors at its next scheduled meeting. A special meeting of the Board of Directors may be called if necessary. The Board of Directors shall forward its recommendation to the State Loan and Investment Board at the next available meeting for its final approval, or rejection, of the bond allocation request.

(v) If the State Loan and Investment Board grants final approval of the allocation request, the project shall return to the Council to work with bond-rating agencies, investment banks, and other necessary parties to issue the bonds on the public market for investment.

Section 8. Attorney General Opinion. No bond allocation shall be made until the Attorney General's Office provides a written opinion certifying the legality of the issuance and all documents connected therewith.

Section 9. Post Bond Sale. Council staff shall maintain an annual report including, but not limited to, the project's projected job creation, wages, capital expenditures, financial analysis and trends, customer and supplier concentration(s).

Section 10. Confidentiality. Information and any other documentation submitted in support of a request for bond allocation pursuant to the agricultural processing revenue bond program, once submitted to a state agency or official, shall be governed by the Public Records Act, W.S. 16-4-201 through 205, as amended. Upon receipt of a request to disclose an application for a loan or loan guarantee or supporting information, the Council shall make a determination as to whether the information must be disclosed pursuant to that Act. The Council, before it makes said determination or discloses an applicant's information, shall inform the applicant of its determination. Should the applicant object to the disclosure of any record the

Council has determined must be disclosed under the Act, the applicant shall justify its request to withhold records under the Act or any other authority to the Council in writing. The Council shall not disclose said information if disclosure is likely to result in the impairment of the government's future ability to obtain necessary information and/or result in substantial harm to the competitive position of the recipient that provided the information to the Council.

Chapter 1

SSBCI – Venture Capital Programs

Section 1. Authority. These rules are adopted by the Wyoming Business Council pursuant to the American Rescue Plan Act of 2021 (ARPA), which reauthorized and amended the Small Business Jobs Act of 2010 (SBJA). 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. 9-1-216.

Section 2. Purpose. These rules are promulgated for the purpose of providing a structure for disbursement of State Small Business Credit Initiative (SSBCI) Venture Capital Funds through the Wyoming Business Council.

Section 3. Definitions.

(a) As used in this program:

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

(ii) “Council staff” means the staff of the Wyoming Business Council.

(iii) “SSBCI” means State Small Business Credit Initiative.

(iv) “SSBCI Committee” is a five-person Committee consisting of two

Wyoming Business Council Board members; board co-chair and investments committee chair, as well as three members of the Council staff; investments director and two other based on areas of expertise.

(v) “Committee Review Threshold” means any investment above two million dollars (\$2,000,000).

(vi) “Venture Capital Fund” means any entity that meets the capital fund definition in 17 C.F.R. § 275.203(I)-1.

(vii) “Employees” as defined by 12 CFR §121.106

Section 4. Eligible Applicants.

(a) To be eligible for investment by the Wyoming Venture Fund, a new or existing Venture Capital Fund must:

- (i) Be independently owned and operated; and
 - (ii) Agree to make the overwhelming majority of investments in Wyoming companies that are headquartered in Wyoming, and have less than 200 employees, and are committed to remain in Wyoming or relocate to Wyoming for at least 1 year after the investment closes; and
 - (iii) Agree to target early-stage investments with a round size of less than \$5,000,000; and
 - (iv) Be headquartered in Wyoming, have its principal operations in Wyoming, have at least sixty percent (60%) of its employees employed in Wyoming, or has committed in writing to make investments with SSBCI dollars in Wyoming; and
 - (v) Be in good standing with the Wyoming Secretary of State or the equivalent in its home state if not a Wyoming Venture Capital Fund.
- (b) To be eligible for investment by the Wyoming Venture Direct, Co-Investment Fund, a business must:
- (i) Be independently owned and operated;
 - (ii) Be headquartered in Wyoming, have its principal operations in Wyoming, have at least sixty percent (60%) of equity owned by residents of Wyoming, have at least sixty percent (60%) of its employees employed in Wyoming, or have committed in writing to move to Wyoming and fulfill one of the other conditions of Section 4. (b)(ii) as a condition of the investment;
 - (iii) Be seeking institutional investment or growth capital funding;
 - (iv) Have a lead investor or other investment fund with committed funds as well as a term sheet defined and be willing to share current diligence;

- (v) Have strong growth potential;
- (vi) Provide evidence acceptable to the council of its intent to remain in

Wyoming for at least 1 year after receipt of investment;

- (vii) Have 200 employees or less; and
- (viii) Be in good standing with the Wyoming Secretary of State.

Section 5. Application Process.

(a) Wyoming Venture Fund Application.

(i) The Council shall provide a “Wyoming Venture Fund” application online that includes a requirement to provide information relevant for funding decisions, including but not limited to:

(A) Information that establishes the application’s eligibility under Section 4(a) of this chapter;

(B) The applicant’s number of full-time, part-time, and contract employees;

(C) The applicant’s funding history, organizational documents, operating agreement, financial statements, bylaws, investment thesis, or other relevant documentation;

(D) The amount of applicant’s funding request and total fund target;

(E) All information necessary for the Wyoming State Auditor’s Office to set up the applicant as a vendor in its vendor payment system, including electronic funds transfer documents; and

(F) Any other information necessary to determine the adequacy of the applicant’s funding request.

(b) Wyoming Venture Direct - Co-Investment Application.

(i) The Council shall provide a “Wyoming Venture Direct” application online that includes a requirement to provide information relevant for funding decisions, including but not limited to:

(A) Information that establishes the application’s eligibility under Section 4(b) of this chapter;

(B) The applicant’s number of full-time, part-time, and contract employees;

(C) The applicant’s organizational documents, operating agreement, financial statements, bylaws, business plan, capitalization table, or other relevant documentation;

(D) The amount of the applicant’s funding request, funding series, and total round size;

(E) All information necessary for the Wyoming State Auditor’s Office to set up the applicant as a vender in its vendor payment system, including electronic funds transfer documents; and

(F) Any other information necessary to determine the adequacy of the applicant’s requested funding.

Section 6. Review and Recommendation.

(a) Applications are reviewed on a rolling basis until funds have been expended. Applications shall be reviewed in the following manner:

(i) Council staff shall review applications and make a determination of eligibility and completeness with consideration to Section 4 of this Chapter of these Rules.

Additional review will be completed by Council staff to ensure compliance with all SSBCI guidance and regulations.

(ii) Upon successful review of (i) above, each applicant shall be asked to pitch their fund or investment to Council staff and the Investments Director or the SSBCI Committee dependent upon the request size in relation to the Committee Review Threshold.

(b) Applications will be recommended in the following manner:

(i) Council staff shall document and present their findings and analysis from applications that are less than the Committee Review Threshold to the Investments Director for final approval or denial.

(ii) Council staff findings and analysis from applications greater than or equal to the Committee Review Threshold will be documented and presented to the SSBCI Committee for final approval or denial.

(c) In the event an application is denied, Council staff shall disclose to the applicant the reasons for not approving the request and any remedial actions the applicant may take in order for the application to be reconsidered.

Section 7. Terms and Conditions. In addition to the terms set forth in other Sections of this Chapter of these Rules, the following terms and conditions apply to all applications for and investments of funds made under this Chapter:

(a) Each applicant shall agree to comply with U.S. Department of Treasury SSBCI Capital program guidelines;

(b) The maximum contribution from the Council shall be five million dollars (\$5,000,000) for any investment, fund or direct co-investment;

(c) The direct co-investment round size maximum from the Council shall be twenty million dollars (\$20,000,000); and

(d) The Council's contribution shall not be, at any time, more than forty-nine percent (49%) of any fund or investment.

Section 8. Reporting requirements; audit compliance.

(a) Each applicant agrees to provide quarterly and annual reports to the Council to comply with state and federal laws and regulations.

(i) Reports may include but are not limited to:

(A) Certifications from the businesses;

(B) Terms and performance of individual investment(s);

(C) Private financing leveraged to date;

(D) Total portfolio performance; and

(E) Any other report required by council staff.

(ii) Failure to provide to the Council on the date specified by the Council any required reports shall result in future funding being held until the applicant provides those reports to the Council.

(b) Council staff may conduct and contract random audits of applicants receiving SSBCI funds under this section to ensure awarded funds are expended in compliance with state and federal law. By accepting an award under this Chapter, the applicant agrees to assist and provide the information requested by the auditors.



Strategy Execution Standing Committee

WYOMINGBUSINESS.ORG

**AMENDMENT ONE TO THE
INFORMATION TECHNOLOGY (IT) CONTACT BETWEEN
WYOMING BUSINESS COUNCIL
AND
ADBAY.COM INC. dba KALEN MARKETING SOLUTIONS**

1. **Parties.** The parties to this Amendment are the Wyoming Business Council (Council), whose address is: 214 West 15th Street, Cheyenne, Wyoming 82002, and Adbay.Com Inc. dba Kalen Marketing Solutions (Contractor), whose address is: 120 North Center Street, 2nd Floor, Casper, WY 82601.
2. **Purpose of Amendment.** This Amendment shall constitute the first amendment to the Contract between the Council and the Contractor. The purpose of this Amendment is to: a) extend the term of the Contract through June 30, 2024; and b) increase the total Contract dollar amount by ninety-two thousand six hundred eighty-seven dollars and fifty cents (\$92,687.50) to one hundred fifty-four thousand thirty-seven dollars and fifty cents (\$154,037.50).

The original Contract, dated September 13, 2021, required the Contractor to set forth the terms and conditions by which the Contractor shall provide website development, migration, maintenance, and hosting services for the Council's public websites for a total contract amount of sixty-one thousand, three hundred fifty dollars (\$61,350.00).

3. **Term of Amendment.** This Amendment is effective when all parties have executed it (Effective Date). The term of the Amendment is from the Effective Date through June 30, 2024. All services shall be completed during this term.

This Amendment may be extended by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of extension and any extension will be determined at the discretion of the Council.

4. **Amendments.**

- A. The second sentence of Section 3 of the original Contract is hereby amended to read as follows:

“The term of the Contract is from the Effective date through June 30, 2024.”

- B. The fourth sentence of Section 4(A) of the original Contract is hereby amended to read as follows:

“Total payment under this contract shall not exceed one hundred fifty-four thousand thirty-seven dollars and fifty cents (\$154,037.50).”

5. **Amended Responsibilities of Contractor.** Responsibilities of the Contractor have not changed.

6. **Amended Responsibilities of Council.** Responsibilities of the Council have not changed.

7. **Special Provisions.**

A. **Same Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the original Contract, and any previous amendments, between the Council and the Contractor, including but not limited to sovereign immunity, shall remain unchanged and in full force and effect.

B. **Counterparts.** This Amendment may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Amendment. Delivery by the Contractor of an originally signed counterpart of this Amendment by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Agency

8. **General Provisions.**

A. **Entirety of Contract.** The original Contract, consisting of fourteen (14) pages; and this Amendment One, consisting of three (3) pages represent the entire and integrated agreement between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral.

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9. **Signatures.** The parties to this Amendment, either personally or through their duly authorized representatives, have executed this Amendment on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Amendment.

The Effective Date of this Amendment is the date of the signature last affixed to this page.

COUNCIL:
WYOMING BUSINESS COUNCIL

Joshua Dorrell, Chief Executive Officer

Date

Sarah Fitz-Gerald, Chief Strategy Officer

Date

CONTRACTOR:
Adbay.Com Inc. dba Kalen Marketing Solutions

Katrina Beckman, Owner

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Cole R. White, Assistant Attorney General

Date

**CONTRACT BETWEEN
WYOMING BUSINESS COUNCIL
AND
THREE ELEPHANT PUBLIC RELATIONS LLC**

1. **Parties.** The parties to this Contract are Wyoming Business Council (Council), whose address is: 214 West 15th Street, Cheyenne, WY 82002 and Three Elephant Public Relations LLC (Contractor), whose address is: P.O. Box 1331, Jackson, WY 83001.
2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the Contractor shall provide as-needed public relations and related communications services to the Council.
3. **Term of Contract.** This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from the Effective Date through June 30, 2024. All services shall be completed during this term.

Contract may be extended by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of extension and any extension will be determined at the discretion of the Council.

4. **Payment.**

- A. The Council agrees to pay the Contractor for the services described in Scope of Work, Attachment A, which is attached to and incorporated into this Contract by this reference. Total payment under this Contract shall not exceed two hundred sixty-one thousand dollars (\$261,000.00). Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Contractor shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this Contract.
- B. No payment shall be made for work performed before the Effective Date of this Contract. Should the Contractor fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as the Contractor performs its duties and responsibilities to the satisfaction of Council.
- C. **Travel.** The payment of travel expenses shall be allowed as set forth below. Contractor is expected to procure the most cost-efficient travel arrangements.
 - (i) **Personal Vehicle.** Mileage shall be reimbursed at the rate of fifty-eight point five cents (\$0.585) or, current state rate, per mile based on standard map mileage.
- D. **Lodging.** The Council agrees to reimburse Contractor's lodging expenses related to the performance of this Contract. Lodging expenses shall be reimbursed at actual costs, supported by a copy of the original receipt with the invoice. The Contractor shall only invoice the Council for the basic room rate, taxes, and lodging fees. The Council is not responsible for incidentals or miscellaneous expenses charged to the

room. Incidental and miscellaneous expenses for which the Council shall not be responsible include charges such as alcohol, internet, telephone charges, mini-bar, and movies.

5. **Responsibilities of Contractor.** The Contractor agrees to:

- A. Provide the services described in Attachment A.
- B. Support and advance communications, public and media relations, and outreach activities. Components of the proposal include messaging strategy, collateral development, outreach campaign, and video and photography assets.
- C. Contractor will design, implement and manage all aspects of the communications and outreach plan in coordination with the Wyoming Business Council Communications team and leadership.

6. **Responsibilities of Council.** The Council agrees to:

- A. Pay Contractor in accordance with Section 4 above.
- B. Cooperate and collaborate with the Contractor on regular meetings to discuss public relations objectives and exchange information for the development of new content and public relations campaigns.

7. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed by all parties to this Contract.
- B. **Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. **Assignment Prohibited and Contract Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Council.
- D. **Audit and Access to Records.** The Council and its representatives shall have access to any books, documents, papers, electronic data, and records of the Contractor which are pertinent to this Contract.

The Contractor shall immediately, upon receiving written instruction from the Council, provide to any independent auditor or accountant all books, documents,

papers, electronic data, and records of the Contractor which are pertinent to this Contract. The Contractor shall cooperate fully with any such independent auditor or accountant during the entire course of any audit authorized by the Council.

- E. Availability of Funds.** Each payment obligation of the Council is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the Council at the end of the period for which the funds are available. The Council shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Council in the event this provision is exercised, and the Council shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. Award of Related Contracts.** The Council may award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Council in all such cases.
- G. Certificate of Good Standing.** The Contractor shall provide to the Council a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Contractor is authorized to conduct business in the State of Wyoming, if required, before performing work under this Contract. Contractor shall ensure that all annual filings and corporate taxes due and owing to the Secretary of State's office are up-to-date before signing this Contract.
- H. Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Council for its release. If and when Contractor receives a request for information subject to this Contract, Contractor shall notify Council within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Council.
- J. Entirety of Contract.** This Contract, consisting of (10) pages, and Attachment A, Scope of Work, consisting of four (4) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Contract and the language of any attachment or document incorporated by reference, the language of this Contract shall control.

- K. Ethics.** Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Contractor's profession.
- L. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the Council and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Contract or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Contract.
- M. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- N. Indemnification.** The Contractor shall release, indemnify, and hold harmless the State, the Council, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's negligence or other tortious conduct.
- O. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Contract, the Contractor shall be free from control or direction over the details of the performance of services under this Contract. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Council or to incur any obligation of any kind on behalf of the State of Wyoming or the Council. The Contractor agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents or employees as a result of this Contract.
- P. Nondiscrimination.** The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et*

seq.), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.

- Q. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract.
- R. Notice of Sale or Transfer.** The Contractor shall provide the Council with notice of any sale, transfer, merger, or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If the Council determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Contractor's obligations under this Contract, then the Council may, at its discretion, terminate or renegotiate the Contract.
- S. Ownership and Return of Documents and Information.** Council is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract. Upon termination of services, for any reason, Contractor agrees to return all such original and derivative information and documents to the Council in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Council's verified receipt of such information, Contractor agrees to physically and electronically destroy any residual Council-owned data, regardless of format, and any other storage media or areas containing such information. Contractor agrees to provide written notice to Council confirming the destruction of any such residual Council-owned data.
- T. Patent or Copyright Protection.** The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the Council for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- U. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Contract has been fully executed and approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-3204(b)(iv).
- V. Insurance Requirements.**

- (i) During the term of this Contract, the Contractor shall obtain and maintain, and ensure that each subcontractor obtains and maintains, each type of insurance coverage specified in Insurance Coverage, below.
- (ii) All policies shall be primary over any insurance or self-insurance program carried by the Contractor or the State of Wyoming. All policies shall include clauses stating that each insurance carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- (iii) The Contractor shall provide Certificates of Insurance to the Council verifying each type of coverage required herein. If the policy is a “claims made” policy instead of an “occurrence” policy, the information provided shall include, but is not limited to, retroactive dates and extended reporting periods or tails.
- (iv) All policies shall be endorsed to provide at least thirty (30) days advance written notice of cancellation to the Council. A copy of the policy endorsement shall be provided with the Certificate of Insurance.
- (v) In case of a breach of any provision relating to Insurance Requirements or Insurance Coverage, the Council may, at the Council’s option, obtain and maintain, at the expense of the Contractor, such insurance in the name of the Contractor, or subcontractor, as the Council may deem proper and may deduct the cost of obtaining and maintaining such insurance from any sums which may be due or become due to the Contractor under this Contract.
- (vi) All policies required by this Contract shall be issued by an insurance company with an A.M. Best rating of A- VIII or better.
- (vii) The Council reserves the right to reject any policy issued by an insurance company that does not meet these requirements.

W. Insurance Coverage. The Contractor shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth above:

- (i) Commercial General Liability Insurance. Commercial general liability insurance (CGL) coverage, occurrence form, covering liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations, and personal and advertising injury, with minimum limits as follows:
 - (a) \$1,000,000.00 each occurrence;
 - (b) \$1,000,000.00 personal injury and advertising injury;
 - (c) \$2,000,000.00 general aggregate; and
 - (d) \$2,000,000.00 products and completed operations.

The CGL policy shall include coverage for Explosion, Collapse and Underground property damage. This coverage may not be excluded by

endorsement.

- (ii) Workers' Compensation and Employer's Liability Insurance. Employees hired in Wyoming to perform work under this Contract shall be covered by workers' compensation coverage obtained through the Wyoming Department of Workforce Services' workers' compensation program, if statutorily required. Employees brought into Wyoming from Contractor's home state to perform work under this Contract shall be covered by workers' compensation coverage obtained through the Wyoming Department of Workforce Services' workers' compensation program or other state or private workers' compensation insurance approved by the Wyoming Department of Workforce Services, if statutorily required.

The Contractor shall provide the Council with a Certificate of Good Standing or other proof of workers' compensation coverage for all of its employees who are to perform work under this Contract, if such coverage is required by law. If workers' compensation coverage is obtained by Contractor through the Wyoming Department of Workforce Services' workers' compensation program, Contractor shall also obtain Employer's Liability "Stop Gap" coverage through an endorsement to the CGL policy required by this Contract, with minimum limits as follows:

- (a) Bodily Injury by Accident: \$1,000,000.00 each accident;
- (b) Bodily Injury by Disease: \$1,000,000.00 each employee; and
- (c) Bodily Injury by Disease: \$1,000,000.00 policy limit.

- (iii) Unemployment Insurance. The Contractor shall be duly registered with the Department of Workforce Services and obtain such unemployment insurance coverage as required. The Contractor shall supply Council with a Certificate of Good Standing or other proof of unemployment insurance coverage.

- X. Publicity.** Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor, shall identify the Council as the sponsoring council and shall not be released without prior written approval from the Council.
- Y. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- Z. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 139104(a), the State of Wyoming and Council expressly reserve sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed,

either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

AA. Taxes. The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.

BB. Termination of Contract. This Contract may be terminated, without cause, by either party upon thirty (30) days written notice. This Contract may be terminated by the Council immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.

If at any time during the performance of this Contract, in the opinion of the Council, the work is not progressing satisfactorily or within the terms of this Contract, then, at the sole discretion of the Council and after written notice to the Contractor, the Council may terminate this Contract or any part of it. As of the termination date, the Contractor will be entitled to a pro rata payment for all work accomplished and accepted by the Council.

CC. Third-Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

DD. Time is of the Essence. Time is of the essence in all provisions of this Contract.

EE. Titles Not Controlling. Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.

FF. Waiver. The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

GG. Counterparts. This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Contract. Delivery by the Contractor of an originally signed counterpart of this Contract by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Council.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

8. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

COUNCIL:
WYOMING BUSINESS COUNCIL

Josh Dorrell, Chief Executive Officer

Date

Sarah Fitz-Gerald, Chief Strategy Officer

Date

CONTRACTOR:
THREE ELEPHANT PUBLIC RELATIONS LLC

Jessica Jaubert, Principal

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Cole R. White, Assistant Attorney General

Date

TO: Amy Quick
Wyoming Business Council



FROM: Honora Kerr and Jessica Jaubert
Three Elephant Public Relations

SUBJECT: Wyoming Business Council, Outreach & Strategy Support Proposal

SUMMARY

As the State of Wyoming's economic development agency, the Wyoming Business Council (WBC) serves the businesses and communities of Wyoming by helping the state overcome the challenge of sustaining and diversifying Wyoming's economy.

The WBC creates new opportunities for current and future generations of Wyomingites by adding value to Wyoming's core industries and leveraging them to activate new economic sectors. The WBC influences statewide policy creates and deploys state and federal funding, and unites statewide leadership. The WBC is seeking to increase its brand awareness across the State of Wyoming.

Outlined below is a communications and outreach work scope for the Wyoming Business Council. This proposal aims to support and advance communications, public and media relations, and outreach activities for WBC. Components of the proposal include:

- Messaging Strategy
- Collateral Development
- Outreach Campaign
- Video and Photography Assets

Three Elephant Public Relations would design, implement and manage all aspects of the communications and outreach plan in coordination with the Wyoming Business Council Communications team and leadership. We pride ourselves on being 'team players' and look forward to working collaboratively with all project partners.

MESSAGING & STRATEGY DEVELOPMENT

The first step in executing a successful communication and outreach plan will lay out a blueprint for messaging goals and key audiences to address. Three Elephant Public Relations will drive and develop messaging, again at the direction of the client and with available market research, to target a wide variety of audiences, including:

- Wyoming State legislators
- Statewide elected officials & key staff
- Energy partners & industry leaders
- Local Businesses
- General public in Wyoming

Three Elephant PR will draft content for external communications as well as develop messaging to be tested via polling, social media, or other outlets. We will develop and manage a robust messaging calendar to support project objectives while syncing key points regarding the benefits of racing to key audiences.

COLLATERAL DEVELOPMENT

In building out the tools necessary for strategic communications and outreach, several digital and print collateral materials will need to be developed. This will likely include:

- Print Materials
 - Strategy Summary
 - Talking Points and Q&A
 - One/Two Pager
 - WBC Annual Report
 - Rack Cards
 - Fact Sheets
- Digital Materials
 - Updated Logo/Branding Guide
 - Presentations, educational materials
 - Branded email and news release template

Three Elephant has a graphic designer in-house and will draft, design, and implement any collateral needed for strategic outreach and communications. Design collateral needed for overall messaging and advertising will be the responsibility of the WBC.

Any additional graphic design/marketing needs may be subcontracted through TEPR and will incur an additional cost, at \$100/hr, not to exceed \$8,500.

EARNED MEDIA

Earned media will be a primary focus in the Three Elephant PR's public relations efforts. Three Elephant PR is experienced working with local, state, and national media outlets and will both create opportunities to share WBC's efforts and programs. This will include pitching and grooming stories for WBC to key media targets, including:

- Wyoming Tribune Eagle
 - County 17, Buckrail, Oil City, Short Go
- These are earned and paid (Sponsored Post) media outlets throughout Wyoming*

- Casper Star-Tribune
- Jackson Hole News & Guide
- Wyoming Public Radio
- Cowboy State Daily
- Denver Post
- Forbes
- New York Times
- Wall Street Journal

VIDEO AND PHOTOGRAPHY ASSETS

(Contracted through TEPR, if video and photography are approved by the WBC.)

- Video Campaign: development of 5-7 short “success story” targeted videos for social media sharing, including storyboarding.
- Miscellaneous video b-roll assets, filmed around various Wyoming communities to be used by WBC
- Photographic Assets of Main Streets, Communities, Towns and Local Businesses around Wyoming to be used by WBC on all collateral, including the website.

MEASURING SATURATION

Executed in tandem, the above communications and outreach strategy should result in the following measurable results:

- Audience Identification and Messaging: established new opportunities and audiences to share WBC’s message, along with increased awareness of WBC’s initiatives and accomplishments
- Establishment and engagement on digital channels
- Increase in number of earned (unpaid) media hits
- An increase in participants in WBC’s initiatives and programs
- A positive change in public perception surrounding Wyoming’s economic opportunities and future growth

COST & DURATION

Three Elephant Public Relations proposes a budget listed below that includes fees for agreed-upon subcontractors. The contract between Three Elephant Public Relations and Wyoming Business Council covers the time period of July 1, 2022 to June 30, 2024. This Contract may be terminated, without cause, by either party upon thirty (30) days written notice. This Contract may be terminated by the Council immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.

If at any time during the performance of this Contract, in the opinion of the Council, the work is not progressing satisfactorily or within the terms of this Contract, then, at the sole discretion of the Council and after written notice to the Contractor, the Council may terminate this Contract or any part of it. As of the termination date, the Contractor will be entitled to a pro rata payment for all work accomplished and accepted by the Council.

The estimated cost for management and execution would be based on the scope of work and level of intensity.

Strategic Communications:

- Messaging Strategy
- Stakeholder Outreach and Storytelling
- Coalition Building
- Collateral Development
- Earned Media

Price per month: \$8,000.00

Not to exceed 200,000

General Marketing and Graphic Design Needs:

An additional fee of \$100/hr, not to exceed \$8,500

Outreach Campaign:

- Planning Listening Sessions
- Facilitation of Listening Sessions

Price per session: \$3,500, not to exceed \$10,500

Includes all travel expenses

Video and Photography Development:

- Video Campaign
- Asset Library

Price not to exceed \$50,000



Operations Standing Committee

WYOMINGBUSINESS.ORG

**AMENDMENT ONE TO THE
INFORMATION TECHNOLOGY (IT) CONTRACT BETWEEN
WYOMING BUSINESS COUNCIL
AND
WAVE INTERACTIVE, LLC**

1. **Parties.** The parties to this Contract are Wyoming Business Council (Council), whose address is: 214 West 15th Street, Cheyenne, Wyoming 82002 and WAVE INTERACTIVE, LLC (Contractor), whose address is: 12801 Pierce Street, Suite 110, Omaha, Nebraska 68144.
2. **Purpose of Amendment.** This Amendment shall constitute the first amendment to the Contract between Council and the Contractor. The purpose of this Amendment is to: a) extend the term of the Contract through June 30, 2024; b) increase the total Contract dollar amount by one hundred sixty thousand dollars (\$160,000) not to exceed one hundred eighty-five thousand dollars (\$185,000) and c) change services fees under Section 5 B (iii), (iv) and (v) to One Hundred forty dollars (\$140.00) per hour.

The original contract dated January 26, 2022 with an expiration date of June 30, 2022 required the Contractor to provide development and integration services for and within the Council's Salesforce environment for a total of twenty-five thousand dollars (\$25,000) and service rates:

- (i) Development services: One hundred forty dollars (\$140.00) per hour;
 - (ii) UI/UX Design services: One hundred forty dollars (\$140.00) per hour;
 - (iii) Architecture services: One hundred sixty dollars (\$160.00) per hour;
 - (iv) Infrastructure Management Support services: One hundred sixty dollars (\$160.00) per hour;
 - (v) Project Management services: One hundred twenty dollars (\$120.00) per hour;
 - (vi) Digital Strategy services: One hundred forty dollars (\$140.00) per hour.
3. **Term of Amendment.** This Amendment is effective when all parties have executed it (Effective Date). The term of the Amendment is from the Effective Date through June 30, 2024. All services shall be completed during this term.

This Amendment may be extended by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of extension and any extension will be determined at the discretion of the Council.

4. Amendments.

- A. The second sentence of Section 3 of the original Contract is hereby amended to read as follows:
“The term of this Contract is from the Effective Date through June 30, 2024.”
- B. The second sentence of Section 4(A) of the original Contract is hereby amended to read as follows:
“The total payment under this Contract shall not exceed one hundred eighty-five thousand dollars (\$185,000)”
- C. Services under 5(B) of the original Contract is hereby amended to read as follows:
“(iii) Architecture services: One hundred sixty dollars (\$140.00) per hour;
(iv) Infrastructure Management Support services: One hundred sixty dollars (\$140.00) per hour;
(v) Project Management services: One hundred twenty dollars (\$140.00) per hour;”

5. Amended Responsibilities of Contractor. Responsibilities to the Contractor have not changed.

6. Amended Responsibilities of Council. Responsibilities of the Council have not changed.

7. Special Provisions.

- A. **Same Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the original Contract, and any previous amendments, between the Agency and the Contractor, including but not limited to sovereign immunity, shall remain unchanged and in full force and effect.
- B. **Counterparts.** This Amendment may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Amendment. Delivery by the Contractor of an originally signed counterpart of this Amendment by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Agency.

8. General Provisions.

Entirety of Contract. The original contract, consisting of fourteen (14) pages; Amendment One, consisting of four (4) pages; represent the entire and integrated

agreement between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

9. **Signatures.** The parties to this Amendment, either personally or through their duly authorized representatives, have executed this Amendment on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Amendment.

The Effective Date of this Amendment is the date of the signature last affixed to this page.

COUNCIL:

Wyoming Business Council

Joshua J. Dorrell, Chief Executive Officer

Date

Amy L. Grenfell, Chief Operating Officer

Date

CONTRACTOR:

WAVE INTERACTIVE, LLC

Skeet Skaalen, Managing Partner

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Cole R. White, Assistant Attorney General

Date