December 10-11, 2024, meetings will be held virtually

(Times and order of agenda items are tentative and subject to change without notice)

Virtual Attendance Information for both Work Session/Panel and Public Meeting Join the Zoom webinar at: <u>https://us02</u>web.zoom.us/j/295704768

-OR-

Join by phone at 1-669-900-6833, enter the 9-digit Meeting ID 295-704-768 (no PIN is required, please press # when prompted); if joining by phone please note your ability to interact with the panelists may be limited due to system limitations.

### Tuesday, December 10, 2024

### 6:00 p.m. <u>Convene (Public) Work Session</u> – Co-Chair Erick Arens

- Welcome and Roll Call of Board Members
- Work Session Agenda *WPMA NOTICE: This portion of the meeting is a work session only and will not include discussion or transaction of public business* 
  - Panel Discussing Approaches to Public Goods, the Role of Government in Economic Development, and Risk Tolerance (Panel Facilitated by Wyoming Business Council Chief Executive Officer, Josh Dorrell)
    - Panelists:
      - Wyoming State Representative (HD31), John Bear
      - Cheyenne Mayor, Patrick Collins
      - Wyoming Energy Authority Executive Director, Rob Creager
      - Wyoming Business Alliance President, Renny MacKay
      - Wyoming Business Council Board of Directors' Strategy Committee Chairman, Derek Smith

7:00 p.m. <u>Conclusion of Work Session</u>

### Wednesday December 11, 2024

**CONSENT AGENDA**: All agenda items listed with the designation of [CA] are considered routine items and will be enacted by one motion. There will be no separate discussion on these items unless a board member request is made. A board member can request to have one or more items be removed from the consent agenda.

#### 8:00 a.m. <u>Convene Public Meeting</u> – Co-Chair, Erick Arens

- Pledge of Allegiance (all participants will be muted)
- Welcome and Roll Call of Board Members
- Consent Agenda
  - o [CA] Meeting Minutes for the September 11, 2024, Regular Meeting (Page 6)
  - [CA] Quarterly People and Performance Report (*Page 13*)
  - [CA] Quarterly Challenge Loan Report (*Page 19*)
  - [CA] Community Facilities Program Rules (Page 20)
  - o [CA] Challenge Loan Rules (Page 30)
  - ACTION ITEM: Consideration of approval of items included on Consent Agenda.
- 8:05 a.m. <u>CEO Report</u> Chief Executive Officer, Josh Dorrell

8:30 a.m. <u>Services Standing Committee</u> – Committee Chair, Pam Thayer (*Page 42*)

- Services Update Services Director, Brandon Marshall
- Entrepreneurship Updates Entrepreneur Development Manager, Taylor Vignaroli, & Agribusiness Development Manager, Jill Tregemba
- Contract with A.T. Kearney, Inc. to Provide Business Model Development for Controlled Environment Agriculture (CEA) Business Accelerator - Entrepreneur Development Manager, Taylor Vignaroli
  - **ACTION ITEM**: Consideration of staff recommendation to approve the A.T. Kearney Contract.
- Connect Wyoming 2.0 Capital Projects Fund (CPF) Project Summary- Broadband Manager, Chad Bolling and Broadband Contractor, David Johnson
- Connect Wyoming 2.0 Capital Projects Fund (CPF) Award Additions Broadband Manager, Chad Bolling and Broadband Contractor, David Johnson
  - ACTION ITEM: Consideration of staff recommendation to approve contract for Spectrum Pacific West LLC, Park County area ARPA CPF grant.

- **ACTION ITEM:** Consideration of staff recommendation to approve contract for All West Communications, Inc., Opal area ARPA CPF grant.
- **ACTION ITEM:** Consideration of staff recommendation to approve contract for BHT Holdings, Inc., Cody Southfork area ARPA CPF grant.
- Contract with CTC Technology and Energy for Phase Two of the Challenge Portal -Broadband Manager, Chad Bolling
  - ACTION ITEM: Consideration of staff recommendation to approve the CTC Contract.

#### 9:15 a.m. Operations Standing Committee – Committee Chair, Kathy Tomassi (Page 134)

- Update on FY24 Financial Audit Lyndsay Orr, Accounting Manager
- Q1FY25 Financial Report Lyndsay Orr, Accounting Manager
  - **ACTION ITEM:** Consideration of staff recommendation to accept the Q1FY25 Financial Report.

**9:30 a.m.** Strategy Execution Standing Committee – Committee Chair, Derek Smith (*Page 136*)

- Strategy Committee Update Chief Strategy, Officer Sarah Fitz-Gerald
- Amendment to Contract with President and Fellows of Harvard College, on behalf of the Harvard Kennedy School, for Building State Capabilities - Chief Strategy, Officer Sarah Fitz-Gerald
  - ACTION ITEM: Consideration of staff recommendation to approve Amendment.
- Amendment to Contract with President and Fellows of Harvard College, on behalf of the Harvard Kennedy School, for Growth Lab Chief Strategy, Officer Sarah Fitz-Gerald
  - **ACTION ITEM:** Consideration of staff recommendation to approve Amendment.
- 10:15 a.m. BREAK
- **10:30 a.m.** Investments Standing Committee Committee Chair, Mark Law (Page 145)
  - Quarterly SBIR Report Startup Grants Manager, Brittnie Faulkner
    - ACTION ITEM: Consideration of staff recommendation to accept the Quarterly SBIR Report.

- Kickstart Update Startup Grants Manager, Brittnie Faulkner
- WYVC Fund Update Equity Portfolio Manager, Gordon Finnegan
- Succession Loans- Loan Portfolio Manager, John Wendling
  - Rantec, Inc. Succession Loan
    - ACTION ITEM: Consideration of staff recommendation.
  - Rock Springs Block Company Succession Loan
    - ACTION ITEM: Consideration of staff recommendation.
  - Trophy Creative, LLC Succession Loan
    - ACTION ITEM: Consideration of staff recommendation.
- Business Ready Community (BRC) Final Rules Grants Portfolio Manager, Noelle Reed
  - ACTION ITEM: Consideration of staff recommendation to adopt the Business Ready Community Rules.
- Review of Business Ready Community (BRC) Budget & Presentation of Application Received\* Grants Portfolio Manager, Noelle Reed

BRC Applications Received September 1, 2024						
Applicant	Project	Туре	Request		Recommendation	
Town of Guernsey	Senior Center and Library Expansion	Community Project Grant	\$	750,000	\$	-
Total			\$	750,000	\$	-
Total Available BRC Funding			\$	74,423,211	\$	74,423,211
Funds remaining if awarded			\$	73,673,211	\$	74,423,211

• ACTION ITEM: Roll Call Vote for Town of Guernsey – BRC Project.

• Consideration of funding request for Town of Guernsey.

Letters of Support for Town of Guernsey (Page 194)

#### 11:30 a.m. Other Board Matters and Adjournment

- Nominating Committee for 2025 Board Officers Co-Chair, Erick Arens
- Closing Remarks Co-Chair, Erick Arens

### **Upcoming Meetings**:

- Next Meeting of SLIB: February 6, 2025
- **Standing Committees** will meet this quarter during the week of February 10, 2025 (invites via Google Calendar):
  - **Operations Standing Committee** Tuesday, February 11, 2025 @ 10 a.m.
  - Strategy Execution Standing Committee Tuesday, February 11, 2025 @ 2 p.m.
  - Investments Standing Committee Wednesday, February 12, 2025 @ 10 a.m.
  - Services Standing Committee Thursday, February 13, 2025 @ 10 a.m.
- Next Regular Meetings of this Board:
  - February 25-26, 2025 Cheyenne
  - May 20-21, 2025 Location TBD

### Wednesday, September 11, 2024

**Board members present:** Elaine Harvey, Ryan Lance, Melissa Atkinson, Dr. Joe Schaffer, Pam Thayer, Kathy Tomassi, Mark Law, Derek Smith, Cindy Johnson, Chuck Kenyon, Chuck Brown and Erick Arens.

**Staff Present:** Katie O'Bryan, Kari Kivisto, Lyndsay Orr, Noelle Reed, John Wendling, Chad Bolling, Patrick Edwards, Rylan O'Bryan, Ron Gullberg, Brandon Marshall, Taylor Vignaroli, Amy Grenfell, Josh Dorrell, Wendy Lopez, Ben Peterson, Sarah Fitzgerald, Kristin Fong, Heather Tupper, Kiley Ingersoll, Amber Power, Brandi Harlow, Drew Dietrich, Kayla Kler, Chance Price, Amy Quick, Chava Case and Bert Adam. Brittnie Faulkner attended virtually.

Co-Chair Erick Arens convened the meeting at 8:02am.

Due to technical issues, there is no recording or text documentation for approximately the first 17 minutes of the meeting. Recording started during the Janine Jordan's welcome to Laramie.

Consent Agenda items

- [CA] Meeting Minutes for the May 8, 2024, Regular Meeting
- [CA] Meeting Minutes for the July 31, 2024, Special Meeting
- [CA] Quarterly People and Performance Report People & Performance Manager, Chava Case
- [CA] Quarterly SBIR Report Entrepreneur Development Manager, Taylor Vignarolli
  - ACTION ITEM: Consideration of approval of items included on Consent Agenda. Derek Smith made the motion to approve, Chuck Brown seconded. There was no further discussion, motion carried unanimously.

Laramie City Manager, Janine Jordan shared slides about developing housing infrastructure, and stated by 2030 there will be an additional 4,106 housing units needed. They are working on bringing water and sewer and other transportation infrastructure to currently undeveloped areas in the community. She shared her enthusiasm about the Plenty expansion in Laramie. The anticipated construction start will be in the spring of 2025. They are very much looking forward to Plenty continuing to operate there.

Chief Executive Officer, Josh Dorrell recognized that today is 911. Mr. Dorrell reviewed our work session with the University of Wyoming student panel held at the College of Business on the evening of September 10. The views of adults and young people are very similar, which plays into our decision-making process. He expressed that there are going to be quite a few interesting projects presented today and interesting work being done. But that is only the tip of the iceberg. And as we look at the projects we are working on today, let's look for those opportunities to create self-reliance.

Regional Team Director, Heather Tupper; and Grants Portfolio Manager, Noelle Reed, along with Economic Development Representative from Economic Development Administration, Aaron Pratt presented the Comprehensive Economic Development Strategy (CEDS) update.

Ms. Tupper gave an overview of why we are doing CEDS, what is CEDS, the process, what comes next and then what comes after that. Our current plan is out of date, we want to align with the state economic development strategy to access EDA grant opportunities to provide a basis for communities and regions and to develop local strategy.

Mr. Pratt, Economic Development Agency, spoke on the mission, which is to promote innovation and competitiveness and to prepare economic reasons for growth and success. The Broad mission is focused on job creation and economic development. They really look for projects that we can quantify job

creation and catalyzing private investment in the process. They provide financial, technical assistance, and grant making. They really want to make sure it is locally driven and regionally oriented. He further explained that CEDS is a strategy driven plan for regional economic development, and that it serves as a means to engage community leaders, leverage private sector involvement and establish a strategic blueprint for regional collaboration.

Ms. Reed stated Pathways to Prosperity, a CEDS workstream, listening Sessions, internal and external team reviews is how we have gotten to where we are now. They are working towards a final version and are close.

Strategy Standing Committee Chair, Derek Smith introduced Chief Strategy Officer, Sarah Fitz-Gerald who gave the strategy execution committee update. She reiterated that our problem, which we love and are constantly working on is that the composition of economic activities is not positioned to sustain a high quality of life across all parts of the state. The reason is because people leave; more than 60% of people born in Wyoming have left by the time they are in their thirty's and don't come back. She related the issues brought up at the UW student panel. Our purpose is to lead and create new opportunities for current and future generations of Wyomingites. We are working on finding the people who care and can do something about it, unlock their ability to act and to identify solutions while building trust along the way.

Services Standing Committee, Committee Chair, Pam Thayer reviewed the contract policy and how it relates to each board meeting. Ms. Thayer introduced Services Director, Brandon Marshall.

Mr. Marshall explained that we have a contract amendment with our current broadband technical consultant, David Johnson, whom we have had a relationship with for the last couple of years and has been vital to our efforts in putting together CPF grant programs as well as our current applications for the Federal BEAD funding. The request is to extend the relationship through May 31, 2025, which is a projected point in time where we will have submitted our final plan for BEAD funding. In addition, we would be adding \$90,000 to the current contract.

• ACTION ITEM: Consideration of acceptance of staff recommendation to approve Contract Amendment with David Johnson. Chuck Kenyon made the motion to approve, Mark Law seconded. There was no further discussion, motion carried unanimously.

Main Street Program Manager, Kayla Kler shared the highlights of 2024. The Wyoming Main Street Program is one of about 46 programs across the country. All are structured a little bit differently and oversee a different number of communities and have a different level of capacity. The Wyoming Main Street Program is twenty years old. Ms. Kler gave some history on how the program has grown and what it has become and the economic impact it has provided. She highlighted a project from Rock Springs that has been hugely successful.

Due to technical issues, there is no recording or text documentation for approximately a five-minute portion of the Business Recruitment Update with Business Recruitment Manager, Chance Price and Wendy Lopez.

Ms. Lopez stated there is a lot of activity south of Cheyenne in the data center realm, and LEADS has been instrumental in getting those parcels and extend to the city. Meta is making over 800 million dollars, which is probably just the tip of the iceberg. Microsoft has not stopped building since they have been in Cheyenne. There is also a new 771-megawatt solar power project. There are a lot of projects across the state that Insight has been working with on site selection.

Ms. Lopez explained the work leading up to a trip to London and Milan to build connections. A team from the business council along with partners at UW, WDA, Cheyenne and Laramie will be participating in the mission September 28 through October 6. They will be attending the world agritech innovation summit, meet with companies, innovative leaders, and facility tours just to name a few.

Mr. Dorrell expressed the importance of what the Services team is doing.

Operations Standing Committee Chair, Kathy Tomassi introduced Accounting Manager, Lyndsay Orr to present the Q4FY24 financial report.

Ms. Orr state that June 30, 2024, was the end of our fiscal year and our 2023 budget that was originally appropriated to us in the 2022 legislative session. Being the end of the biennium and end of the fiscal year, our general fund budget optimum would ideally be 100 percent. In the line items that are not, most will carry forward to the 2025/2026 budgets. Community facilities, broadband, and business ready will always carry forward. Items like payroll do not carry over. The federal fund section has a lot of BEAD planning award money that we are spending down. We had seven million in state small business credit initiative to make investments and have invested a little over eleven million dollars in direct investments and fund investment of \$518,000 as of June 30<sup>th</sup>. For the economic agency funds, we had 27.9 million between large loan and challenge loan. During the year we received just under four million in loan principal, interest payments, and investment income from the State Treasurer's office. She reviewed the Capital funds project in relation to broadband.

There were conversations between board members on how the budget request process works.

• ACTION ITEM: Consideration of acceptance of Q4FY24 Financial Report. Pam Thayer made the motion to approve, Derek Smith seconded. There was no further discussion, motion carried unanimously.

Investments Standing Committee Chair, Mark Law explained that Investments committee will be done in two parts today, with a break in the middle for a lunch.

(Part One) Investments Director, Bert Adam gave a quarterly update on WYVC (Wyoming Venture Capital) Quarterly and Deal Data. Mr. Adam explained that WYVC is the State small business credit initiative that we were awarded funds in January 2023. We have approximately 58.4 million dollars in this fund. We have currently been running the program for seventeen months. He explained this is really a relationship game and there are summits and pitch days planned. We have invested in eight companies so far; 19.34 percent average investment per round; 7:1 leverage ratio; 75.3 million in private capital invested; 12 million WYVC capital invested for a total capital into Wyoming startups at \$87.3 million. He shared a slide that reviewed the WYVC deployment.

There were questions on the overall process, how long the program will last and how the tranches work.

Investments Standing Committee Chair, Mark Law introduced Loan Portfolio Manager, John Wendling and Investments Director Bert Adam to start the second part of the Investments report.

Mr. Wendling stated we have surpassed the two-year mark on some of the new challenge loans that are currently driving a lot of the interest. There are two loans for consideration today, a 50/50 loan and a succession loan. The first loan is for HOPE Church/True North, which is in participation with First Bank of Wyoming. The loan is to complete a remodel renovation to purchase a 15,000 square feet building to

expand their existing childcare business, True North Academy, which operates under Hope Church. Our portion of the loan will be \$995,000 of a 1.9 million loan, which is 50 percent. It will be a ten-year loan with the first year being for the construction piece. There is a need for a larger facility as their waitlist is three years, this will have the potential to add 300 openings.

• ACTION ITEM: Consideration of acceptance of staff recommendation to approve the HOPE Church/True North 50/50 Loan participation. Pam Thayer made the motion to approve, Elaine Harvey seconded. There was no further discussion, motion carried unanimously. (Cindy was not present for vote)

Mr. Wendling reviewed the second loan request, succession loan for Rocky Mountain Electric. This is an acquisition of a Casper based electrical contracting company by two existing employees. Our portion of the loan would be \$244,375, a five-year loan with a 6.29 blended rate. There are no plans to change the overall operations of the company. All sixteen employees will be retained. The existing owner will be stepping away.

• ACTION ITEM: Consideration of acceptance of staff recommendation to approve the Rocky Mountain Electric Business Succession Loan participation. Dr, Joe Schaffer made the motion to approve, Derek Smith seconded. There was no further discussion, motion carried unanimously.

Mr. Wendling gave an update for the Quarterly Loan Report. He explained the past due with Mr. Walker is unchanged. The challenge on fund balance is just under fourteen million. The report due July 15 included our report of examination that was completed by the Division of Banking came back clear. The four loans as of May and the Special Board meeting have all been closed.

There was some discussion on the natural gas fueling station and problems that it is seeing.

• ACTION ITEM: Consideration of acceptance of the Quarterly Loan Report. Derek Smith made the motion to approve, Chuck Kenyon seconded. There was no further discussion, motion carried unanimously.

Mr. Wendling reviewed the Challenge Loan Program Final Rules and why it is in front of the board for approval. We want to update the Challenge Loan Program and looking for help from the Attorney General's office on clarification on statute and the definition of a new owner with our succession loan due to the inquiries we are receiving. There are also some basic grammar fixes and minor updates.

• **ACTION ITEM:** Consideration to adopt final Challenge Loan Program rules. Chuck Brown made the motion to approve, Pam Thayer seconded. There was no further discussion, motion carried unanimously.

Grants Portfolio Manager, Noelle Reed reviewed Community Facilities Program (CFP) Final Rules. These rules are requested to be adopted and will not go out for public comment. The legislature appropriated 2.7 million dollars from the general fund for the purposes of community facilities program. The purpose of the program is to assist communities to preserve former school and government facilities that have existing or future community uses. It is for the community economic development or enhancement of quality of life. We will add some requirements of a match similar to BRC with a 10-20 percent dependent on category type. There will also be a requirement to hold a public hearing process in the community. • **ACTION ITEM:** Consideration to adopt final CFP rules. Kathy Tomassi made the motion to approve, Pam Thayer seconded. There was no further discussion, motion carried unanimously.

Ms. Reed reviewed the Business Ready Community (BRC) Draft Rules. These rules will go out for public comment and then brought back to the Board for final adoption at the December Board Meeting. The changes with these are a lot of administrative things. The current maximum award is five million, the proposal is that the maximum award for Readiness and Business Committed is the remaining amount in the BRC account at the time of the application. We then would not have to ask the Board to waive the rules, and we want community to think bigger and really creative and unique projects.

• ACTION ITEM: Consideration of acceptance of draft BRC rules. Derek Smith made the motion to approve, Cindy Johnson seconded. There was no further discussion, motion carried unanimously.

Mr. Dorrell explained how the Old Stoney, City of Sundance, project and application came to be in front of the board today. It is a project that meets the requirements of the Community Facility Rehabilitation program. However, the board will not be making a recommendation to SLIB to approve this project.

The Mayor of Sundance gave history and the background on the project and the process they have went through. The restoration of Old Stoney really means a lot to this town.

 ACTION ITEM: Consideration of acceptance of staff recommendation to proceed with grant award contract for City of Sundance – CFR Project. Erick Arens made the motion to approve, Chuck Brown seconded. There was no further discussion, motion carried unanimously.

Ms. Reed reviewed three Business Ready Community (BRC) applications.

The Rock Springs-Sweetwater County Airport Board requested a two-million-dollar Community Readiness grant and a five-million-dollar loan to complete the Southwest Wyoming Regional Airport Commercial Terminal Modernization project. The airport board was awarded a three-million-dollar BRC Community Readiness grant in April 2021 for this project. The total project costs are \$41,469,110. The staff recommendation is to fund the loan request, not to exceed twenty percent of the total eligible project costs, but not to fund the grant request. Their increased requests follow a series of challenges that have resulted in challenges and increased costs along with significant delays.

- ACTION ITEM: Roll Call for Rock Springs-Sweetwater County Airport Board BRC Project.
  - Consideration of funding request for Rock Springs-Sweetwater County Airport Board. Dr. Schaffer made the motion to approve, and Elaine Harvey seconded.

First Motion to approve as staff recommended the loan request and not the grant request:

Yes: Chuck Brown, Ryan Lance, Mark Law, Dr. Schaffer, Derek Smith, and Pam Thayer.

**No**: Melissa Atkinson, Elaine Harvey Erick Arens, Cindy Johnson, Chuck Kenyon and Kathy Tomassi.

Second Motion: To recommend funding the grant and loan request in full of a contingency that if the applicant receives additional funding from other sources, the WBC grant amount will be reduced appropriately.

Dr..Schaffer made a motion to approve the funding of the grant and the loan without the twenty percent contingency. Kathy Tomassi seconded the motion.

Mr. Kenyon made an amendment to the motion that any funds that will not be utilized for this project will be credited back to the grant first then the loan.

**Yes**: Erick Arens, Melissa Atkinson, Chuck Brown, Elaine Harvey, Cindy Johnson, Chuck Kenyon, Mark Law, Dr. Schaffer, Derek Smith, and Pam Thayer, and Kathy Tomassi.

No: Ryan Lance

The second BRC SEEDA Project is from the Sheridan Economic and Educational Development Authority (SEEDA). They are requesting a 4.4 million Community Readiness grant to develop the second phase of the Sheridan High Tech Park. The staff recommendation is to fund the project as requested.

- ACTION ITEM: Roll Call for SEEDA BRC Project.
  - Consideration of funding request for SEEDA.

Derek Smith made the motion to approve, and Cindy Johnson seconded.

**Yes:** Erick Arens, Melissa Atkinson, Elaine Harvey, Cindy Johnson, Chuck Kenyon, Ryan Lance, Mark Law, Dr. Schaffer, Derek Smith, Pam Thayer, and Kathy Tomassi.

No: Chuck Brown

The final BRC project is requested from the Town of Evansville. They are requesting a \$8,964,713 Business Committed grant to develop a 206-acre site which will provide the needed infrastructure to serve the committed business, Mesa Solutions, on 43.8 acres, as well as an additional 162 acres of developable land. Mesa Solutions will act as an anchor business planning to construct a 203,000 square-foot facility that will retain 222 jobs and create 261 new positions over five years. The staff recommendation is to fund as requested.

• ACTION ITEM: Town of Evansville – BRC Project.

• Consideration to waive the BRC grant maximum rules for Town of Evansville.

Pam Thayer made the motion to waive the rules of the grant maximum and Derek Smith seconded.

**Yes**: Erick Arens, Melissa Atkinson, Chuck Brown, Elaine Harvey, Cindy Johnson, Chuck Kenyon, Ryan Lance, Mark Law, Dr. Schaffer, Derek Smith, Pam Thayer, and Kathy Tomassi.

Chuck Kenyn made the motion to approve the staff recommendation and Pam Thayer seconded.

- ACTION ITEM: Roll Call for Town of Evansville BRC Project.
  - Consideration of funding request for Town of Evansville.

**Yes**: Erick Arens, Melissa Atkinson, Chuck Brown, Elaine Harvey, Cindy Johnson, Chuck Kenyon, Ryan Lance, Mark Law, Dr. Schaffer, Derek Smith, Pam Thayer, and Kathy Tomassi.

Co-Chair Erick Arens reviewed the upcoming meetings.

Next Meeting of State Loan and Investment Board (SLIB): Thursday, October 3 @ 8:00 a.m. Standing Committees will meet this quarter during the week of November 19, 2024 (invites will be sent via Google Calendar next week):

- **Operations Standing Committee** Tuesday, November 19, 2024 @ 10 a.m.
- Strategy Execution Standing Committee Tuesday, November 19, 2024 @ 2 p.m.
- Investments Standing Committee Wednesday, November 20, 2024 @ 10 a.m.
- Services Standing Committee Thursday, November 21, 2024 @ 10 a.m.

#### Next Regular Meetings of this Board:

- December 10-11, 2024 Virtual
- February 25-26, 2025 Cheyenne

Respectfully Submitted

Kari Kivisto, Agency Services Manager

Kathy Tomassi, Committee Chair



# **PEOPLE & PERFORMANCE**

## August/September 2024



NEW TEAM MEMBERS & RECRUITMENTS CELEBRATING A JOURNEY OUR CONTINUED GROWTH



# **PEOPLE ALIGNED WITH A PURPOSE**

A TEAM OF 40: Building a team of thousands







# **PEOPLE: BUILDING THE TEAM**



# BROADBAND MANAGER

Chad Bolling, July 2024



STARTUP GRANTS MANAGER Brittnie Faulkner, August 2024

# **COMING SOON:**

SOUTHEAST REGIONAL DIRECTOR STRATEGY

ADMINISTRATIVE SERVICES





# **PEOPLE: CELEBRATIONS**



### **BEN PETERSON** 16 YEARS

### **KRISTIN FONG** 3 YEARS



**SKY EDMUND** 1 YEAR



### **CHAVA CASE** 15 YEARS



## **AMBER POWER** 2YEARS



### TORI SMALE 1 YEAR



**AMY QUICK** 7 YEARS



### **TAYLOR VIGNAROLLI** 2YEARS



## **KILEY INGERSOLL**

3 Y E A R S



### **PATRICK EDWARDS** 2 YEARS





# **ENLIGHTENMENT SERIES**



# **TEAM RETREAT**

Lander: July 2024

- Unsolvable Problems
- Storytelling: Personal Symbolism
- Adding Value



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### Memorandum To: Wyoming Business Council Board of Directors From: Investments Team Subject: Challenge Loan Reporting Requirements Date: December 11, 2024

1. **Past Due Report.** Challenge Loan Policy requires quarterly reporting of all loans 30 days or more past due.

There is (1) past due payments as of September 30, 2024:

#### Hay Growers:

- **David Walker** The WBC spoke with Mr. Walker on June 26, 2024. He continues to claim he will get us payment as soon as he can. We will continue to monitor and stay in touch with Mr. Walker. The amount past due as of September 30, 2024 is \$9,718.25 (2 Annual payments plus \$462.77 late charge); loan balance is \$31,191.35
- 2. Loan Loss Reserve Analysis. Challenge Loan Policy requires a review of all loans that are delinquent (over 30 days past due) and a specific reserve will be allocated if the review warrants. There will be an additional unallocated reserve of one-half of one percent of the total portfolio balance.
  - The reserve is adequate with a balance of **\$705,232.** The allocation includes a 10% loan loss reserve for the Economic Disaster Loans originated, plus 0.5% of the total loan portfolio. The reserve does include the past due Economic Disaster loan for David Walker (\$31,191.35).
  - The resulting available fund balance in the Economic Development Fund is **\$12,404,538.**

### 3. Charge off balances.

- No charge offs this quarter
- 4. Other News.
  - There are currently 93 active loans totaling \$11,039,643.
  - Two loans approved since the last quarterly board meeting have been closed.
  - The WBC and borrower on the Star Valley Natural Gas Loan have settled and final payment was collected. Loan is considered paid in full.

### **Staff Recommendation:**

• Staff recommends acceptance of this report.



## Community Facilities Program (CFP) Rules - FINAL

### Chapter 1

### **GENERAL PROVISIONS**

**Section 1. Purpose.** The purpose of the Community Facilities Program (CFP) is to assist communities to preserve former school and government facilities that have existing or future community uses. These rules are adopted in order to implement W.S. 9-12-801 through 9-12-804, which provide for grants to eligible applicants for community economic development or enhancement of quality of life community facility projects. The rules provide for a method of application review, recommendation, the establishment of terms and conditions for awards and a hearing process.

**Section 2. Authority.** Rule-making for this program is the responsibility of the Wyoming Business Council as authorized by W.S. 9-12-104(a)(iv) and W.S. 9-12-801 through W.S. 9-12-804.

### Section 3. Definitions.

(a) "Affixed equipment" means equipment that is fixed in position to a building or property as a permanent appendage or as a structural part of the building or property.

(b) "Applicant" means a county, incorporated city or town, joint powers board, or a cooperative tribal governing body who applies for funding under the Community Facilities Program (CFP).

(c) "Award recipient" means a county, incorporated city or town, joint powers board, or a cooperative tribal governing body who has been awarded funds under the CFP.

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

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

(f) "Community Development Organization" 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 throughout its community or county and which may take equity positions and shall take security positions in its borrowers' businesses and appropriate personal guarantees from the owners thereof.

(g) "Council" means the Wyoming Business Council Board of Directors.

(h) "Council Staff" means the staff of the Wyoming Business Council assigned to administer the program.

(i) "Eligible Project Costs" means total project cost, less ineligible project costs. Eligible project costs must be related to either 1) the expansion, renovation or remodeling of a surplus government facility and/or associated infrastructure or 2) expansion, renovation, conversion or purchase of an interest in a local enhancement to a school building or facility and/or associated infrastructure.

(j) "Ineligible Project Costs" are fixtures, appliances, equipment or other features of the facility which are not physically attached or otherwise are depreciating assets, and any other items identified by Council staff.

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

(l) "Local Enhancement to a School Building and Facility" as defined by W.S. 21-15-111(iii).

(m) "Movable equipment" includes those items that are the functioning collection of machinery or devices for performing a mechanical, electrical or communications task that remain movable and not a structural part of the building and/or property.

(n) "Revenue Generating project" means real property developed with CFP grants that can generate revenue from lease payments or the proceeds from the sale of real property.

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

### Section 4. Eligible Applicants.

(a) Eligible applicants as defined by W.S. 9-12-801(c) may apply for CFP funding. Two or more eligible applicants may apply for a joint project via one application.

(b) The Council may enter into a cooperative agreement with the Eastern Shoshone Tribe, the Northern Arapaho Tribe, or the cooperative tribal governing body in order to promote the purpose of this program.

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

(d) An otherwise eligible applicant that is past due on program reporting or revenue recapture payments to the Council shall be deemed ineligible until the applicant brings itself into full compliance with existing reporting and payment obligations to the Council.

### Section 5. Project Type.

(a) A grant may be made for the following types of project facilities:

(i) The expansion, renovation or remodeling of existing surplus government facilities.

(ii) The expansion, renovation, conversion, or purchase of an interest in a local enhancement to a school building or facility.

**Section 6. Eligible Project Uses.** Grant funds may be used for economic development and enhancement of quality of life community facilities projects that provide:

(a) Space for community gatherings and functions;

(b) Appropriate recreational, swimming, and athletic facilities for community members, particularly youth;

(c) Other functions or uses determined by the Council to be consistent with the purposes of the CFP.

**Section 7. Ownership of Facility.** The project facility funded by this program shall be owned by the applicant or an eligible Community Development Organization or State Development Organization as defined in Section 3 of this Chapter for a minimum of four years. The applicant may lease, sell, transfer or otherwise dispose of the project facility as provided by statute. No ownership interest in the project or facility under a project shall remain with the school district upon expenditure of any funds under this program for any project.

**Section 8.** School District Agreement. In the event the project facility involves a school district, such as a local enhancement to a school building or facility, or other school district involvement, an agreement between the applicant and the school district shall be developed that delineates the responsibilities of each party.

### Section 9. Required Public Hearing Procedures and Resolution of Support.

An applicant is required to inform and educate the public and business community (a) to the greatest extent possible about the proposed economic development project (including, but not limited to the economic development opportunity, possible funding sources, and alternative solutions) utilizing a variety of techniques and media. The applicant must make readily available to the public access to the application and associated materials, exclusive of business plans or business financial information. An applicant shall actively solicit citizen input that can be submitted via writing, electronically or in person at a public hearing. A minimum of one (1) public hearing is required before submission of an application. For the purposes of this program, seven (7) days is the minimum period for notification of a hearing date. Public notice shall be published in an official medium such as local newspapers, public fora, local governmental social media pages, or another venue as approved by Council staff. If the project facility is to be located outside the geographical boundaries of the applicant, the applicant shall hold an additional public hearing near the location of the proposed project facility. The notice shall contain a concise description of the proposed project and state that time will be set aside at the public hearing to take testimony from citizens about the project.

minimum:

(i)

To inform the public and gather information, any public hearing shall at a

facility;

(A) Be advertised with a concise description of the proposed project

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

(C) Ensure that comments are actively being solicited and time will be set-aside at the public hearing to take testimony from citizens who may feel that the proposed use of the project facility might compete with an existing business or governmental organization pursuant.

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

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

**Section 10. Funding Cycles.** Applications shall be accepted according to an annual deadline schedule posted on the Wyoming Business Council website.

### Section 11. Application Procedures.

(a) The applicant shall schedule a consultation with a Wyoming Business Council Regional Director to discuss the project at least one month prior to project submission.

(i) Final draft applications and final draft application materials must be provided to the Regional Director no less than two weeks prior to submission.

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

(i) Council staff shall utilize a scoring matrix to evaluate a grant application.

(ii) Each applicant shall submit the required application form and any supplemental documentation required by Council Staff.

(c) Incomplete or ineligible applications will be sent back to the applicant with an explanation of the Council staff's findings and recommendations.

(d) Council Staff shall provide statewide notice of Council and Board meetings at which CFP applications will be discussed.

(e) Council Staff shall provide the Council with a summary of each application and a recommendation as to that application.

(f) Council Staff shall provide the Board with a summary of each application including the Council's recommendation.

(g) Council Staff may, at its expense, hire a qualified third party to verify project cost estimates and the structural stability of the project facility. In addition, the Council Staff may, at its expense, hire a qualified third party to determine if any environmental hazards exists and to determine the condition of the facility or building components such as the plumbing, electrical, roof and mechanical systems.

**Section 12. Demonstration of Need.** To qualify for a grant, an applicant shall demonstrate:

(a) A commitment by the applicant to adequately maintain and insure the project facility for which the grant is requested for at least four (4) years.

(b) A partnership or other working arrangement or agreement with other local governmental entities to ensure the viability of the project facility for at least four (4) years.

(c) The project facility is not otherwise provided in the community or that such a facility exists except that the financing of that facility has not been paid in full.

(d) The project facility will not compete with existing governmental organizations or businesses.

(e) The relationship of the project facility to a community economic development plan or to the enhancement of quality of life in the community.

(f) That all project costs will be funded at the time of receipt of a grant under this article with funding sources specified within the project application.

(g) The availability of funds sufficient to maintain the project facility. The grant application shall clearly identify maintenance funding sources sufficient to cover maintenance costs for a period of at least four (4) years.

### Section 13. Grant Match Requirements.

(a) The total required match is based on total eligible project costs.

(b) Category One applicants require a twenty percent (20%) match, and Category Two applicants require a ten percent (10%) match.

(c) Half of the required match must be in the form of cash. The remaining fifty percent (50%) can be in the form of in-kind matches, subject to the following conditions:

(i) Eligible in-kind sources of match funds include real or personal property, building(s) and other sources as determined by Council staff.

(ii) Ineligible in-kind sources of match funds include operations, maintenance, grant writing, grant administration and other as determined by Council staff.

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

(i) Category One applicants are those municipalities with a population greater than 1,300.

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

(iii) In the event the applicant is a joint powers board, the project's location will determine its categorization.

## Section 14. Fund Disbursement, Project Monitoring, Performance Measures and Revenue Recapture Reporting.

(a) Procurement Standards. Applicants must follow state procurement regulations applicable to cities and towns and the Wyoming Preference Act. If a non-municipal applicant has a procurement policy, Council staff or qualified consultants reserve the right to review that policy prior to fund disbursements and to disburse funds in accordance with that policy to the extent it is consistent with State law.

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

(c) Funds Reversion.

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

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

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

(iv) For projects with contingencies, applicant must provide a quarterly update on the status of any project contingency. The award recipient has the option to submit a new application or may request an extension or modification of the contingency terms through the Council staff. Council staff may recommend and the Council may grant an extension of time or grant a modification to the contingency terms.

(d) Construction Monitoring.

(i) Reports. Within fifteen (15) calendar days of the conclusion of each calendar quarter during the term of the award contract, the applicant shall provide Council staff with a progress report. Each progress report shall set forth, in narrative form, the work accomplished under the grant during the quarter and shall include a financial status report.

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

(iii) At the end of the construction period, the applicant shall provide Council staff a comprehensive report of the project and a cumulative financial statement that reflects the total fund expenditure pursuant to the award contract.

(e) Project Evaluation.

(i) Reports. Once the construction period is complete, the applicant shall submit annual reports for an additional five years to evaluate project outcomes against established measures on an annual basis. The Board may approve a longer reporting period on a finding that a longer reporting period would be beneficial to the State for the project. Council staff shall tailor reports to the specific nature of each grant, in agreements between the Council and award recipient. This requirement shall transfer with the transfer of any ownership interest in the infrastructure or building constructed with CFP funds.

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

(iii) Project outcomes reported shall be substantiated by the applicant.

(iv) At the end of the five-year reporting requirement and/or at the sale of the public asset (if applicable), the award recipient shall provide a comprehensive report to the Council staff in a format prescribed by the Council staff that is a cumulative financial and performance report of the project. This report shall, at a minimum, include:

(A) A detailed accounting of project expenditures that were paid for with CFP grant funds;

(B) The match contributed and the source of the match monies;

(C) Recapture revenue(s) received, including an accounting of how recaptured revenues were or will be used, how recaptured revenue use complies with the rules of the CFP program and the project grant agreement; and

(D) The accomplishments that resulted from the grant. An authorized official of the award recipient shall certify, under penalty of false swearing, that the information in the report is true.

(v) Council Staff reserve the right to require the award recipient to request a CFP project audit be conducted by the director of the department of audit or his designee. The award recipient shall be responsible to pay the cost of this audit.

(vi) Record retention. Award recipients shall agree to retain all records related to the project for five (5) years following Council Staff's date of notice to award recipient of closeout of the grant.

## Section 15. Public Comments on Applications Submitted and Under Board Consideration for Funding Recommendations.

(a) Comments regarding any application submitted under this program may be offered by any interested party.

(b) Written comments shall be received by Council Staff no less than fourteen (14) calendar days prior to the public meeting at which the application is to be considered by the Council and:

(i) May be submitted using an online form to be prescribed by the Council

staff;

- (ii) May be submitted by email to the <u>wbc.public-comment@wyo.gov</u>; or
- (iii) May be submitted by mail or courier service as follows:

Wyoming Business Council Attn: Public Comment 214 West 15<sup>th</sup> Street Cheyenne, WY 82002

(c) Written comments submitted by any means other than those set forth in Subsection 15(b) of this Chapter shall not be considered.

(d) Prior to taking action on any application, the Council may accept oral comments during public session from any interested party. In accordance with W.S. 16-4-403(b), any party wishing to offer oral comments shall notify the Council as set forth below. Such notification shall include:

(i) The first and last name of the person offering comment; and

(ii) The affiliation(s) of the person offering comment; and

(iii) If applicable for commenters participating virtually, the unique identifier (such as screen name or user name) of the person offering comment such that the Council can identify the person offering comment and enable them to speak.

(e) Notwithstanding Subsection 15(d) of this Chapter, the Council reserves its right to forego public comments during any meeting of the Council or to otherwise impose reasonable limitations, such as limitations on comment length, on any comment period.



## Challenge Loan Program Rules - FINAL

### **CHAPTER 1**

### **GENERAL PROVISIONS**

Section 1. Purpose. 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;

Section 2. Authority.

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

Section 3. Definitions. As used in these rules, unless otherwise specified:

(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;

(1) "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) "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;

(q) "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;

(r) "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;

(s) "Lost revenues" shall only include actual losses incurred and shall not include any future losses;

(t) "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;

(u) "New Owner" means an individual or entity purchasing or acquiring majority control over a business's operations and assets and which is responsible for the business's debt and existing obligations.

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

(w) "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;

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

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

(z) "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;

(aa) "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;

(bb) "Succession financing" means a provision of financing to be used to assist in the transition or succession of a business that has been in existence for not less than seven (7) years immediately before the transfer or succession to a new owner of the business;

(cc) "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;

(dd) "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(n);

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

(iv) Any business requesting Large Project Loan financing as defined in

Section 3(q);

(v) Any business requesting Contract Financing as defined in Section 3(h);

(vi) Any business requesting Succession Financing as defined in Section

3(bb);

(vii) Any business requesting Wyoming Main Street Loan Participation as defined in Section 3(dd);

(viii) Any business requesting a Natural Gas Fueling Infrastructure loan as defined in Section 3(t).

### 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 15<sup>th</sup> 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 eighty five percent (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) Certification by the lender and business that all statutory requirements will

be met;

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

(ix) 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 request would exceed:

(A) One Million dollars (\$1,000,000.00) to a single community development organization or three million five hundred thousand dollars (\$3,500,000.00) to a state development organization;

(B) Whichever is less of fifty percent (50%) of the total project costs or two million five hundred thousand dollars (\$2,500,000.00) to a business applying for "fifty-fifty (50-50) financing";

(C) Five hundred thousand dollars (\$500,000.00) to a business applying for "economic disaster loan" financing does not exceed;

(D) Two hundred thousand dollars (\$200,000.00) to a business applying for "contract financing" loan, if the total of all "contract financing" loans issued does not exceed one million dollars (\$1,000,000.00) at any given time;

(E) Five hundred thousand dollars (\$500,000.00) to a business applying for a "succession financing" loan;

(F) One hundred thousand dollars (\$100,000.00) to a business applying for a "Wyoming main street loan participation";

(G) Seventy-Five percent (75%) of the total costs of real property, construction, and equipment or one million dollars (\$1,000,000.00), whichever is less, to a business applying for a "natural gas fueling infrastructure loans" 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;

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

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

(iv) All appropriate legal documents are executed;

(v) 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;

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

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

(viii) 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 each applicant of the time and place of the Board of Directors' meeting at which its 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;

security package.

(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 Collateral and

(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. 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.



# SERVICES COMMITTEE REPORT





LEAD ECONOMIC GROWTH · BUILD RESILIENT COMMUNITIES · CREATING OPPORTUNITIES TO THRIVE



# Agriculture Technology & Innovation



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## Give me six hours to chop down a tree and I will spend the first four sharpening the axe.

(Abraham Lincoln)



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## WYOMING LANDS PLENTY

## WORKSTREAM BEGINS

# Policy

**Masters Level Interns** 

**CEA Alliance** 

VA vs WY

Systems Testing

**Internal Processes** 

# Funding

Growth Diagnostic

**Europe Mission** 

Ecosystem

Accelerator

## Leadership

Internal Team Stakeholders Marketing @ identified events Region Collaboration UW engagement Tools, exposure age 48 of 209 Barriers- opportunities



# STARTUP ENVIRONMENT DEVELOPMENT

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## **BIG PICTURE**

## What makes an ecosystem and what determines its success?

1 Million Cups		Kansas State University (K-State)	
AltCap		Research and Extension Kansas State University (K-State)	
Artist INC / Mid-America Arts Alliance B12 Capital Partners		Technology Development Institute	
Banks		Kauffman FastTrac <sup>6</sup> (online)	•
bop tech accelerator		Kauffman Founders School (online) KCRise Fund	•
BioKansas		KCRise Fund KC Velocity	
Black Economic Union of Greater Kansas City	00000	KC Volunteer Lawyers & Accountants for	
Black & Veatch MakerSpace at Johnson County Library		the Arts	
Business Basics in a Day (Kansas SBDC at JCCC)		KITE-Proof of Concept Program (Kansas Department of Commerce)	•
Business plan competitions		Konza Valley Capital	
C3 Capital		LaunchU (Women's Business Center)	
Capital Access Center		LEANLAB Education	
Chambers of commerce *		Leawood Venture Capital	
Charlotte Street Foundation		Libraries/research ~	••
Collaborative Capital Concentus Capital		LISC (Local Initiatives Support Corporation)	:
Crowdfunding		Hetropolitan Community College (MCC) Corporate College	•
Dairy Farmer's of America CoLAB Accelerator		Hid-America Angels	
Determination, Incorporated		Mid-America Trade Adjustment	
Digital Sandbox KC		Assistance Center	
Dundee Venture Capital		MidStates Capital L.P. Midwest Small Business Finance	0.0
Economic development corporations (EDCs) *		Midwest small Business Finance Missouri DED International Trade and	
EDC Loan Corporation Eldar Capital		Investment Office	
ELEVATION ART Growth 360		Missouri DED Division of Workforce Development	•
(Missouri SBDC at UMKC)		Workforce Development Hissouri Enterprise	
ELEVATIONLAB " OROWTH VENTURE (Missouri SBDC at UMKC)		Missouri TechLaunch (MTC)	
(MISSOUN SEDC AT UMRC) ELEVATIONLAB" NEW VENTURE		Mountain Plains Minority Supplier	
(Missouri SBDC at UMKC)		Development Council	
ELEVATIONLAB* TECH VENTURE		Huticultural Business Coalition NetWork Kansas	
(Missouri SBDC at UMKC) Ennovation Center		NetWork Kansas Multiplier Funds	
Entrepreneurial Legal Services and Intellectual		Northland Coffee Connect	
Property Clinic (UMKC)		Novel Growth Partners	
Entrepreneurial Mindset Training (Missouri		Nueterra Capital	
SBDC at UMKC) Equity (superscript) 2 Impact Fund		OpenAir Equity Partners	•
Equity (superscript) 2 impact Pund E-Scholars Program (UMKC)		Open Prairie Ventures	0.0
Evergy Ventures		Pathway Financial Education	•
FabLab (MCC - Business & Technology)		Pipeline Pipeline Pathways	•
Financial opportunity centers *		Pipeline Pathways The Porter House KC	
Firebrand Ventures	••••	Primer Paso (HEDC)	00
First Business Bank investor group		Procurement Technical Assistance Centers (PTACs) *	
Five Elms Capital			
Phyover Capital Free Enterprise Center at UMKC School of		Prospect Business Association	0
Computing and Engineering		Registration, licenses and permits * Royal Street, Ventures	
Fulcrum Global Capital	• • • • •	SBA-backed loans "	
Generating Income for Tomorrow (GIFT)		Small Business Development Centers (SBDCs) *	
GotDevKC Great Range Capital		ScaleUPI Kansas City (Missouri SBDC at UMKC)	
Great Range Capital Growth Hentoring Services (Enterprise Center		SCORE	0.
of Johnson County)		Seed Capital Co-Investment Program (MTC)	•
Growth through Action Measurement & Engagement (GAME) (Kansas SBDC at JCCC)		The Sewing Labs	0.
Engagement (GAME) (Kansas SBDC at JCCC) GSA Office of Small and Disadvantaged		Simple Steps for Starting a Business (SCORE) Small Business Innovation Research Grant	
Business Utilization		Phase I (SBIR) (SBDCs)	
GULDR		Small Business Innovation Research Grant Phase II (SBIR) (SBDCs)	
Hackathons		Phase II (SBIR) (SBDCs)	
Hammerspace Community Workshop & Makerspace		Small Business Mentorship Program (The Porter House KC, Missouri SBDC at UMKC)	
		Social Media Club of Kansas City	
Helzberg Entrepreneurial Mentoring Program (HEMP)		Social Venture Studio	•
Hispanic Economic Development Corporation (HEDC)		Sofia Angel Fund	•
Corporation (HEDC) IgniteX CleanTech Accelerator		Square One Small Business Services - Mid-Continent Public Library	
IM		Startup Grind	•
Incubator Kitchen at Kansas State		Startup Rewind	
University (K-State) Olathe		Startup Weekend	
InnovateHER		Stray Dog Capital	•
Innovation Exchange (Startland)		Summit Equity Group	•
Innovation Stockyard International Trade Council of Greater	••••	Target Hill Capital	•
Kansas City		TechAccel TGP Investments	•
InterUrban ArtHouse		TGP Investments T-Mobile Accelerator	
Inventors Center of Kansas City		The Toolbox: Small Business Resource Center	
InvestMidwest Venture Capital Forum		Tradebot Ventures	
Johnson County, Hissouri, Loan Fund		UMB Capital Corp.	
Justine PETERSEN microloan program		U.S. Department of Commerce/U.S.	
Kansas Angel Tax Credit, Kansas Department of Commerce		Commercial Service	-
Kansas City, Kansas, Entrepreneurial Resource	0.000	Whiteboard 2 Boardroom* Women's Business Center	
and Training Center Kansas Department of Commerce, Export		Women's Business Center Women's Capital Connection	
Kansas Department of Commerce, Export Assistance and Marketing		Workforce Partnership	-
Kansas Manufacturing Solutions		World Trade Center-Kansas City	





## **GROUND CONDITIONS**

- The WY startup environment needs help
- Mix of resources is needed for greater startup success
- Focused efforts are going to make the most progress (clusters work)





## **STARTUP RESOURCES & THEIR STAGES**

Basics (Business Model, Registration)				
Mentors				
Incubators				
Universities				
Co-Working Spaces				
Grants and Loans				
Investors (Angel, VC)				
Accelerators				
Service Providers (Legal, Accounting)				
Service Providers (Marketing, Sales, HR)				
Government Agencies (SBA)				
Corporations (Strategic Partnerships)				
	Ideation & Validation	Seed Stage	Early-Stage Growth	Late-Stage Growth



## LEVERAGE FACTORS



- Prime economic growth & diversification opportunity
- Attract businesses
- Specific innovation hub & cluster development
- Attract investment
- Strengthen the larger startup ecosystem

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## KEARNEY CONTRACT

## **CONTRACT SCOPE**

- Feasibility study
- Business model
- Roadmap

## CONTRACTOR SELECTION

- Expertise
- Network

## CONTRACT TOTAL: \$200,000





## CONTRACT BETWEEN WYOMING BUSINESS COUNCIL AND A.T. KEARNEY, INC.

- 1. <u>Parties</u>. The parties to this Contract are Wyoming Business Council (Council), whose address is: 214 W 15<sup>th</sup> St, Cheyenne, WY 82002 and A.T. KEARNEY, INC. (Contractor), whose address is: 227 West Monroe Street, Chicago IL 60606.
- 2. <u>Purpose of Contract</u>. The purpose of this Contract is to set forth the terms and conditions by which the Contractor shall provide a business model development for a business accelerator in Laramie, WY.
- 3. <u>Term of Contract</u>. This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from Effective Date through May 1, 2025. All services shall be completed during this term.

### 4. <u>Payment</u>.

- A. The Council agrees to pay the Contractor for the services described in Section 5 below. Total payment under this Contract shall not exceed two hundred thousand dollars (\$200,00.00). 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 of Contractor's obligations under this Contract.

### 5. **<u>Responsibilities of Contractor</u>**. The Contractor agrees to:

- A. Provide the services described in Attachment A, Scope of Work and Deliverables.
- 6. <u>Responsibilities of Council</u>. The Council agrees to pay Contract as set forth in Section 4 (A).

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

## 7. <u>General Provisions</u>.

- **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. Any such access request or audits shall take place not more than once a year, upon reasonable prior notice to Contractor, and shall be conducted during Contractor's regular business hours and be subject to Contractor's confidentiality obligations to its employees and other clients. If the Council utilizes a third party to conduct an audit, the third-party auditor shall not be a competitor of Contractor and will enter into an appropriate confidentiality agreement with Contractor before any such audit.
- 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, and Attachment A, Scope of Work and Deliverables consisting of one (1) page; represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- **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 the grossly 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 gross negligence, intentional misconduct or other tortious conduct.

- 0. 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 the Contractor or produced by the Contractor in the performance of this Contract and delivered to Council for

Council's exclusive use as part of the Services (such Contractor-produced work, the" Deliverables"). The Services and Deliverables are personal to Council and intended solely for the internal use of Council. No person or entity other than Council may use or rely upon the Deliverables, the Services or any recommendations that Contractor may make. Council shall reimburse, indemnify, and hold harmless Contractor for, from and against losses, damages, liabilities, suits and claims (and costs and expenses in connection therewith, including reasonable attorneys' fees and other investigation and defense costs) to the extent such losses, damages, liabilities, suits and claims arise out of or are caused by (a) any use of or reliance upon the Deliverables, the Services or Contractor's recommendations by a third party or (b) any use of or reliance upon the Deliverables, the Services or Contractor's recommendations by Council in any manner other than for Council's intended use. Upon termination of services, for any reason, Contractor agrees to return all such original and derivative information and documents provided by the Council, 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 Councilowned data.

Notwithstanding the foregoing, Contractor shall retain full ownership of all methodologies, procedures, management tools, workshops, manuals, software data files, work papers, concepts, ideas, inventions, know-how and other intellectual capital that Contractor has heretofore created or acquired or may hereafter create or acquire, while performing the Services or otherwise ("Contractor Intellectual Capital"). Subject to payment to Contractor's fees and expenses in connection with the Services, the Council shall have an irrevocable, perpetual, non-inclusive right and license to use, reproduce display and prepare derivative works based upon Contractor Intellectual Capital that is contained or incorporated in the Deliverables or is otherwise provided by Contractor to the Council for its use in connection with the Deliverables. Except as specifically authorized in writing by Contractor, however, the Council may not use, reproduce, or display such Contactor Intellectual Capital or prepare such derivate works for the benefit of any person or entity other than the Council.

**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.

Other than the warranties set forth herein, Contractor makes no representation or warranty, express or implied, regarding any matter including the merchantability, suitability, originality, fitness for a particular use of or purpose, or results to be derived from the use of any materials, deliverables or services provided under this Contract. Contractor does not guarantee that any recommendations may be implemented at the cost or with the results that Contractor may estimate or project or that any work product or deliverable will be error free.

In no event shall either Contractor or the Council be liable for any incidental, indirect, exemplary, special or consequential damages whatsoever (including damages for list profits, income or savings, or interruption of business) that may be suffered or incurred by the other party or any person or entity affiliated or associated with the other party, even if advised of the possibility of such damages. In addition, the liability of Contractor for losses damages, liability suits and claims arising out of or related to the terms of engagement, regardless of the form of action and the person or entity bringing such action, shall not exceed, in the aggregate, the total amount of the fees paid (excluding payments for taxes and expenses) by the Council to Contractor for the services performed under this Contract.

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, upon request. 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) Contractor shall provide at least thirty (30) days advance written notice of cancellation to the Council.

- (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) <u>Commercial General Liability Insurance</u>. 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) <u>Workers' Compensation and Employer's Liability Insurance</u>. 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) <u>Unemployment Insurance</u>. 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) <u>Automobile Liability Insurance</u>. Automobile liability insurance covering any auto (including 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. 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.
- **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, and any expenses incurred by Contractor through date of termination in performance of the work.

**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. Reserved.

- **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.** Third-Party Proceedings. Unless specifically agree to in a separate writing, Contractor's Services do not include giving testimony or appearing or participating in discovery proceedings, in administrative hearings, in court, or in other legal or regulatory inquiries or proceedings. Contractor's costs and expenses (including reasonable attorney's fees) and time spent (billed at Contractor's then-current rates) in legal and regulatory matters or proceedings arising from the Services, such as subpoenas, testimony, bankruptcy filings or proceedings, consultation involving private litigation, arbitration, government or industry regulation inquiries, whether made at the Council's request or the request of a third party or by subpoena or equivalent, will be billed to the Council separately.
- **HH.** 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. <u>Signatures</u>. 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

Amy L. Grenfell, Chief Operating Officer

Brandon Marshall, Services Director

**CONTRACTOR:** A.T. KEARNEY, INC.

	Rob	Dongoski,	Partner
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## ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Madison Barber, Assistant Attorney General

Date

Date

Date

Date

## ATTACHMENT A

## SCOPE OF WORK AND DELIVERABLES

**Context and Objectives:** The Wyoming Business Council seeks external consulting support in its path to accelerate economic development in Laramie, WY. Laramie hosts a thriving population of ~32,000 and is known as a center for higher education while being a key source of talent for the state. Plenty, a leading vertical farming company, is scaling its R&D capabilities by building an advanced vertical farming research center in Laramie, WY. The State of Wyoming through WBC has approved a \$20M grant to support construction and infrastructure costs of the Plenty project with the City of Laramie and Laramie Chamber Business Alliance (LCBA) providing additional funding and land. This investment will elevate Wyoming as a center of agriculture research and provide an opportunity to diversify the local economy. With the Plenty facility as a trigger, the Wyoming Business Council seeks to leverage Plenty's investment as an accelerant to facilitate broader economic development in Laramie. In dialogues between WBC and Kearney, we have jointly decided to focus efforts on a feasibility study, pitch deck, and roadmap to accelerate path to execution. Specifically, the objectives of this engagement are:

- Determine requirements for a successful business accelerator
- Enable WBC to advocate external partner engagement in activating the business accelerator
- Outline a roadmap to execute for accelerating economic development in Laramie, WY

This effort is expected to run for 3 weeks and will launch upon mutual agreement and after project mobilization activities are complete.

**Scope, Approach, and Deliverables:** To achieve these objectives, Kearney and WBS plan a 3-week effort organized into three steps: 1) feasibility study, 2) pitch deck and 3) roadmap for WBC. For each step, the approach and deliverables are outlined below:

- I. <u>Feasibility Study</u>
  - a. Assessment of requirements to support a successful Laramie business accelerator and the dependencies to address those requirements.
- II. Pitch Deck
  - a. Market-facing document advocating for partnership in supporting the Laramie business accelerator, outlining:
    - i. Current situation
    - ii. Opportunity
    - iii. Rationale for partnership
    - iv. Enabling requirements
- III. <u>Roadmap for the Wyoming Business Council</u>
  - a. Outline next steps for execution, estimated resources, and enablers.

Application Name	Company Name	Project Name	Project Location	Application Score	Project Total	Applicant Match	Max Grant Amount	Total Locations		Underserved Locations
NN/CDE 000000440	Charter Commission (Constant)		Fiber to the home project north and east		¢ 2,766,540,00	ć 000 700 00	¢ 4 022 700 00	247	245	102
WYCPF-000000110	Charter Communications (Spectrum)	Park County 4	of Cody	72	\$ 2,766,510.00	\$ 832,720.00	\$ 1,933,790.00	317	215	102
WYCPF-00000018	AllWest Communications	Opal	Fiber to the Home in Opal Wyoming	71	\$ 362,898.00	\$ 90,725.00	\$ 272,173.00	48	48	0
WYCPF-00000068	BHT Holdings, Inc. (Tri County Telephone Association [TCT])		Fiber to the Home/Business in the Southfork area west of Cody	70	\$ 997,771.00	\$ 108,152.98	\$ 889,618.02	215	109	106
WYCPF-00000068	relephone Association [TCT])	Cody/Southork	Southfork area west of Cody	70		· · · · · · · · · · · · · · · · · · ·	. ,	-		
					\$ 4,127,179.00	\$ 1,031,597.98	\$ 3,095,581.02	580	372	208

## CONTRACT BETWEEN WYOMING BUSINESS COUNCIL AND SPECTRUM PACIFIC WEST LLC

- 1. <u>Parties</u>. The parties to this Contract are Wyoming Business Council (Council), whose address is: 214 West 15<sup>th</sup> Street, Cheyenne, Wyoming 82001 and Spectrum Pacific West LLC (Subrecipient), whose address is: 1821 Logan Ave, Cheyenne, WY 82001.
- 2. <u>Purpose of Contract</u>. The purpose of this Contract is to set forth the terms and conditions by which the Council shall provide federal American Rescue Plan Act (ARPA), Capital Projects Fund (CFDA 21.029) funds to the Subrecipient for the completion of the broadband project outlined in Attachment A, Park County 4 Addendum, and Attachment B, Park County 4 County Service Area, which are both attached to and incorporated into this Contract by this reference.
- 3. <u>Term of Contract</u>. This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from Effective Date through December 31, 2026 (ARPA deadline). All projects funded by this program must be completed during this term.

## 4. <u>Payment</u>.

- The Council agrees to pay the Subrecipient for the services described in Attachment A. A. Eligible material purchased prior to contract date, and after March 11, 2021, utilized by Subrecipient to complete the approved project can be submitted for reimbursement at the item's original purchase price and must include the supplier invoice from the time of purchase. Total payment under this Contract shall not exceed one million nine hundred thirty-three thousand and seven hundred ninety dollars (\$1,933,790.00). The Connect Wyoming CPF Program will provide structured reimbursements for validated grant expenditures submitted. Subrecipients are expected to submit supporting documentation for expenditures (i.e., invoices, receipts, etc.) and proof of payment if requested. Subrecipients must submit all required legal and contractual agreements/documents prior to funds disbursement. Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Subrecipient 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, notwithstanding any material purchased prior to the contract date utilized by the Subrecipient to complete the approved project i.e. fiber, conduit, housings, and vaults, meeting current standards, can be submitted for reimbursement at the items original purchase price and must include the supplier invoice from the time of purchase. Should the Subrecipient 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 Subrecipient performs its duties and responsibilities to the satisfaction of Council. If the Subrecipient does not perform duties outlined in this Contract to the satisfaction of the Council, repayment may be required. Additionally, the Council may, at its discretion, require repayment if the Subrecipient fails to deliver the project or speeds or other requirements that are specified in this Contract's Attachment A (Addendum).

- C. Subrecipient may submit payment requests at the following milestones:
  - (i) Final Design and all permits obtained-Reimbursement allowed for engineering and permit costs once final design and permits are obtained. At this time a twenty (20) percent advance of the total project cost can be requested.
  - (ii) Project Material Reimbursement-Reimbursement for allowed materials purchased specific to individual project.
  - (iii) Final Construction-all placing costs associated with placement of infrastructure.
  - (iv) Final payment upon report of all data required by the State and US Treasury and the system is operational and verified that it met the requirements of the contract.
- **D.** Except as otherwise provided in this Contract, the Subrecipient shall pay all costs and expenses, including travel, incurred by Subrecipient or on its behalf in connection with Subrecipient's performance and compliance with all of Subrecipient's obligations under this Contract.

### 5. <u>**Responsibilities of Subrecipient.**</u> The Subrecipient agrees to:

- A. Provide all goods and/or services necessary for completion of the broadband project described in Attachment A and Attachment B.
- **B**. Obtain all appropriate licenses and/or permits from the appropriate entity or entities for all projects performed in a public right of way. Subrecipient agrees to abide by all requirements set forth in the licenses and/or permits.
- **C.** Maintain any Broadband Infrastructure constructed through funds provided under this program at the applicant's own expense for a 15-year period for Fixed Wireless and a 20-year period for fiber, which will allow for replacement of end of life, obsolete or non-functioning equipment so that the speeds are at or above those committed to in the award, are continued, and reliable service is provided for the period stated. Any successive owner(s) are required to comply for the remaining period.

**D.** Submit requests for Eligible Costs only and to acknowledge that Eligible and Ineligible Costs are as defined:

## Eligible Costs, which include but are not limited to:

- (i) Construction and materials;
- (ii) New and rehabilitated construction contracts;
- (iii) Architect and engineering services and legal professional services, if required by the project;
- (v) Permitting fees;
- (vi) Acquisition of broadband infrastructure equipment
- (vii) Construction and installation of infrastructure equipment, to include direct labor costs; and
- (viii) Other expenses deemed eligible under the US Department of Treasury Capital Funds Project.

#### Ineligible Costs are as follows:

- (i) General broadband planning not associated with the project;
- (ii) Ongoing overhead, operating costs, or staff costs to include bonuses of any kind;
- (iii) Political activities or lobbying.

### 6. <u>**Responsibilities of Council.**</u> The Council agrees to:

**A.** Pay Subrecipient in accordance with Section 4 above.

## 7. <u>Special Provisions</u>.

- A. Assumption of Risk. The Subrecipient shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Subrecipient's failure to comply with state or federal requirements. The Council shall notify the Subrecipient of any state or federal determination of noncompliance.
- **B.** Environmental Policy Acts. Subrecipient 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.** Subrecipient 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 Subrecipient breaches or violates this warranty, Council may, at its discretion, terminate this Contract without liability to Council, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

The Subrecipient shall comply with the Copeland Anti-Kickback Act (18 U.S.C. § 874) as supplemented in the Department of Labor Regulations (29 CFR, Part 3). This Act provides that the Subrecipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works to give up any part of the compensation to which he or she is otherwise entitled.

**E.** Limitations on Lobbying Activities. By signing this Contract, Subrecipient certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by Subrecipient or its sub-Subrecipients 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.

Subrecipient and sub-Subrecipients may also be required to submit an additional certification statement and disclosure form acceptable to the Council before commencement of the work.

F. Monitoring Activities. The Council, as well as the Governor of the State of Wyoming and any designee of the Governor, shall have the right to monitor all activities related to this Contract that are performed by Subrecipient or its sub-Subrecipients. 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 Subrecipient 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.

Federal law requires the Subrecipient to include all relevant special provisions of this Contract in every subcontract awarded over ten thousand dollars (\$10,000.00) so that such provisions are binding on each sub-Subrecipient.

- **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 Subrecipient and related to the services and work to be performed under this Contract, shall identify the Council as the sponsoring agency and shall not be released without prior written approval of Council.
- J. Suspension and Debarment. By signing this Contract, Subrecipient 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, Subrecipient agrees to notify Council 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. Subrecipient agrees its use of the funds awarded herein is subject to the Uniform Administrative Requirements of 2 C.F.R. Part 200, *et seq.*; the federal American Rescue Plan Act; 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 Council.
- L. Copyright License and Patent Rights. Subrecipient acknowledges that federal grantor, the State of Wyoming, and Council 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 Subrecipient purchases ownership using funds awarded under this Contract. Subrecipient must consult with Council regarding any patent rights that arise from, or are purchased with, funds awarded under this Contract.

- M. Federal Audit Requirements. Subrecipient 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. Subrecipient 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, Subrecipient shall provide one (1) copy of the audit report to Council and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to Council's records.
- N. Non-Supplanting Certification. Subrecipient 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. Subrecipient 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.** Subrecipient shall not deposit grant funds in an interest-bearing account without prior approval of Council. Any income attributable to the grant funds distributed under this Contract must be used to increase the scope of the program or returned to Council.

# 8. <u>General Provisions</u>.

- **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 Subrecipient 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 Subrecipient which are pertinent to this Contract. The Subrecipient 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 Subrecipient which are pertinent to this Contract. The Subrecipient 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 Subrecipient 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 subrecipients for work related to this Contract. The Subrecipient shall cooperate fully with other subrecipients and the Council in all such cases.
- **G.** Certificate of Good Standing. The Subrecipient shall provide to the Council a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Subrecipient is authorized to conduct business in the State of Wyoming, if required, before performing work under this Contract. Subrecipient shall ensure that 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 Subrecipient shall keep informed of and comply with all applicable federal, state, and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Contract.
  - (i) Subrecipient agrees to comply with the CPF Statute and the Guidance. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, including but not limited to applicable statutes and regulations prohibiting discrimination in programs receiving federal financial assistance and all applicable federal environmental laws and regulations, and Subrecipient shall provide for such compliance in any agreements it enters into with other parties relating to this award.
  - (ii) Federal regulations applicable to this award include, without limitation, the

following:

- (a) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this award and subject to such exceptions\_as may be otherwise provided by Treasury. Subpart F Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- (b) Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, and pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- (c) Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- (d) OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19. C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R.
- (e) Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- (f) New Restrictions on Lobbying, 31 C.F.R. Part 21.
- I. Conflict of Interest. Conflict of Interest. Subrecipient agrees that it will maintain in effect a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) covering each activity funded under this award. Subrecipient and sub-Subrecipients shall disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

# J. Protections for Whistleblowers.

(i) In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing information to any of the list of persons or entities provided below that the employee reasonably believes is evidence of gross

mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

- (ii) The list of persons and entities referenced in the paragraph above includes the following:
  - (a) A member of Congress or a representative of a committee of Congress;
  - (b) An Inspector General;
  - (c) The Government Accountability Office;
  - (d) A Treasury employee responsible for contract or grant oversight or management;
  - (e) An authorized official of the Department of Justice or other law enforcement agency;
  - (f) A court or grand jury; and/or
  - (g) A management official or other employee of Subrecipient, contractor, or sub-Subrecipient who has the responsibility to investigate, discover, or address misconduct.
  - (h) Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
- K. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Subrecipient in the performance of this Contract shall be kept confidential by the Subrecipient unless written permission is granted by the Council for its release. If and when Subrecipient receives a request for information subject to this Contract, Subrecipient 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.
- L. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Award funds may not be used to procure or obtain any covered telecommunication and video surveillance services or equipment as described in 2 C.F.R. § 200.216, including covered telecommunication and video surveillance services or equipment provided or produced by entities owned or controlled by the People's Republic of China and telecommunications equipment produced by

Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- **M. Domestic Preferences in Procurement.** Council and Subrecipient shall provide a preference for the procurement or use of goods, products, or materials produced in the United States as described in 2.C.F.R § 200.322 and Executive Order 14005 Ensuring the Future is Made in All of America by All of America's Workers (January 25, 2021).
- N. Federal Interest and Insurance. Subrecipient agrees that any equipment, supplies or real property purchased or, in the case of real property, improved, using award funds will be used for the purpose and in the manner described in the approved Grant Plan or Program Plan, subject to the Guidance, the requirements of 2 C.F.R. § 200.310, Insurance, 2 C.F.R. § 200.311, Real Property, 2 C.F.R. § 200.313, Equipment, 2 C.F.R. § 200.314 Supplies, 2 C.F.R. § 200.315, Intangible Property, as applicable, and any other condition to approving Council's Application.
- **O. Entirety of Contract.** This Contract, consisting of seventeen (17) pages; Attachment A, Park County 4 Addendum, consisting of one (1) page; and Attachment B, Park County 4 Service Area, provided in Excel format, 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.
- **P.** Ethics. Subrecipient 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 Subrecipient's profession.
- **Q.** 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.
- **R.** 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.
- **S. Indemnification.** The Subrecipient 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 Subrecipient's failure to perform any of Subrecipient's duties and obligations hereunder or in connection with the negligent performance of Subrecipient's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Subrecipient's negligence or other tortious conduct.

- T. Independent Contractor. The Subrecipient 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 Subrecipient shall be free from control or direction over the details of the performance of services under this Contract. The Subrecipient shall assume sole responsibility for any debts or liabilities that may be incurred by the Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient or the Subrecipient's agents or employees as a result of this Contract.
- U. 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.
- V. Notice of Sale or Transfer. The Subrecipient shall provide the Council with notice of any sale, transfer, merger, or consolidation of the assets of the Subrecipient. 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 Subrecipient's obligations under this Contract, then the Council may, at its discretion, terminate or renegotiate the Contract.
- W. 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 Subrecipient in the performance of this Contract. Upon termination of services, for any reason, Subrecipient 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, Subrecipient agrees to physically and electronically

destroy any residual Council-owned data, regardless of format, and any other storage media or areas containing such information. Subrecipient agrees to provide written notice to Council confirming the destruction of any such residual Councilowned data.

- X. Patent or Copyright Protection. The Subrecipient 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 Subrecipient or its sub-Subrecipients will violate any such restriction. The Subrecipient shall defend and indemnify the Council for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- Y. **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, 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).

## Z. Insurance Requirements.

- (i) During the term of this Contract, the Subrecipient shall obtain and maintain, and ensure that each sub-Subrecipient 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 Subrecipient 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 Subrecipient or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- (iii) The Subrecipient 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 Subrecipient, such insurance in the name of the Subrecipient, or sub-Subrecipient, 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 Subrecipient 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.
- **AA. Insurance Coverage.** The Subrecipient shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth above:
  - (i) <u>Commercial General Liability Insurance</u>. 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) <u>Automobile Liability Insurance</u>. 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) <u>Builder's Risk Insurance.</u> Builder's all risk insurance, through a company lawfully authorized to do business in the State of Wyoming, protecting the interests of the Council and subrecipients of all tiers against loss as specified below, through the date of Final Completion or until final payment has been made and no person or entity other than the Owner has an insurable interest in the property:
  - (a) The policy shall be in the amount of the initial Contract Sum, plus the value of subsequent contract modifications and costs of material supplied or installed by others, and shall at all times provide coverage for 100% of the insurable value of the Work, including

Subrecipient's change orders and any Council furnished work. The policy shall include replacement cost coverage for all real and personal property incorporated into the Work, including engineered and Project specific false works and formings, while at the Project Site, off-site, or in transit. Coverage shall be extended to include increased construction cost, soft costs (such as reasonable compensation for Design Professional, Council, and Subrecipient s' services and expenses required as a result of an insured loss, excluding any Liquidated Damages), extra expense, and expediting expense.

- (b) The policy shall insure against "all risks" and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, subsidence or earth movement, windstorm, flood, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and ensuing damage as a result of faulty workmanship or material or both.
- (c) The policy shall name the State of Wyoming and Council as loss payee for all covered losses as their interests may appear.
- (d) The policy shall be endorsed waiving the insurer's right of recovery under subrogation against the Council, Subrecipient and sub-Subrecipients, for losses covered under the Builder's Risk policy. The Subrecipient shall be responsible for the deductible on each loss and shall retain responsibility for any loss not covered by the Builder's Risk policy. Unless otherwise agreed, all monies received due to a covered loss shall be first applied to rebuilding or repairing the destroyed or injured Work.
- (e) The Subrecipient shall be solely responsible for any required notice to or consent of the insurer providing the Builder's Risk coverage regarding a) a covered event or occurrence and b) occupancy of the Work, or a portion thereof, by the Council.
- (f) The policy shall not cover any Subrecipient's equipment, including, but not limited to, machinery, tools, equipment, or other personal property owned, rented, or used by the Subrecipient or sub-Subrecipients in the performance of their work on the Work, which will not become a part of the Work to be accepted by the Council.
- (iv) <u>Professional Liability or Errors and Omissions Liability Insurance</u>. Professional liability insurance or errors and omissions liability insurance

protecting against any and all claims arising from the Subrecipient's alleged or real professional errors, omissions, or mistakes in the performance of professional duties under this Contract, with minimum limits as follows:

- (a) \$1,000,000.00 each occurrence; and
- **(b)** \$1,000,000.00 general aggregate.

The policy shall have an extended reporting period of two (2) years.

- **BB.** 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.
- CC. 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. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions supplied by the Subrecipient, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Contract, or in any attachments or documents incorporated by reference, will not be binding on the State of Wyoming. 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.
- **DD. Taxes.** The Subrecipient 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.
- **EE.** 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 Subrecipient 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 Subrecipient, the Council may terminate this Contract or any part of it.

- **FF.** 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.
- GG. Time is of the Essence. Time is of the essence in all provisions of this Contract.
- **HH. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.
- **II. 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.
- **JJ. 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 Subrecipient 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. <u>Signatures</u>. 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

Amy L. Grenfell, Chief Operating Officer	Date
Brandon Marshall, Services Division Director	Date
SUBRECIPIENT: Spectrum Pacific West LLC	
Paul Woelk, SVP, Business Planning, Charter Communications, Inc	Date
ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM	

Madison Barber, Assistant Attorney General

Date

Attachment A to the Contract Between the Wyoming Business Council and SPECTRUM PACIFIC WEST LLC	
SI LE IROM I P	
Subgrantee Name	SPECTRUM PACIFIC WEST LLC
Project Location	PARK COUNTY 4
	Construct a last-mile FTTP EPON network to provide service to 317 unserved and underserved locations in Park County, (Park County 4). FTTP EPON is a standardized and mature model operated by Charter across the country, engineered and managed to meet 1 Gbps symmetrical speeds, and extremely low typical median latency. These high bandwidth and low latency attributes mean that Charters FTTP EPON deployment is suitable for, among other uses, remote learning, remote working, and telehealth. FTTP EPON can accommodate numerous members of a household or small business simultaneously using bandwidth-intensive applications, such as video conferencing, telemedicine, video streaming, gaming, vitual or augmented reality sessions, and numerous other applications.
Project Description	
Total Project Cost	\$2,766,510.00
Subgrantee Match	\$832,720.00
Grant Amount	\$1,933,790.00
Number of Locations Served	317
Unserved	215
Underserved	102
Project Completion Date Commitment by Subgrantee	10/31/2026

### CONTRACT BETWEEN WYOMING BUSINESS COUNCIL AND ALL WEST COMMUNICATIONS, INC.

- 1. <u>Parties</u>. The parties to this Contract are Wyoming Business Council (Council), whose address is: 214 West 15<sup>th</sup> Street, Cheyenne, Wyoming 82001 and All West Communications, Inc. (Subrecipient), whose address is: 50 W 100 N, Kamas, UT 84036.
- 2. <u>Purpose of Contract</u>. The purpose of this Contract is to set forth the terms and conditions by which the Council shall provide federal American Rescue Plan Act (ARPA), Capital Projects Fund (CFDA 21.029) funds to the Subrecipient for the completion of the broadband project outlined in Attachment A, Opal Addendum, and Attachment B, Opal Service Area, which are both attached to and incorporated into this Contract by this reference.
- 3. <u>Term of Contract</u>. This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from Effective Date through December 31, 2026 (ARPA deadline). All projects funded by this program must be completed during this term.

### 4. <u>Payment</u>.

- A. The Council agrees to pay the Subrecipient for the services described in Attachment A. Eligible material purchased prior to contract date, and after March 11, 2021, utilized by Subrecipient to complete the approved project can be submitted for reimbursement at the item's original purchase price and must include the supplier invoice from the time of purchase. Total payment under this Contract shall not exceed two hundred seventy-two thousand one hundred seventy-three dollars (\$272,173.00). The Connect Wyoming CPF Program will provide structured reimbursements for validated grant expenditures submitted. Subrecipients are expected to submit supporting documentation for expenditures (i.e., invoices, receipts, etc.) and proof of payment if requested. Subrecipients must submit all required legal and contractual agreements/documents prior to funds disbursement. Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Subrecipient 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, notwithstanding any material purchased prior to the contract date utilized by the Subrecipient to complete the approved project i.e. fiber, conduit, housings, and vaults, meeting current standards, can be submitted for reimbursement at the items original purchase price and must include the supplier invoice from the time of purchase. Should the Subrecipient 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 Subrecipient performs its duties and

responsibilities to the satisfaction of Council. If the Subrecipient does not perform duties outlined in this Contract to the satisfaction of the Council, repayment may be required. Additionally, the Council may, at its discretion, require repayment if the Subrecipient fails to deliver the project or speeds or other requirements that are specified in this Contract's Attachment A (Addendum).

- C. Subrecipient may submit payment requests at the following milestones:
  - (i) Final Design and all permits obtained-Reimbursement allowed for engineering and permit costs once final design and permits are obtained. At this time a twenty (20) percent advance of the total project cost can be requested.
  - (ii) Project Material Reimbursement-Reimbursement for allowed materials purchased specific to individual project.
  - (iii) Final Construction-all placing costs associated with placement of infrastructure.
  - (iv) Final payment upon report of all data required by the State and US Treasury and the system is operational and verified that it met the requirements of the contract.
- **D.** Except as otherwise provided in this Contract, the Subrecipient shall pay all costs and expenses, including travel, incurred by Subrecipient or on its behalf in connection with Subrecipient's performance and compliance with all of Subrecipient's obligations under this Contract.

### 5. <u>**Responsibilities of Subrecipient.**</u> The Subrecipient agrees to:

- A. Provide all goods and/or services necessary for completion of the broadband project described in Attachment A and Attachment B.
- **B**. Obtain all appropriate licenses and/or permits from the appropriate entity or entities for all projects performed in a public right of way. Subrecipient agrees to abide by all requirements set forth in the licenses and/or permits.
- **C.** Maintain any Broadband Infrastructure constructed through funds provided under this program at the applicant's own expense for a 15-year period for Fixed Wireless and a 20-year period for fiber, which will allow for replacement of end of life, obsolete or non-functioning equipment so that the speeds are at or above those committed to in the award, are continued, and reliable service is provided for the period stated. Any successive owner(s) are required to comply for the remaining period.
- **D.** Submit requests for Eligible Costs only and to acknowledge that Eligible and Ineligible Costs are as defined:

Eligible Costs, which include but are not limited to:

- (i) Construction and materials;
- (ii) New and rehabilitated construction contracts;
- (iii) Architect and engineering services and legal professional services, if required by the project;
- (v) Permitting fees;
- (vi) Acquisition of broadband infrastructure equipment
- (vii) Construction and installation of infrastructure equipment, to include direct labor costs; and
- (viii) Other expenses deemed eligible under the US Department of Treasury Capital Funds Project.

### Ineligible Costs are as follows:

- (i) General broadband planning not associated with the project;
- (ii) Ongoing overhead, operating costs, or staff costs to include bonuses of any kind;
- (iii) Political activities or lobbying.

### 6. <u>**Responsibilities of Council.</u>** The Council agrees to:</u>

**A.** Pay Subrecipient in accordance with Section 4 above.

### 7. <u>Special Provisions</u>.

- A. Assumption of Risk. The Subrecipient shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Subrecipient's failure to comply with state or federal requirements. The Council shall notify the Subrecipient of any state or federal determination of noncompliance.
- **B.** Environmental Policy Acts. Subrecipient 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.** Subrecipient 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 Subrecipient breaches or violates this warranty, Council may, at its discretion, terminate this Contract without liability to Council, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

The Subrecipient shall comply with the Copeland Anti-Kickback Act (18 U.S.C. § 874) as supplemented in the Department of Labor Regulations (29 CFR, Part 3). This Act provides that the Subrecipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works to give up any part of the compensation to which he or she is otherwise entitled.

**E.** Limitations on Lobbying Activities. By signing this Contract, Subrecipient certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by Subrecipient or its sub-Subrecipients 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.

Subrecipient and sub-Subrecipients may also be required to submit an additional certification statement and disclosure form acceptable to the Council before commencement of the work.

- F. Monitoring Activities. The Council, as well as the Governor of the State of Wyoming and any designee of the Governor, shall have the right to monitor all activities related to this Contract that are performed by Subrecipient or its sub-Subrecipients. 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 Subrecipient 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.

Federal law requires the Subrecipient to include all relevant special provisions of this Contract in every subcontract awarded over ten thousand dollars (\$10,000.00) so that such provisions are binding on each sub-Subrecipient.

- **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 Subrecipient and related to the services and work to be performed under this Contract, shall identify the Council as the sponsoring agency and shall not be released without prior written approval of Council.
- J. Suspension and Debarment. By signing this Contract, Subrecipient 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, Subrecipient agrees to notify Council 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. Subrecipient agrees its use of the funds awarded herein is subject to the Uniform Administrative Requirements of 2 C.F.R. Part 200, *et seq.*; the federal American Rescue Plan Act; 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 Council.
- L. Copyright License and Patent Rights. Subrecipient acknowledges that federal grantor, the State of Wyoming, and Council 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 Subrecipient purchases ownership using funds awarded under this Contract. Subrecipient must consult with Council regarding any patent rights that arise from,

or are purchased with, funds awarded under this Contract.

- M. Federal Audit Requirements. Subrecipient 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. Subrecipient 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, Subrecipient shall provide one (1) copy of the audit report to Council and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to Council's records.
- N. Non-Supplanting Certification. Subrecipient 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. Subrecipient 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.** Subrecipient shall not deposit grant funds in an interest-bearing account without prior approval of Council. Any income attributable to the grant funds distributed under this Contract must be used to increase the scope of the program or returned to Council.

## 8. <u>General Provisions</u>.

- 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 Subrecipient 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 Subrecipient which are necessary to audit the Subrecipient's expenditure of funds

under this Contract. The Subrecipient shall within ten (10) days, or such longer time as is reasonable under the circumstances, upon receiving written instruction from the Council, provide to any independent auditor or accountant all books, documents, papers, electronic data, and records of the Subrecipient which are necessary to audit the Subrecipient's expenditure of funds under this Contract. The Subrecipient 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 Subrecipient 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 subrecipients for work related to this Contract. The Subrecipient shall cooperate fully with other subrecipients and the Council in all such cases.
- **G.** Certificate of Good Standing. The Subrecipient shall provide to the Council a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Subrecipient is authorized to conduct business in the State of Wyoming, if required, before performing work under this Contract. Subrecipient shall ensure that 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 Subrecipient shall keep informed of and comply with all applicable federal, state, and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Contract.
  - (i) Subrecipient agrees to comply with the CPF Statute and the Guidance. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, including but not limited to applicable statutes and regulations prohibiting discrimination in programs receiving federal financial assistance and all applicable federal environmental laws and regulations, and Subrecipient shall provide for such compliance in any agreements it enters into with other parties relating to this award.
  - (ii) Federal regulations applicable to this award include, without limitation, the following:

- (a) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this award and subject to such exceptions\_as may be otherwise provided by Treasury. Subpart F Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- (b) Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, and pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- (c) Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- (d) OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19. C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R.
- (e) Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- (f) New Restrictions on Lobbying, 31 C.F.R. Part 21.
- I. Conflict of Interest. Conflict of Interest. Subrecipient agrees that it will maintain in effect a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) covering each activity funded under this award. Subrecipient and sub-Subrecipients shall disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

### J. Protections for Whistleblowers.

(i) In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing information to any of the list of persons or entities provided below that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a

substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

- (ii) The list of persons and entities referenced in the paragraph above includes the following:
  - (a) A member of Congress or a representative of a committee of Congress;
  - (b) An Inspector General;
  - (c) The Government Accountability Office;
  - (d) A Treasury employee responsible for contract or grant oversight or management;
  - (e) An authorized official of the Department of Justice or other law enforcement agency;
  - (f) A court or grand jury; and/or
  - (g) A management official or other employee of Subrecipient, contractor, or sub-Subrecipient who has the responsibility to investigate, discover, or address misconduct.
  - (h) Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
- K. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Subrecipient in the performance of this Contract shall be kept confidential by the Subrecipient unless written permission is granted by the Council for its release, except for information required to be produced by any other governmental entity for permitting or required by any other agent or subcontractor of Subrecipient for performance. If and when Subrecipient receives a request for information subject to this Contract, Subrecipient 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.
- L. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Award funds may not be used to procure or obtain any covered telecommunication and video surveillance services or equipment as described in 2 C.F.R. § 200.216, including covered telecommunication and video surveillance services or equipment provided or produced by entities owned or controlled by the

People's Republic of China and telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- **M. Domestic Preferences in Procurement.** Council and Subrecipient shall provide a preference for the procurement or use of goods, products, or materials produced in the United States as described in 2.C.F.R § 200.322 and Executive Order 14005 Ensuring the Future is Made in All of America by All of America's Workers (January 25, 2021).
- N. Federal Interest and Insurance. Subrecipient agrees that any equipment, supplies or real property purchased or, in the case of real property, improved, using award funds will be used for the purpose and in the manner described in the approved Grant Plan or Program Plan, subject to the Guidance, the requirements of 2 C.F.R. § 200.310, Insurance, 2 C.F.R. § 200.311, Real Property, 2 C.F.R. § 200.313, Equipment, 2 C.F.R. § 200.314 Supplies, 2 C.F.R. § 200.315, Intangible Property, as applicable, and any other condition to approving Council's Application.
- **O. Entirety of Contract.** This Contract, consisting of seventeen (17) pages; Attachment A, Opal Addendum, consisting of one (1) page; and Attachment B, Opal Service Area, provided in Excel format, 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.
- **P.** Ethics. Subrecipient 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 Subrecipient's profession.
- **Q.** 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.
- **R.** 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, pandemics, 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.
- **S. Indemnification.** The Subrecipient 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 Subrecipient's failure to perform any of Subrecipient's duties and obligations hereunder or in connection with the negligent performance of Subrecipient's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Subrecipient's negligence or other tortious conduct.

- T. Independent Contractor. The Subrecipient 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 Subrecipient shall be free from control or direction over the details of the performance of services under this Contract. The Subrecipient shall assume sole responsibility for any debts or liabilities that may be incurred by the Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient or the Subrecipient's agents or employees as a result of this Contract.
- U. 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.
- V. Notice of Sale or Transfer. The Subrecipient shall provide the Council with notice of any sale, transfer, merger, or consolidation of the assets of the Subrecipient. 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 Subrecipient's obligations under this Contract, then the Council may, at its discretion, terminate or renegotiate the Contract.
- W. 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 Subrecipient in the performance of this Contract. Upon termination of services, for any reason, Subrecipient agrees to return all such original and derivative information and documents to the Council in a useable format, except that Subrecipient may retain such information as is necessary and proper to perform its ongoing maintenance obligations pursuant to this Contract. 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, Subrecipient agrees to physically and electronically destroy any residual Council-owned data, regardless of format, and any other storage media or areas containing such information. Subrecipient agrees to provide written notice to Council confirming the destruction of any such residual Council-owned data.

- X. Patent or Copyright Protection. The Subrecipient 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 Subrecipient or its sub-Subrecipients will violate any such restriction. The Subrecipient shall defend and indemnify the Council for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- Y. 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, 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).

## Z. Insurance Requirements.

- (i) During the term of this Contract, the Subrecipient shall obtain and maintain, and ensure that each sub-Subrecipient 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 Subrecipient 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 Subrecipient or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- (iii) The Subrecipient 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 Subrecipient, such insurance in the name of the Subrecipient, or sub-Subrecipient, 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 Subrecipient 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.
- **AA. Insurance Coverage.** The Subrecipient shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth above:
  - (i) <u>Commercial General Liability Insurance</u>. 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) <u>Automobile Liability Insurance</u>. 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) <u>Builder's Risk Insurance.</u> Builder's all risk insurance, through a company lawfully authorized to do business in the State of Wyoming, protecting the interests of the Council and subrecipients of all tiers against loss as specified below, through the date of Final Completion or until final payment has been made and no person or entity other than the Owner has an insurable interest in the property:
  - (a) The policy shall be in the amount of the initial Contract Sum, plus the value of subsequent contract modifications and costs of material

supplied or installed by others, and shall at all times provide coverage for 100% of the insurable value of the Work, including Subrecipient's change orders and any Council furnished work. The policy shall include replacement cost coverage for all real and personal property incorporated into the Work, including engineered and Project specific false works and formings, while at the Project Site, off-site, or in transit. Coverage shall be extended to include increased construction cost, soft costs (such as reasonable compensation for Design Professional, Council, and Subrecipient s' services and expenses required as a result of an insured loss, excluding any Liquidated Damages), extra expense, and expediting expense.

- (b) The policy shall insure against "all risks" and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, subsidence or earth movement, windstorm, flood, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and ensuing damage as a result of faulty workmanship or material or both.
- (c) The policy shall name the State of Wyoming and Council as loss payee for all covered losses as their interests may appear.
- (d) The policy shall be endorsed waiving the insurer's right of recovery under subrogation against the Council, Subrecipient and sub-Subrecipients, for losses covered under the Builder's Risk policy. The Subrecipient shall be responsible for the deductible on each loss and shall retain responsibility for any loss not covered by the Builder's Risk policy. Unless otherwise agreed, all monies received due to a covered loss shall be first applied to rebuilding or repairing the destroyed or injured Work.
- (e) The Subrecipient shall be solely responsible for any required notice to or consent of the insurer providing the Builder's Risk coverage regarding a) a covered event or occurrence and b) occupancy of the Work, or a portion thereof, by the Council.
- (f) The policy shall not cover any Subrecipient's equipment, including, but not limited to, machinery, tools, equipment, or other personal property owned, rented, or used by the Subrecipient or sub-Subrecipients in the performance of their work on the Work, which will not become a part of the Work to be accepted by the Council.

- (iv) <u>Professional Liability or Errors and Omissions Liability Insurance</u>. Professional liability insurance or errors and omissions liability insurance protecting against any and all claims arising from the Subrecipient's alleged or real professional errors, omissions, or mistakes in the performance of professional duties under this Contract, with minimum limits as follows:
  - (a) \$1,000,000.00 each occurrence; and
  - **(b)** \$1,000,000.00 general aggregate.

The policy shall have an extended reporting period of two (2) years.

- **BB.** 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.
- CC. 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. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions supplied by the Subrecipient, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Contract, or in any attachments or documents incorporated by reference, will not be binding on the State of Wyoming. 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.
- **DD. Taxes.** The Subrecipient 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.
- **EE.** 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 Subrecipient 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 Subrecipient, and failure to cure alleged lack of progress within thirty (30) days, the Council may terminate this Contract or any part of it.

- **FF. 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.
- GG. Time is of the Essence. Time is of the essence in all provisions of this Contract.
- **HH. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.
- **II. 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.
- **JJ. 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 Subrecipient 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. <u>Signatures</u>. 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

Amy L. Grenfell, Chief Operating Officer	Date
Brandon Marshall, Services Division Director	Date
SUBRECIPIENT: All West Communications, Inc.	
Matt Weller, Chief Operations Officer	Date

# ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Madison Barber, Assistant Attorney General

Date

Attachment A t	o the Contract Between the
Wyoming Business Council	
and	
All West Communictions, Inc	
Subgrantee Name	All West Communications, Inc.
Project Location	Opal
Project Description	All West proposes to deploy a fiber-to-the-home (FTTH) network in Opal, Lincoln County. All West will serve all 48 residences and 3 businesses located in the project area. The buried FTTH network will be capable of providing 100/100 Mbps and up to 2/2 Gbps to every location. It will connect to the internet through All West's existing middle-mile network.
Total Project Cost	\$ 362,898.00
Subgrantee Match	\$ 90,725.00
Grant Amount	\$ 272,173.00
Number of Locations Served	48
Unserved	48
Underserved	0
Project Completion Date Commitment by Subgrantee	10/31/2026

Attachment A t o the Contract Between Wyoming Business Council and All West Communications, Inc. Page 1 of 1

## CONTRACT BETWEEN WYOMING BUSINESS COUNCIL AND BHT HOLDINGS, INC.

- 1. <u>Parties</u>. The parties to this Contract are Wyoming Business Council (Council), whose address is: 214 West 15<sup>th</sup> Street, Cheyenne, Wyoming 82001 and BHT HOLDINGS, INC. (Subrecipient), whose address is: 1601 South Park Dr. Cody, WY 82414.
- 2. <u>Purpose of Contract</u>. The purpose of this Contract is to set forth the terms and conditions by which the Council shall provide federal American Rescue Plan Act (ARPA), Capital Projects Fund (CFDA 21.029) funds to the Subrecipient for the completion of the broadband project outlined in Attachment A, Cody Southfork Addendum, and Attachment B, Cody Southfork Service Area, which are both attached to and incorporated into this Contract by this reference.
- 3. <u>Term of Contract</u>. This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from Effective Date through December 31, 2025 (ARPA deadline). All projects funded by this program must be completed during this term.

## 4. <u>Payment</u>.

- A. The Council agrees to pay the Subrecipient for the services described in Attachment A. Eligible material purchased prior to contract date, and after March 11, 2021, utilized by sub-grantee to complete the approved project can be submitted for reimbursement at the item's original purchase price and must include the supplier invoice from the time of purchase. Total payment under this Contract shall not exceed eight hundred eighty-nine thousand six hundred eighteen dollars and two cents (\$889,618.02). The Connect Wyoming CPF Program will provide structured reimbursements for validated grant expenditures submitted. Subrecipients are expected to submit supporting documentation for expenditures (i.e., invoices, receipts, etc.) and proof of payment if requested. Subrecipients must submit all required legal and contractual agreements/documents prior to funds disbursement. Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Subrecipient 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, notwithstanding any material purchased prior to the contract date utilized by the sub-grantee to complete the approved project i.e. fiber, conduit, housings, and vaults, meeting current standards, can be submitted for reimbursement at the items original purchase price and must include the supplier invoice from the time of purchase. Should the Subrecipient 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 Subrecipient performs its duties and responsibilities to the satisfaction of Council. If the Subrecipient does not perform

duties outlined in this Contract to the satisfaction of the Council, repayment may be required. Additionally, the Council may, at its discretion, require repayment if the Subrecipient fails to deliver the project or speeds or other requirements that are specified in this Contract's Attachment A (Addendum).

- C. Subrecipient may submit payment requests at the following milestones:
  - (i) Final Design and all permits obtained-Reimbursement allowed for engineering and permit costs once final design and permits are obtained. At this time a twenty (20) percent advance of the total project cost can be requested.
  - (ii) Project Material Reimbursement-Reimbursement for allowed materials purchased specific to individual project.
  - (iii) Final Construction-all placing costs associated with placement of infrastructure.
  - (iv) Final payment upon report of all data required by the State and US Treasury and the system is operational and verified that it met the requirements of the contract.
- **D.** Except as otherwise provided in this Contract, the Subrecipient shall pay all costs and expenses, including travel, incurred by Subrecipient or on its behalf in connection with Subrecipient's performance and compliance with all of Subrecipient's obligations under this Contract.
- 5. <u>**Responsibilities of Subrecipient.**</u> The Subrecipient agrees to:
  - **A.** Provide all goods and/or services necessary for completion of the broadband project described in Attachment A and Attachment B.
  - **B**. Obtain all appropriate licenses and/or permits from the appropriate entity or entities for all projects performed in a public right of way. Subrecipient agrees to abide by all requirements set forth in the licenses and/or permits.
  - **C.** Maintain any Broadband Infrastructure constructed through funds provided under this program at the applicant's own expense for a 15-year period for Fixed Wireless and a 20-year period for fiber, which will allow for replacement of end of life, obsolete or non-functioning equipment so that the speeds are at or above those committed to in the award, are continued, and reliable service is provided for the period stated. Any successive owner(s) are required to comply for the remaining period.
  - **D.** Submit requests for Eligible Costs only and to acknowledge that Eligible and Ineligible Costs are as defined:

Eligible Costs, which include but are not limited to:

- (i) Construction and materials;
- (ii) New and rehabilitated construction contracts;
- (iii) Architect and engineering services and legal professional services, if required by the project;
- (v) Permitting fees;
- (vi) Acquisition of broadband infrastructure equipment
- (vii) Construction and installation of infrastructure equipment, to include direct labor costs; and
- (viii) Other expenses deemed eligible under the US Department of Treasury Capital Funds Project.

#### Ineligible Costs are as follows:

- (i) General broadband planning not associated with the project;
- (ii) Ongoing overhead, operating costs, or staff costs to include bonuses of any kind;
- (iii) Political activities or lobbying.

### 6. <u>**Responsibilities of Council.**</u> The Council agrees to:

**A.** Pay Subrecipient in accordance with Section 4 above.

### 7. <u>Special Provisions</u>.

- A. Assumption of Risk. The Awardee shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Awardee's failure to comply with state or federal requirements. The Council shall notify the Awardee of any state or federal determination of noncompliance.
- **B.** Environmental Policy Acts. Awardee agrees all activities under this Agreement 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 Agreement may be terminated without penalty if a private entity that receives funds under this Agreement:
  - (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.** Awardee certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If Awardee breaches or violates this warranty, Council may, at its discretion, terminate this Agreement without liability to Council, 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 Agreement, Awardee certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by Awardee 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. Awardee and subcontractors may also be required to submit an additional certification statement and disclosure form acceptable to the Council before commencement of the work.
- **F. Monitoring Activities.** Council shall have the right to monitor all activities related to this Agreement that are performed by Awardee 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 Agreement; and to observe personnel in every phase of performance of Agreement related work.
- **G.** Nondiscrimination. The Awardee 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 Agreement.
- **H.** No Finder's Fees. No finder's fee, employment agency fee, or other such fee related to the procurement of this Agreement, 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 Awardee and related to the services and work to be performed under this Agreement, shall identify the Council as the sponsoring agency and shall not be

released without prior written approval of Council.

- J. Suspension and Debarment. By signing this Agreement, Awardee 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 Agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension), or 2 CFR Part 180, or are on the debarred, or otherwise ineligible, vendors lists maintained by the federal government. Further, Awardee agrees to notify Council 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 Agreement.
- K. Administration of Federal Funds. Awardee agrees its use of the funds awarded herein is subject to the Uniform Administrative Requirements of 2 CFR Part 200, *et seq.*; [Insert additional requirements specific to federal grant or program]; 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 Council.
- L. Copyright License and Patent Rights. Awardee acknowledges that federal grantor, the State of Wyoming, and Council 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 Agreement; and (2) any rights of copyright to which Awardee purchases ownership using funds awarded under this Agreement. Awardee must consult with Council regarding any patent rights that arise from, or are purchased with, funds awarded under this Agreement.
- M. Federal Audit Requirements. Awardee agrees that if it expends an aggregate amount in excess of the amount set forth in 2 CFR Part 200, Subpart F in federal awards during its fiscal year, it must undergo an organization-wide financial and compliance single audit. Awardee agrees to comply with the audit requirements of the U.S. General Accounting Office Government Auditing Standards and Audit Requirements of 2 CFR Part 200, Subpart F. If findings are made which cover any part of this Agreement, Awardee shall provide one (1) copy of the audit report to Council and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to Council's records.
- N. Non-Supplanting Certification. Awardee 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. Awardee 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 Agreement.
- **O. Program Income.** Awardee shall not deposit grant funds in an interest bearing
account without prior approval of Council. Any income attributable to the grant funds distributed under this Agreement must be used to increase the scope of the program or returned to Council.

**P.** Applicability of Appendix II to 2 CFR Part 200. This Agreement has been funded, in whole or in part, with an Award of Federal funds and is bound by the federal contract provisions required by the Uniform Guidance Appendix II of 2 CFR Part 200 (the Federal Contract Provisions), incorporated herein by this reference. In the event of a conflict between the Special Provisions section of this Agreement, or any attachments or exhibits incorporated herein, and the Federal Contract Provisions, the Federal Contract Provisions shall control. Failure to comply with the Federal Contract Provisions shall constitute an event of default under this Agreement. If such a default remains uncured five (5) calendar days following the terminate this Agreement. This remedy will be in addition to any other remedy available to the State of Wyoming and the Council under this Agreement, at law, or in equity.

## 8. <u>General Provisions</u>.

- **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 Subrecipient 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 Subrecipient which are pertinent to this Contract. The Subrecipient 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 Subrecipient which are pertinent to this Contract. The Subrecipient 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 Subrecipient 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 subrecipients for work related to this Contract. The Subrecipient shall cooperate fully with other subrecipients and the Council in all such cases.
- **G.** Certificate of Good Standing. The Subrecipient shall provide to the Council a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Subrecipient is authorized to conduct business in the State of Wyoming, if required, before performing work under this Contract. Subrecipient shall ensure that 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 Subrecipient shall keep informed of and comply with all applicable federal, state, and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Contract.
  - (i) Subrecipient agrees to comply with the CPF Statute and the Guidance. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, including but not limited to applicable statutes and regulations prohibiting discrimination in programs receiving federal financial assistance and all applicable federal environmental laws and regulations, and Subrecipient shall provide for such compliance in any agreements it enters into with other parties relating to this award.
  - (ii) Federal regulations applicable to this award include, without limitation, the following:
    - (a) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

- (b) Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, and pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- (c) Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- (d) OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19. C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R.
- (e) Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- (f) New Restrictions on Lobbying, 31 C.F.R. Part 21.
- I. Conflict of Interest. Conflict of Interest. Subrecipient agrees that it will maintain in effect a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) covering each activity funded under this award. Sub-subrecipient and subrecipients shall disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

# J. Protections for Whistleblowers.

- (i) In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing information to any of the list of persons or entities provided below that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- (ii) The list of persons and entities referenced in the paragraph above includes the following:
  - (a) A member of Congress or a representative of a committee of Congress;

- (b) An Inspector General;
- (c) The Government Accountability Office;
- (d) A Treasury employee responsible for contract or grant oversight or management;
- (e) An authorized official of the Department of Justice or other law enforcement agency;
- (f) A court or grand jury; and/or
- (g) A management official or other employee of subrecipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- (h) Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
- K. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Subrecipient in the performance of this Contract shall be kept confidential by the Subrecipient unless written permission is granted by the Council for its release. If and when Subrecipient receives a request for information subject to this Contract, Subrecipient 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.
- L. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Award funds may not be used to procure or obtain any covered telecommunication and video surveillance services or equipment as described in 2 C.F.R. § 200.216, including covered telecommunication and video surveillance services or equipment provided or produced by entities owned or controlled by the People's Republic of China and telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- M. Domestic Preferences in Procurement. Agency and subrecipient shall provide a preference for the procurement or use of goods, products, or materials produced in the United States as described in 2.C.F.R § 200.322 and Executive Order 14005 Ensuring the Future is Made in All of America by All of America's Workers (January 25, 2021).
- **N.** Federal Interest and Insurance. Subrecipient agrees that any equipment, supplies or real property purchased or, in the case of real property, improved, using award funds will be used for the purpose and in the manner described in the approved Grant Plan or Program Plan, subject to the Guidance, the requirements of 2 C.F.R.

§ 200.310, Insurance, 2 C.F.R. § 200.311, Real Property, 2 C.F.R. § 200.313, Equipment, 2 C.F.R. § 200.314 Supplies, 2 C.F.R. § 200.315, Intangible Property, as applicable, and any other condition to approving Agency's Application.

- **O. Entirety of Contract.** This Contract, consisting of seventeen (17) pages; Attachment A, Cody Southfork Addendum, consisting of one (1) page; and Attachment B, Cody Southfork Service Area, provided in Excel format, and the Federal Contract Provisions, represent the entire and integrated Agreement 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 Agreement and the language of any attachment or document incorporated by reference, the language of this Agreement shall control. In the event of a conflict or inconsistency between the language of any attachment or document incorporated by reference, the language of this Contract and the language of this Contract shall control.
- **P.** Ethics. Subrecipient 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 Subrecipient's profession.
- **Q.** 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.
- **R.** 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.
- **S. Indemnification.** The Subrecipient 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 Subrecipient's failure to perform any of Subrecipient's duties and obligations hereunder or in connection with the negligent performance of Subrecipient's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Subrecipient's negligence or other tortious conduct.
- **T. Independent Contractor.** The Subrecipient 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 Subrecipient shall be free from control or direction over the details of the performance of services under this Contract. The Subrecipient shall assume sole

responsibility for any debts or liabilities that may be incurred by the Subrecipient 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 Subrecipient 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 Subrecipient 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 Subrecipient or the Subrecipient's agents or employees as a result of this Contract.

- U. 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.
- V. Notice of Sale or Transfer. The Subrecipient shall provide the Council with notice of any sale, transfer, merger, or consolidation of the assets of the Subrecipient. 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 Subrecipient's obligations under this Contract, then the Council may, at its discretion, terminate or renegotiate the Contract.
- W. 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 Subrecipient in the performance of this Contract. Upon termination of services, for any reason, Subrecipient 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, Subrecipient agrees to physically and electronically destroy any residual Council-owned data, regardless of format, and any other storage media or areas containing such information. Subrecipient agrees to provide written notice to Council confirming the destruction of any such residual Council-owned data.
- X. Patent or Copyright Protection. The Subrecipient 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 Subrecipient or its subcontractors will violate any such restriction. The Subrecipient shall defend and indemnify the Council for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.

Y. 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, 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).

# Z. Insurance Requirements.

- (i) During the term of this Contract, the Subrecipient 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 Subrecipient 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 Subrecipient or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- (iii) The Subrecipient 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 Subrecipient, such insurance in the name of the Subrecipient, 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 Subrecipient 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.
- **AA. Insurance Coverage.** The Subrecipient shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth above:
  - (i) <u>Commercial General Liability Insurance</u>. 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) <u>Automobile Liability Insurance</u>. 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) <u>Builder's Risk Insurance</u>. Builder's all risk insurance, through a company lawfully authorized to do business in the State of Wyoming, protecting the interests of the Council and subrecipient s of all tiers against loss as specified below, through the date of Final Completion or until final payment has been made and no person or entity other than the Owner has an insurable interest in the property:
  - (a) The policy shall be in the amount of the initial Contract Sum, plus the value of subsequent contract modifications and costs of material supplied or installed by others, and shall at all times provide coverage for 100% of the insurable value of the Work, including Subrecipient's change orders and any Council furnished work. The policy shall include replacement cost coverage for all real and personal property incorporated into the Work, including engineered and Project specific false works and formings, while at the Project Site, off-site, or in transit. Coverage shall be extended to include increased construction cost, soft costs (such as reasonable compensation for Design Professional, Council, and Subrecipient s' services and expenses required as a result of an insured loss, excluding any Liquidated Damages), extra expense, and expediting expense.
  - (b) The policy shall insure against "all risks" and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, subsidence or earth movement, windstorm,

flood, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and ensuing damage as a result of faulty workmanship or material or both.

- (c) The policy shall name the State of Wyoming and Council as loss payee for all covered losses as their interests may appear.
- (d) The policy shall be endorsed waiving the insurer's right of recovery under subrogation against the Council, Subrecipient and Subcontractors, for losses covered under the Builder's Risk policy. The Subrecipient shall be responsible for the deductible on each loss and shall retain responsibility for any loss not covered by the Builder's Risk policy. Unless otherwise agreed, all monies received due to a covered loss shall be first applied to rebuilding or repairing the destroyed or injured Work.
- (e) The Subrecipient shall be solely responsible for any required notice to or consent of the insurer providing the Builder's Risk coverage regarding a) a covered event or occurrence and b) occupancy of the Work, or a portion thereof, by the Council.
- (f) The policy shall not cover any Subrecipient's equipment, including, but not limited to, machinery, tools, equipment, or other personal property owned, rented, or used by the Subrecipient or Subcontractors in the performance of their work on the Work, which will not become a part of the Work to be accepted by the Council.
- (iv) <u>Professional Liability or Errors and Omissions Liability Insurance</u>. Professional liability insurance or errors and omissions liability insurance protecting against any and all claims arising from the Subrecipient's alleged or real professional errors, omissions, or mistakes in the performance of professional duties under this Contract, with minimum limits as follows:
  - (a) \$1,000,000.00 each occurrence; and
  - **(b)** \$1,000,000.00 general aggregate.

The policy shall have an extended reporting period of two (2) years.

- **BB.** 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.
- **CC.** 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. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions supplied by the Subrecipient, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Contract, or in any attachments or documents incorporated by reference, will not be binding on the State of Wyoming. 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.

- **DD. Taxes.** The Subrecipient 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.
- **EE.** 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 Subrecipient 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 Subrecipient, the Council may terminate this Contract or any part of it.

- **FF. 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.
- GG. Time is of the Essence. Time is of the essence in all provisions of this Contract.
- **HH. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.

- **II. 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.
- **JJ. 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 Subrecipient 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.** <u>Signatures</u>. 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

Amy L. Grenfell, Chief Operating OfficerDateBrandon Marshall, Services Division DirectorDateSUBRECIPIENT:<br/>BHT HOLDINGS, INC.DateRichard Wardell, Chief Executive OfficerDate

# ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Madison Barber, Assistant Attorney General

Date

	the Contract Between the Business Council and			
BHT HOLDINGS, INC.				
Subgrantee Name	BHT HOLDINGS, INC			
Project Location	Cody-Southfork			
Project Description	TCT is seeking a grant to construct fiber-to-the-premises (FTTP) broadband connectivity in rural areas outside the city of Cody, Wyoming. The proposed project will upgrade unserved and underserved locations along the South Fork highway south of Cody. The project will add 8.98 miles of fiber to bring upgraded broadband services to 214 residences and one Business. The plan includes a complete FTTP network for which TCT will utilize XGS-PON technology which is capable of delivering 10 Gbps symmetrical service. Dedicated services of up to 100 Gbps are available utilizing the new fiber construction. TCT's plan will provide significant broadband upgrades for customers in this rural Cody area and will equip the project region with a robust network which can support future growth and increases in bandwidth demands.			
Total Project Cost	\$997,771.00			
Subgrantee Match	\$108,152.98			
Grant Amount	\$889,618.02			
Number of Locations Served	215			
Unserved	109			
Underserved	106			
Project Completion Date Commitment by Subgrantee	12/31/2025			

### CONTRACT BETWEEN WYOMING BUSINESS COUNCIL AND COLUMBIA TELECOMMUNICATIONS CORPORATION d/b/a CTC TECHNOLOGY AND ENERGY

- 1. <u>Parties</u>. The parties to this Contract are Wyoming Business Council (Council), whose address is: 214 W 15th St, Cheyenne WY 82002, and COLUMBIA TELECOMMUNICATIONS CORPORATION d/b/a CTC TECHNOLOGY AND ENERGY (Contractor), whose address is: 10613 Concord St, Kensington MD, 20895.
- 2. <u>Purpose of Contract</u>. The purpose of this Contract is to set forth the terms and conditions by which the Contractor shall support the Broadband Equity Access and Deployment (BEAD) program for the establishment and ongoing operation of the Challenge Portal.
- 3. <u>Term of Contract</u>. This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from Effective Date through July 25, 2025. The Contract's Period of Performance is March 19, 2024 through July 25, 2025. All services shall be completed during this term.

This 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. <u>Payment</u>.

- A. The Council agrees to pay the Contractor for the services described in Attachment A, Cost Proposal 1 – Portal, which is attached to and incorporated into this Contract by this reference. Total payment under this Contract shall not exceed one hundred sixty thousand, six hundred dollars and zero cents (\$160,600.00). 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 outside the Performance Period 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. **<u>Responsibilities of Contractor</u>**. The Contractor agrees to:

A. Provide the services described in Attachment A, Scope of Work. Per the Scope described in Attachment A, Contractor and any Subcontractors performing comparable work are explicitly designated as contractors and not as subrecipients.

# 6. <u>Responsibilities of Council</u>. The Council agrees to:

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

# 7. <u>Special Provisions</u>.

- 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), 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 CFR 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 in excess of the amount set forth in 2 CFR Part 200, Subpart F in federal awards 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 CFR 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.
- P. Applicability of Appendix II to 2 CFR Part 200. This Contract has been funded, in whole or in part, with an Award of Federal funds and is bound by the federal contract provisions required by the Uniform Guidance Appendix II of 2 CFR Part 200 (the Federal Contract Provisions), incorporated herein by this reference. In the event of a conflict between the Special Provisions section of this Contract, or any attachments or exhibits incorporated herein, and the Federal Contract Provisions, the Federal Contract Provisions shall control. Failure to comply with the Federal Contract Provisions shall control. Failure to comply with the Federal Contract Provisions shall control. Failure to comply with the Federal Contract Provisions shall constitute an event of default under this Contract. If such a default remains uncured five (5) calendar days following the termination of a thirty (30) day prior written notice period, the Agency may terminate this Contract. This remedy will be in addition to any other remedy available to the State of Wyoming and the Agency under this Contract, at law, or in equity.

### 8. <u>General Provisions</u>.

- **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 and 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 invoices and final deliverables 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 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, and all federal grant requirements and executive orders 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 both parties unless prior written permission is granted by the Contractor and Council for its release. If and when either party receives a request for information subject to this Contract, the notified party shall notify the other party within ten (10) days of such request and shall not release such information to a third party unless: 1) prior written approval is granted by Contractor, if the information is related to a release of Contractor's Confidential Information; or 2) directed to do so by Council.
- J. Entirety of Contract. This Contract, consisting of twelve (12) pages; and Attachment A, Scope of Work consisting of one (1) page, and the Federal Contract Provisions, 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. 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 and Limitation of Liability. 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 from 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.

Limitation of Liability. The Services provided under this Contract shall not be deemed investment, legal, tax, accounting or other regulated advice. Contractor does not supplant the Council's management or other decision-making bodies and does not guarantee results. The Contractor is not responsible for the Council's decisions, actions, use of the Deliverables and compliance with applicable laws, rules, and regulations. Neither party will be liable for any lost profits or other indirect, consequential, incidental, punitive or special damages.

- 0. 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.** 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.
- **Q.** 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.
- **R. Ownership and Return of Documents and Information.** Council is the official custodian and owns all documents, data compilations, reports, 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, except for one (1) copy Contractor can retain for internal archival and audit purposes. Contractor agrees to provide written notice to Council confirming the destruction of any such residual Council-owned data upon request of destruction by Council.

- S. 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 knowingly violate any such restriction. In accordance with Section 8(N), the Contractor shall defend and indemnify the Council for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions as a direct result of Contractor's breach of this Contract, negligence, or willful misconduct.
- **T. Prior Approval.** This Contract shall not be binding upon either partyand 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).

## U. 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.
- V. **Insurance Coverage.** The Contractor shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth above:
  - (i) <u>Commercial General Liability Insurance</u>. 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) <u>Workers' Compensation and Employer's Liability Insurance</u>. 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) <u>Unemployment Insurance</u>. 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) <u>Automobile Liability Insurance</u>. 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.
- **W.** 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.
- X. 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. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions supplied by the Contractor, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Contract, or in any attachments or documents incorporated by reference, will not be binding on the State of Wyoming. 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.

- Y. 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.
- **Z. 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.
- AA. 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.
- **BB.** Time is of the Essence. Time is of the essence in all provisions of this Contract.
- **CC. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.
- **DD.** 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.
- **EE. 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.

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

## WYOMING BUSINESS COUNCIL:

Joshua J. Dorrell Chief Executive Officer

Amy L. Grenfell Chief Operating Officer Date

Date

# **CONTRACTOR:** COLUMBIA TELECOMMUNICATIONS CORPORATION d/b/a CTC TECHNOLOGY AND ENERGY

Joanne Hovis President

Date

# ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

#244598 son Barber

Assistant Attorney General

11.12.24 Date



# OPERATIONS COMMITTEE REPORT

		, (	/2026 Biennium)				Optimum =	25%	5
BUDGET SUMMARY	BUDGET	EXPENDED	ENCUMBERED	BALANCE	%	Avai	I. Cash Balance		Receip
Economic Diversification									
Investments	\$50,356,543	\$4,619	\$0	\$50,351,924	0.01%				
Investments (BRC/CDBG)	\$25,000	\$3,421	\$0	\$21,579	13.68%				
Finance	\$10,000	\$1,198	\$0	\$8,802	11.98%				
Business Ready Communities (Includes MRG)	\$50,321,543	\$0	\$0	\$50,321,543	0.00%				
Community Facilities	\$0	\$0	\$0	\$0	N/A				
Services	\$11,329,740	\$221,681	\$2,689,864	\$8,418,195	25.70%				
Services	\$2,796,841	\$19,012	\$2,300,139	\$477,690	82.92%				
Broadband Administration (fund 004)	\$0	\$0	\$0	\$0	N/A				
Entrepreneurship	\$7,025,000	\$7,165	\$55,050	\$6,962,785	0.89%				
Main Street	\$235,000	\$13,938	\$30,750	\$190,312	19.02%				
Markets & Expansion	\$460,899	\$51,879	\$49,374	\$359,646	21.97%				
Recruitment	\$535,000	\$83,325	\$41,150	\$410,525	23.27%				
Community Development	\$62,500	\$10,225	\$35,038	\$17,237	72.42%				
Asia Pacific Trade Office	\$214,500	\$36,137	\$178,363	\$0	100.00%				
Nyoming Business Council	+= · · ,• • •								
Operations	\$6,548,673	\$1,243,278	\$32,663	\$5,272,732	19.48%				
Accounting	\$71,000	\$1,266	\$0	\$69,734	1.78%				
Agency Services	\$304,563	\$26,080	\$12,000	\$266,483	12.50%				
Board	\$62,500	\$3,185	\$0	\$59,315	5.10%				
Executive	\$30,650	\$2,934	\$0	\$27,716	9.57%				
HR (Non-Payroll)	\$180,192	\$24,868	\$20,663	\$134,661	25.27%				
HR (Payroll)	\$5,679,733	\$1,164,293	\$0	\$4,515,440	20.50%				
IT	\$220,035	\$20,652	\$0	\$199,383	9.39%				
Regional Directors	\$90,000	\$13,363	\$0	\$76,637	14.85%				
Strategy	\$824,468	\$50,954	\$243,045	\$530,469	35.66%				
General Strategy	\$568,139	\$3,963	\$185,670	\$378,506	33.38%				
Communications	\$120,129	\$13,585	\$57,375	\$49,169	59.07%				
Strategic Partnerships	\$120,129	\$33,406	\$37,373 \$0	\$102,794	24.53%				
TOTAL GENERAL FUNDS	\$69,149,424	\$1,533,895	\$2,965,572	\$64,649,957	6.51%				
TOTAL GENERAL FONDS	\$05,145,424	\$1,000,000	<i>\$2,505,512</i>	\$04,049,907	0.01/0				
Federal Funds									
Brownfield Revolving Loan Program	\$0	\$0		\$0	N/A				
ARPA State Planning	\$218,531	\$0	218.531	\$0	100.00%				
State Small Business Credit Initiative	\$669,971	\$36,525	\$0	\$633,446	5.45%	\$	7,377,038	\$	55,28
State Trade and Export Program (STEP)	\$100,315	\$41,850	15,000	\$43,465	56.67%	Ť	1,011,000	Ŷ	00,20
Broadband Equity, Access, & Deployment (BEAD)	\$831,373	\$237,535	\$593,838	\$0	100.00%				
TOTAL FEDERAL FUNDS	\$1,820,190	\$315,910	\$827,369	\$676,911	62.81%				
	+ -,-=-,	+ ,	<i>+,</i>						
Agency Funds									
Economic Loan Development (fund 039/089)*	\$1,146,943	\$707,775	\$0	\$439,168	61.71%	\$	12,404,538	\$	321,65
Rural Rehabilitation (fund 499)	\$304,439	\$5,000	\$0	\$299,439	1.64%	\$	4,937,719	\$	32,75
Wyoming Business Council (fund 085)	\$76,517	\$0	\$0	\$76,517	0.00%	\$	222,888	\$	1,78
TOTAL AGENCY FUNDS	\$1,527,899	\$712,775	\$0	\$815,124	46.65%				
TOTAL BUDGET	\$72,497,513	\$2,562,580	\$3,792,941	\$66,141,992	8.77%				
American Rescue Plan Act	A005		AA 40 5	AF0 (	00.050				
Pathways to Prosperity	\$395,592	\$0	\$343,588	\$52,004	86.85%				
WIP Initiative	\$184,413	\$64,550	\$113,550	\$6,313	96.58%				
Capital Projects Fund - Broadband	\$72,142,688	\$10,036,652	\$58,425,044	\$3,680,992	94.90%				
TOTAL ARPA	\$72,722,693	\$10,101,202	\$58,882,182	\$3,739,309	94.86%				

Wyoming Business Council YTD September 30, 2024 (2025/2026 Biennium)



Loan Type	Balance
Economic Disaster	4,416,032
Participation	3,256,406
Amendment IV	-
Natural Gas Infrastructure	-
WyoTech	2,902,707
BRC	11,786,220
Unallocated Allowance	(39,343)
	22,322,022





# STRATEGY COMMITTEE REPORT

## AMENDMENT ONE TO THE CONTRACT BETWEEN STATE OF WYOMING, BY AND THROUGH THE WYOMING BUSINESS COUNCIL, AND PRESIDENT AND FELLOWS OF HARVARD COLLEGE, ON BEHALF OF THE HARVARD KENNEDY SCHOOL

- 1. <u>Parties.</u> This Amendment is made and entered into between the State of Wyoming, by and through the Wyoming Business Council (Agency), whose address is: 214 West 15th Street, Cheyenne, WY 82002, and President and Fellows of Harvard College, on behalf of the Harvard Kennedy School (Contractor), whose address is: 1033 Massachusetts Avenue 5th Floor, Cambridge, MA 02138-5369.
- 2. <u>Purpose of Amendment</u>. This Amendment shall constitute the first 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 January 31, 2026; b) amend the Fixed Price; c) amend the milestone schedule; and d) amend attachment A to the original Contract, "Building State Capabilities Contract Wyoming Proposal."

The original Contract, dated August 23, 2022, required the Contractor to use American Rescue Plan Act (ARPA), State and Local Fiscal Recovery' Funds (CFDA 21.027) to undertake economic growth and training and may include connecting the Council with a network of collaborators in active and emerging economic research, business development, and policy making, for a total Contract amount of four hundred eighty thousand dollars dollars (\$480,000.00) with an expiration date of January 31, 2025.

- 3. <u>Term of the Amendment</u>. 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.
- 4. <u>Amendments.</u> Responsibilities of the Agency are hereby amended as follows:
  - **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 January 31, 2026."

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

"The Fixed Price ("Fixed Price") under this Contract equals nine hundred and sixty thousand dollars (\$960,000.00)."

**C.** Section 4(B) of the original Contract is hereby amended in its entirety to read as follows:

**B.** The milestone schedule and fixed price associated with each milestone is provided in the table below.

No	Key Events /Deliverables	Payment Date	Payment Due	
1	Effective Date	Upon Signature	\$160,000.00	
2	Program 1 Work Complete	September 30, 2024	\$160,000.00	
3	Program 2 Work Complete	January 30, 2025	\$160,000.00	
4	Phase 2 Start	March 1, 2025	\$160,000.00	
5	Program 3 Work Complete	August 30, 2025	\$160,000.00	
6	Program 4 Work Complete	January 30, 2026	\$160,000.00	

- 5. <u>Amended Responsibilities of the Contractor.</u> Responsibilities of the Contractor have not changed.
- 6. <u>Amended Responsibilities of the Council.</u> Responsibilities of the Council have not changed.
- 7. <u>Special Provisions</u>.
  - 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. <u>General Provisions</u>.

A. Entirety of Contract. The original Contract, consisting of thirteen (13) pages; and Attachment A, Proposal for a PDIA Action-Learning Program (Statement of Work), consisting of five (5) pages; and this 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, 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.

#### WYOMING BUSINESS COUNCIL

Joshua J. Dorrell, Chief Executive Officer

Sarah Fitz-Gerald, Chief Strategy Officer

## **CONTRACTOR:**

President and Fellows of Harvard College, on behalf of the Harvard Kennedy School

Sarah Holtz, Sr. Grants and Contracts Officer

### **ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM**

Madison Barber, Assistant Attorney General

Date

Date

Date

Date

## AMENDMENT TWO TO THE CONTRACT BETWEEN STATE OF WYOMING, BY AND THROUGH THE WYOMING BUSINESS COUNCIL, AND PRESIDENT AND FELLOWS OF HARVARD COLLEGE, ON BEHALF OF THE HARVARD KENNEDY SCHOOL

- 1. <u>Parties.</u> This Amendment is made and entered into between the State of Wyoming, by and through the Wyoming Business Council (Agency), whose address is: 214 West 15th Street, Cheyenne, WY 82002, and President and Fellows of Harvard College, on behalf of the Harvard Kennedy School (Contractor), whose address is: 1033 Massachusetts Avenue 5th Floor, Cambridge, MA 02138-5369.
- 2. <u>Purpose of Amendment</u>. This Amendment shall constitute the second 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 January 31, 2026; b) amend the Fixed Price; and c) amend the milestone schedule.

The original Contract, dated August 23, 2022, required the Contractor to use American Rescue Plan Act (ARPA), State and Local Fiscal Recovery' Funds (CFDA 21.027) and the U.S. Economic Development Administration's 2021 ARPA Statewide Planning, Research, and Networks (CFDA 11.307) to undertake economic growth and development policy research for a total Contract amount of two million, eight hundred eighty-three thousand, seven hundred fifty-eight dollars (\$2,883,758.00) with an expiration date of January 31, 2024.

Amendment One, dated October 23, 2023, amended the original Contract to: a) extend the term of the contract through January 31, 2025; b) amend the Fixed Price; and c) amend the milestone schedule.

- 3. <u>Term of the Amendment</u>. 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.
- 4. <u>Amendments.</u> Responsibilities of the Agency are hereby amended as follows:
  - **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 January 31, 2026."

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

"The Fixed Price ("Fixed Price") under this Contract equals three million, seven hundred and fifty-two thousand, six hundred and fifty-two dollars (\$3,752,652.00)."

- C. Section 4(B) of the original Contract is hereby amended in its entirety to read as follows:
  - **B.** The milestone schedule and fixed price associated with each milestone is provided in the table below.

No	Key Events /Deliverables	Payment Date	Payment Due	
1	Contract Execution	Upon Signature	\$432,563.70	
2	Growth Perspective	September 30, 2022	\$360,469.75	
3	Strategy & Capacity Building Workstreams	November 1, 2022	\$360,469.75	
4	Presentations of Year 1 Research	December 16, 2022	\$360,469.75	
5	Strategy & Capacity Building Workstreams	March 1, 2023	\$360,469.75	
6	Strategy & Capacity Building Workstreams	June 1, 2023	\$360,469.75	
7	Strategy & Capacity Building Workstreams	September 1, 2023	\$360,469.75	
8	Presentation of Year 2 Research and Strategy & Capacity Building Workstreams	December 1, 2023	\$288,375.80	
9	Strategy & Capacity Building Workstreams	March 1, 2024	\$121,059.50	
10	Strategy & Capacity Building Workstreams	June 1, 2024	\$121,059.50	
11	Strategy & Capacity Building Workstreams	September 1, 2024	\$121,059.50	
12	Strategy & Capacity Building Workstreams	December 1, 2024	\$121,059.50	
13	Strategy & Capacity Building Workstreams	March 1, 2025	\$96,164.00	
14	Strategy & Capacity Building Workstreams	June 1, 2025	\$96,164.00	
15	Strategy & Capacity Building Workstreams	September 1, 2025	\$96,164.00	

16	Strategy & Capacity Building	December 1, 2025	\$96,164.00
	Workstreams		

- 5. <u>Amended Responsibilities of the Contractor.</u> Responsibilities of the Contractor have not changed.
- 6. <u>Amended Responsibilities of the Council.</u> Responsibilities of the Council have not changed.
- 7. <u>Special Provisions</u>.
  - 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. <u>General Provisions</u>.

A. Entirety of Contract. The original Contract, consisting of fourteen (14) pages; and Attachment A, Wyoming's Pathways to Growth, Jobs, and Prosperity ("Statement of Work"), consisting of twelve (12) pages; and this 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.

8. 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.

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

#### WYOMING BUSINESS COUNCIL

Joshua J. Dorrell, Chief Executive Officer

Sarah Fitz-Gerald, Chief Strategy Officer

## **CONTRACTOR:**

President and Fellows of Harvard College, on behalf of the Harvard Kennedy School

Sarah Holtz, Sr. Grants and Contracts Officer

### **ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM**

Madison Barber, Assistant Attorney General

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Date

Date

Date

Date


# INVESTMENTS COMMITTEE





SBIR & KickStart Update • WBC Board Meeting • December 2024

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# **SBIR Key Metrics To-Date**

52 Matching Grants

\$7,427,230

Matching Funds Awarded

**187** Total Jobs



**Federal Awards Realized** 



Leverage Ratio



# **RECENT SBIR AWARDEES**



Native's technology redefines global communication by integrating real-time messaging with advanced translation technologies.



Resono is at the forefront of innovation in unsteady pressure measurement systems

Fourth State Communications, LLC

Fourth State is actively conducting atmospheric modification, research, and data dissemination.



Acadian is utilizing wood byproduct to develop graphene materials necessary for the success of multiple industries



# **SBIR FUND DISTRIBUTION**





# **COMING SOON - KICKSTART**



Applications Opened November 25, 2024 First awards to be announced at Feb '25 board meeting

**4** Cycles per Year

Awards per Cycle

4



Funds to be Awarded







# WYVC UPDATE

WBC Board Meeting December 2024







## **INVESTMENTS TO-DATE**



Direct

...

**Funds** 







## **CO-INVESTORS TO DATE**

 $\boxed{\bullet \bullet \bullet}$ 

Leads





## WYVC DEPLOYMENT

### **WYVC INVESTMENT ACTIVITY**

	1Q24	2Q24	3Q24	11/15/24
Direct Strategy Invested	\$ 9,016,668	\$ 11,016,667	\$ 11,602,642	\$ 12,227,556
Portfolio Companies	6	7	7	8
Funds Strategy Invested	-	\$ 2,731,000	\$ 2,731,000	\$ 2,731,000
Partner Funds	-	1	1	1
WYVC Total Invested	\$ <b>9,016,668</b>	\$ 13,747,6697	\$ 14,333,642	\$ 14,958,556

### **SSBCI TRANCHE TRACKING**

Tranche Remaining (\$)	\$ 9,291,732	\$ 4,560,733	\$ 3,974,758	\$ 3,349,844
Tranche Remaining (%)	50.8%	24.9%	21.7%	18.3%

Active LOIs (\$)*	\$ 7,269,000
Tranche Remaining (\$)	\$ (3,919,156)
Tranche Remaining (%)	NMV



## WY Deal Flow Report

Our first annual deal flow report using data from public sources, cleaned to remove both solely domiciled companies and companies without physical presence.

https://wyomingbusiness.org/wp-content/uploads/2024/10/Wyoming-Deal-Flow-Report-2023.pdf







WYOMINGBUSINESS.ORG



#### **Credit Memorandum**

# Applicant:Little Horn State Bank (Sheridan, WY)Client:Rantec, Inc/Rick Bilodeau150 Dayton East RoadDayton, WY 82836Date:December 11, 2024Purpose:Business Succession Loan for the Acquisition of an Industrial<br/>Grade Water Soluble Polymer Manufacturer

#### **Proposal:**

Little Horn State Bank, located in Sheridan, WY has requested the Wyoming Business Council (WBC) to participate under the "Succession Financing" provision of the Wyoming Partnership Challenge Loan program to provide a term loan to Rick Bilodeau to purchase all stock and assets, including purchase of all Subordinated Shareholder Notes held by the current owners of Rantec, Inc. The bank and WBC have acquired a list of all assets and valuation of said assets. The WBC's participation will be five hundred thousand dollars (\$500,000.00) or 20.5% of the final total loan.

	Request
Total Loan	\$2,435,844.00
WBC Portion	\$500,000 (20.5%)
Amount Refinanced	\$0
Collateral	A/R, Inventory, Personal Residence \$5,159,837 (47.2% LTV)
Loan Fee	\$5,000.00 (1%)
WBC Interest Rate	5.75%
Adjustment Time	Fixed
Blended Interest Rate	8.13%
Loan Term	5 Years, Fully Amortized
<b>Payment Frequency</b>	Monthly
Guarantor	Rick & Brenda Bilodeau

#### **Project:**

Rantec, Inc was established in 1982 and is located in Ranchester, WY and is currently owned by three brothers. The company manufactures, mixes, and sells a wide variety of industrial grade water-soluble polymers including guar gum, cellulose gum, polyacrylamide, and starch. These polymers have many industrial applications including erosion control, mineral processing, food processing, and paper manufacturing to name a few.

A majority of the company's revenue is from guar gum and guar blends. Guar gum is extracted from guar beans and has thickening and stabilizing properties that are useful in a multitude of applications. The cost and supply of guar gum are dependent on the quality and yield of the crops located in India and Pakistan. Ten percent of the company's sales are international with the remaining ninety percent domestic, and most of those domestic sales are out of state.

Rantec's current manager, Rick Bilodeau has been a long-standing employee and has managed the business for the last ten years. The company has ten employees and has been very successful. Mr. Bilodeau has been a big reason for that success over the last decade. The proposed loan to Mr. Bilodeau will allow the business to continue its operations under the new ownership of its long-time manager.

The lead bank is lending according to their loan policy, the borrowers are submitting a down payment, and the WBC is covering the gap, including blue sky, in the financing picture with this proposed loan. There are multiple loans involved in this transaction and the WBC is participating in the non-real estate portion of financing picture.

#### **Cash Flow:**

Based on the historical financials obtained from the lead bank, Rantec, Inc exhibits the ability to service all the new debt with a DSCR of 1.78 with the proposed lower rate on loan from the WBC. The blended rate will save the company debt service on the monthly payments to Little Horn State Bank in the amount of (approx.) \$710; totaling \$42,614 over life of the loan. Additionally, it should be noted that with the additional support of the guarantors to all the debt, the DSCR increases to 2.05.

Credit reports were submitted to the WBC from the lead bank, all accounts are current and paying as agreed.

#### **Bank Risk Rating:**

The loan is presented as a pass credit with Little Horn State Bank, based on historical cash flow, guarantor support, and management/industry experience.

## The net available balance in the Economic Development Fund is \$12,404,538.

#### **Recommendation:**

Staff recommends that the Board of Directors of the Wyoming Business Council approve the loan participation in the amount of five hundred thousand dollars (\$500,000.00) as presented in this Credit Memorandum. This participation will be with Little Horn State Bank in Sheridan, WY as the lead bank. The loan recipient will be Rick Bilodeau.

Respectfully submitted, John Wendling Loan Portfolio Manager

#### **Attachment 1 – Applicable Statute**

#### Attachment 1

#### § 9-12-304. Criteria for loans.

Any business may apply to the council for financing as defined in W.S. 9-12-301(a) (xii). "Succession Financing" means a provision of financing to be used to assist in the transition or succession of a business that has been in existence for not less than seven (7) years immediately before the transfer or succession to a new owner of the business.



#### **Credit Memorandum**

# Applicant:State Bank (Rock Springs, WY)Client:Rock Springs Block Company/Bud A. Smith<br/>2210 Upland Street<br/>Rock Springs, WY 82901Date:December 11, 2024Purpose:Business Succession Loan for Acquisition of Concrete Block<br/>Manufacturing Company

#### **Proposal:**

State Bank, located in Rock Springs, WY has requested the Wyoming Business Council (WBC) to participate under the "Succession Financing" provision of the Wyoming Partnership Challenge Loan program to provide a term loan for the purchase of Rock Springs Block Company, Inc. The existing owner is selling and transferring the business to its current Manager, Bud A. Smith. The proposed loan would be used to acquire business assets associated with the company, not including real estate. The bank and WBC have acquired a list of all assets and valuation of said assets. WBC's participation will be three hundred five thousand sixty-six dollars (\$305,066) or 34.1% of the final total loan. The bank will have 34.1% of the loan as well and the remaining 31.8% is in the form of seller carry back financing.

	Request	
Total Loan	\$894,968.00	
WBC Portion	\$305,066.00 (34.1%)	
Amount Refinanced	\$0	
Collateral	Equipment, Inventory \$594,968 (97.5% LTV)	
Loan Fee	\$3,050.66 (1%)	
WBC Interest Rate	5.25%	
Adjustment Time	Fixed	
Blended Interest Rate	6.63%	
Loan Term	7 Years, fully amortized	
Payment Frequency	Monthly	
Guarantor	Bud Smith, Larry Caller (1 year)	

#### **Project:**

Rock Springs Block was originally started as Wyoming Masonry Products after World War II. In 1971, the current owner, Larry Caller, and his father, Joe Caller, purchased the block company, built a new plant, and began production of concrete products for the local underground mines. In 1990 the Caller's worked with FMC Soda Ash to produce a roof support system that was functional and economically viable. The result was

MineCrib<sup>™</sup> Blocks that still service the needs of two local Trona mines and represents much of their current sales. The company also provides other products for a natural gas provider and the local oil and gas industry. Mr. Caller is looking to sell the business to Mr. Smith who has been with Rock Springs Block for 15 years and managing the business for the past six years.

The WBC has been working with Mr. Caller and Pete Delaurante, Executive Vice President of State Bank, to help structure this deal. The lead bank is lending according to their loan policy and the WBC is covering the blue sky in the financing picture with this proposed participation loan.

#### **Cash Flow:**

Based on the historical financials obtained from the lead bank, Rock Springs Block Company exhibits the ability to service the proposed debt with a DSCR of 1.95 with the proposed lower rate on loan from the WBC. The blended rate will save the company debt service on the monthly payments to State Bank in the amount of (approx.) \$407.12, totaling \$34,198.22 over life of the loan.

#### **Bank Risk Rating:**

The loan is presented as a watch credit with State Bank, based on historical cash flow, guarantor support, and management/industry experience but with some weakness in lack of a secondary source of repayment and no prior experience with the borrower.

## The net available balance in the Economic Development Fund is \$12,404,538.

#### **Recommendation:**

Staff recommends that the Board of Directors of the Wyoming Business Council approve the loan participation in the amount of \$305,066.00 (three hundred five thousand sixty-six dollars and 00/100 cents) as presented in this Credit Memorandum. This participation will be with State Bank in Rock Springs, WY as the lead bank. The loan recipient will be Bud Smith under an LLC established after closing.

Respectfully submitted, John Wendling Loan Portfolio Manager

#### **Attachment 1 – Applicable Statute**

#### Attachment 1

#### § 9-12-304. Criteria for loans.

Any business may apply to the council for financing as defined in W.S. 9-12-301(a) (xii). "Succession Financing" means a provision of financing to be used to assist in the transition or succession of a business that has been in existence for not less than seven (7) years immediately before the transfer or succession to a new owner of the business.



#### **Credit Memorandum**

<b>Applicant:</b>	Hilltop National Bank (Cheyenne, WY)		
Client:	Trophy Creative, LLC/Shawndae Ogle		
	508 W. 19 <sup>th</sup> Street		
	Cheyenne, WY 82001		
Date:	December 11, 2024		
<b>Purpose:</b>	Business Succession Loan for the Acquisition of a Screen-		
	Printing and Engraving Business		

#### **Proposal:**

Hilltop National Bank, located in Casper, WY has requested the Wyoming Business Council (WBC) to participate under the "Succession Financing" provision of the Wyoming Partnership Challenge Loan program to provide a term loan to Trophy Creative. The current minority partner is looking to buy out the majority owner and comanager of the business for sole ownership of the business. The proposed loan would be used to acquire all controlling interest and assets associated with the business. The bank and WBC have acquired a list of all assets and valuation of said assets. The WBC's participation will be three hundred sixty thousand dollars (\$360,000.00) or 33% of the final total loan.

	Request	
Total Loan	\$1,100,000.00	
WBC Portion	\$360,000.00 (33%)	
Amount Refinanced	\$740,000.00	
Collateral	Real Estate \$920,000 (120% LTV)	
Loan Fee	\$3,600.00 (1%)	
WBC Interest Rate	5.50%	
Adjustment Time	Fixed	
Blended Interest Rate	6.22%	
Loan Term	10 Years, Amortized 25 years	
Payment Frequency	Monthly	
Guarantor	Shawndae Ogle & Kevin Ogle	

#### **Project:**

Trophy Creative, LLC was originally established in 1964 as Wyoming Trophy & Engraving. The business was purchased in 2016 by Sara Weber and Shawndae Olge and renamed. The business specializes in screen-printing and engraving, creating merchandise personalized to order across several types of mediums.

The business is currently co-managed by Sara Weber and Shawndae Olge. Olge is looking to take over full controlling ownership of the business. Currently, Olge has 42% ownership and with this loan, will be the sole remaining shareholder and manager of the business.

Much of the loan does have refinancing involved and that portion consists of buying out the current owner's interest in the real estate and a shareholder loan. However, the WBC's portion of the loan is strictly going towards the blue sky, non-refinanced portion of the buy-out.

The WBC has been working with Josh Hardee, Vice President of Hilltop Bank to help structure this deal. The lead bank is lending according to their loan policy and the WBC is covering the gap created by the blue sky in the financing package with this proposed loan.

#### **Cash Flow:**

Based on the historical financials obtained from the lead bank, Trophy Creative exhibits the ability to service the proposed debt with a DSCR of 1.80 with the proposed lower rate on loan from the WBC. The blended rate will save the company debt service on the monthly payments to Hilltop Bank in the amount of (approx.) \$236; totaling \$28,296 over life of the loan. With the additional support of the guarantors to the new debt and including personal existing debt, the DSCR increases to 2.13.

Credit reports were submitted to the WBC from the lead bank, all accounts are current and paying as agreed.

#### **Bank Risk Rating:**

The loan is presented as a pass credit with Hilltop Bank, based on historical cash flow, and existing management/industry experience. It was mentioned that the nature of the buyout is mainly real estate and increases the borrower's debt to equity significantly, but earnings and personal cash flow should remain strong.

## The net available balance in the Economic Development Fund is \$12,404,538.

#### **Recommendation:**

Staff recommends that the Board of Directors of the Wyoming Business Council approve the loan participation in the amount of three hundred sixty thousand dollars (\$360,000.00) as presented in this Credit Memorandum. This participation will be with Hilltop National Bank in Cheyenne, WY as the lead bank. The loan recipient will be Trophy Creative, LLC.

Respectfully submitted, John Wendling Loan Portfolio Manager

#### **Attachment 1 – Applicable Statute**

#### Attachment 1

#### § 9-12-304. Criteria for loans.

Any business may apply to the council for financing as defined in W.S. 9-12-301(a) (xii). "Succession Financing" means a provision of financing to be used to assist in the transition or succession of a business that has been in existence for not less than seven (7) years immediately before the transfer or succession to a new owner of the business.



## Business Ready Community (BRC) – Rules FINAL

#### Chapter 1

#### **GENERAL PROVISIONS**

**Section 1. Purpose.** The purpose of the program is to promote economic development through publicly owned infrastructure at the city, town, county, tribe and regional levels in order to improve economic health and a stronger state economy. These rules are adopted in order to implement W.S. 9-12-601 through 9-12-603, which provide for the making of grants and loans to eligible applicants for economic or educational development infrastructure. The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of awards, and a hearing process.

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

#### Section 3. Definitions.

(a) "Affixed equipment" means equipment that is fixed in position to a building or property as a permanent appendage or as a structural part of the building or property.

(b) "Applicant" means a county, incorporated city or town, joint powers board, or a cooperative tribal governing body who applies for funding under the Business Ready Community Grant and Loan Program (BRC).

(c) "Award recipient" means a county, incorporated city or town, joint powers board, or a cooperative tribal governing body who has been awarded funds under the BRC.

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

(e) "Cash match" means cash contributed to the total eligible project cost. Real estate owned by the Applicant or Community Development Organization may be used as a cash match if the property in question was not purchased with or developed through the use of BRC funds and the value of the real estate is supported by an appraisal. Engineering and design work completed within six months of the date a project application is received by the Wyoming Business Council may also be counted as cash match at the discretion of the Council staff.

(f) "Category One Applicants" means those municipalities with a population greater than 1,300.

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

(h) "Community Development Organization" means a business entity organized to provide services as an agent of the Applicant for the exclusive mission of helping to develop and support economic development within a specified town, city, county or region by providing

necessary resources and assistance.

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

(j) "Council staff" means the staff of the Wyoming Business Council assigned to administer the BRC.

(k) "Economic development" means creating additional economic health and a stronger state economy.

(l) "Eligible project costs" means total project costs, less ineligible project costs. Eligible project costs for infrastructure projects include affixed equipment and other permanent fixtures.

(m) "Gross Wages" means employee wages before taxes but does not include employer match or employer-provided benefits.

(n) "Ineligible project costs" means project costs that are not eligible for BRC funding and include appliances, movable equipment, furnishings and other features of the facility which are not physically attached or otherwise are depreciating assets, and any other items identified by Council staff.

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

(i) Ineligible in-kind match sources include operations, maintenance, grant writing, grant administration and other as determined by Council staff.

(p) "Managed Data Center" means a center that has a primary purpose as the centralized repository for storage, management and dissemination of data and information for multiple businesses. This definition does not include spaces primarily for housing office computers, including individual workstations, servers associated with workstations, or small server rooms.

(q) "Median Wage" as used in these Rules is calculated as either the County Median Wage (if ninety percent (90%) or more of the project's expected employment is located in one county) or the State Median Wage (if less than ninety percent (90%) is located in one county). Additionally, the Median Wage of a project must also meet the State or National Industry

Average Wage for the industry from which employees will be hired, whichever is higher, to be considered "median wage."

(r) "Movable equipment" includes those items that are the functioning collection of machinery or devices for performing a mechanical, electrical or communications task that remain movable and not a structural part of the building and/or property.

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

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

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

(v) "Phased projects" means a project in which parts ("phases") are completed and fully functional before the entire project is built-out. Receipt of funding for a phased project does not guarantee additional funding for future phases.

(w) "Political subdivision" means a division of the state that exists primarily to discharge some function of local government.

(x) "Primary jobs" are jobs created or retained by a business(es) that provide(s) goods and services that are primarily exported out of the state, that gain market share from imports to the state, that meet an unmet need in the market area and result in the creation of new wealth or economic development. An additional consideration will be given for full-time equivalent (FTE) positions with wages at or above median and state industry average wage and which include benefits.

(y) "Revenue generating project" means real property developed with BRC grants or loans that can generate revenue from lease payments or the proceeds from the sale of real property.

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

#### Section 4. Eligible Applicants.

(a) Eligible Applicants as defined by W.S. 9-12-601(b) may apply for BRC funding. Two or more eligible Applicants may apply for a joint project via one application.

(b) The Council may enter into a cooperative agreement with the Eastern Shoshone Tribe, the Northern Arapaho Tribe, or the cooperative tribal governing body in order to promote the purpose of this program.

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

(d) An otherwise eligible Applicant that is past due on program reporting or revenue recapture payments to the Council shall be deemed ineligible until the Applicant brings itself into full compliance with existing reporting and payment obligations to the Council.

(i) Noncompliant Applicants shall be highlighted on program annual reporting to the Wyoming Legislature.

#### Section 5. Type of Projects.

(a) An infrastructure project is a project that funds the construction of physical structures and facilities including the purchase of land, buildings, facilities, telecommunications infrastructure, rights of way, airports, sewer and water projects, roads, landscaping, recreational and convention facilities and like expenditures. The Council may recommend, and the Board may approve, upon a finding of extraordinary circumstances, that a higher funding amount, a lower match amount, and/or a lower recapture amount to the BRC fund is consistent with the purpose of the BRC.

(i) A Business Committed Project is a project in which an Applicant has a business committed to start-up, expand, locate or retain jobs in the community. The Applicant must demonstrate that new primary jobs, at or above median wage and at the state industry average wage, will be created or retained by the business. The maximum grant amount per project is the amount remaining in the BRC account at the time of application submittal.

(ii) A Community Readiness Project is a project which has no specific business committed to expand or locate in a community. The community wants to build infrastructure to ready itself for new business development under a specific strategy or plan of action. The Applicant must demonstrate potential exists for creation of new primary jobs. The maximum grant amount per project is the amount remaining in the BRC account at the time of application submittal.

(iii) A Community Project is a project in which an Applicant wants to improve the community's aesthetic character or quality of life in order to make itself more attractive for business development or workforce attraction and/or retention under a specific strategy or plan of action. Landscaping and streetscaping enhancements must be located in commercial districts, sites of business activity or high visibility areas. Recreation, convention or cultural centers must have a draw greater than the jurisdictional boundaries of the Applicant. The maximum grant amount for Category 1 Applicants is five hundred thousand (\$500,000) per project and the maximum grant amount for Category 2 Applicants is seven hundred fifty thousand (\$750,000) per project. Funding in excess of the maximum grant amount may be applied for as a BRC loan.

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

(i) An Economic Development Plan assesses the economic capabilities of the community as a whole and identifies potential future economic development opportunities. The maximum award is one hundred thousand (\$100,000).

(ii) A Feasibility Study is a site-specific or industry-specific plan to determine the feasibility of a project to meet economic development objectives or remove barriers to economic development. The maximum award is fifty thousand (\$50,000).

#### Section 6. Eligible Activities.

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

(b) Grant and loan funds for infrastructure projects may not be used for the rehabilitation or expansion of existing infrastructure unless the Council determines the rehabilitation or expansion is necessary to meet the purpose of the program or that existing infrastructure was previously funded under the BRC program in a prior phase of a phased project.

(c) Grant and loan funds may not be used for salaries, wages, or contracts during the grant writing stage.

(d) Eligible projects shall clearly demonstrate how the outcome for each project will result in economic development.

#### Section 7. Ownership of Infrastructure.

(a) The infrastructure funded by this program shall be owned by the Applicant or an agent of the Applicant, such as a Community Development Organization, State Development Organization or political subdivision acting in the role of agent of the Applicant.

(b) Unless the project is owned by the Applicant, there shall be binding documentation signed by the owner of the project providing that, in the event of dissolution of the owner, the BRC-funded infrastructure shall revert to the sponsoring Applicant or a related city, town, county, joint powers board or tribe acting as agent of the Applicant. This requirement

may be satisfied by either specific language within articles of incorporation or a filing of the real estate record with the county of record.

(c) The infrastructure or facility constructed using BRC funds may be sold to a private entity without advertising the sale or calling for bids, provided that the award recipient:

(i) Makes a determination that the sale will benefit the economic development of the community, and

(ii) Holds the sale in accordance with W.S. 15-1-112(b) and any other applicable statute.

(d) If the owner of any infrastructure or facility built with BRC funds sells the infrastructure or facility to a private entity prior to the end of the project reporting requirements, the new owner shall fulfill the requirements of the grant agreement.

#### Section 8. Revenue Generating Projects.

(a) Revenue generated by the Applicant or an owner described in Section 7 of this Chapter must be recaptured at a negotiated rate commensurate with the public investment. Revenue recapture requirements may be satisfied via revenue recapture payments unless otherwise prohibited by applicable statues, rules, or regulations. All funds recaptured at the local level shall be placed in a segregated economic development account or separate line item within a budget.

(b) Revenue recaptured to the BRC fund must be no less than twenty-five percent (25%) of net revenue generated.

(c) Revenue paid to the BRC fund shall not exceed the original grant amount of the project.

(d) No more than fifty percent (50%) of local recapture may be used for operational expenses of the Applicant or the agent of the Applicant and must be matched dollar-for-dollar by local funds. The Council staff may, at its expense, conduct an audit of records of the agent for the Applicant.

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

(f) A property recording shall be filed on the property by the Applicant at the time of grant and/or loan agreement execution.

(g) Revenue generating projects may incur servicing fees, as set by the Council's servicing agent.

#### Section 9. Projects Involving a Private Developer.

(a) Projects involving a private developer shall demonstrate that adequate consideration exists by showing that the expected benefit to the State is at least as great as the BRC assistance. The analysis of whether adequate consideration exists may include whether the private developer is providing a match with its own funds, has secured a match with other non-state funds, and any capital expenditures the private developer intends to make connected to the project. Such projects shall include the repayment of BRC funds as described in Section 8 and meet at least one of the following three criteria:

- (i) Direct, permanent jobs created as a result of the project;
- (ii) Projected tax benefits;

(iii) Donation of real estate that is not otherwise necessary for the project to the Applicant or an agent of the Applicant. The value of all real estate donations must be verified by a certified appraisal or market analysis as determined by Council staff.

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

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

(i) To inform the public and gather information, any public hearing shall

at a minimum:

(A) Identify the economic development opportunity or

opportunities;

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

(C) Be advertised with a comprehensive description of the

proposed project;

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

(E) Conduct specific outreach to any affected industry or industries and any competitors within that industry.

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

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

#### Section 11. Application Procedures.

(a) The Applicant must schedule a consultation with a Wyoming Business Council Regional Director to discuss the project at least one month prior to project submission.

(i) Final draft applications and final draft application materials must be provided to the Regional Director no less than two weeks prior to submission.

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

(i) Council staff shall utilize a scoring matrix to evaluate a grant and/or loan application.

(ii) Each Applicant shall submit the required application form and any supplemental documentation required by Council staff.

(iii) An Applicant shall demonstrate satisfactory performance under previous grants and/or loans awarded through this program.

(b) Incomplete or ineligible applications will be sent back to the Applicant for resubmittal at the next eligible application cycle. If Council staff determine that an application is incomplete or ineligible, the Applicant shall be provided an explanation of the Council staff's findings and recommendations.

(c) The Council staff shall provide statewide notice of Council and Board meetings at which BRC applications will be discussed.

(d) The Council staff shall provide the Council with a summary of each application and a recommendation as to that application.

(e) The Council shall perform a roll-call vote on all BRC projects.

(f) The Council staff shall provide the Board with a summary of each application including the Council's recommendation.

#### Section 12. Allocation Plan and Funding Cycles.

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

(b) Applications will be accepted according to an annual deadline schedule posted on the Wyoming Business Council website.

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

Community Readiness	One per calendar year
Community Project	One per calendar year
Planning	One per calendar year

#### Section 13. Grant Match Requirements.

(a) The required match percentages by category, as defined in Section 3 of this Chapter, will be posted on the Wyoming Business Council website.

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

(ii) In the event the Applicant is a joint powers board, the project's location will determine its categorization.

- (b) The total required match is based on total eligible project costs.
- (c) Half of required match must be cash sources.
- (d) BRC loans do not require a match.
- (e) A BRC loan can be used to satisfy the grant match requirement.

(f) A grant for a planning project shall require a minimum match of twenty-five percent (25%) of total eligible project activities.

(g) For Business Committed applications, the committed business must contribute to the project in at least one of the following ways:

- (i) Contribute to the eligible cash match;
- (ii) Contribute to the ineligible project costs; or
- (iii) Contribute other investments into the project.

## Section 14. Fund Disbursement, Project Monitoring, Performance Measures and Revenue Recapture Reporting.

(a) Procurement Standards. Applicants must follow state procurement regulations for cities and towns and the Wyoming Preference Act. If a non-municipal Applicant has a procurement policy, Council staff or qualified consultants reserve the right to review that policy prior to fund disbursements and to disburse funds in accordance with that policy to the extent it is consistent with State law.

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

(i) The progress reports described in Section 14(d) of this Chapter must be up to date prior to approval of a request for fund disbursement.

(c) Fund Reversion.

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

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

(iii) For projects that have not been started within one (1) year: Council staff shall notify an award recipient of a pending expiration prior to the one-year anniversary of the grant/loan approval. The award recipient may submit a written request to continue the project. Council staff may request new or updated information and documentation. Council staff may recommend and the Council may grant an extension of time in which to start or terminate the

project.

(iv) For projects with contingencies, Applicant must provide a quarterly update on the status of any project contingency. The award recipient has the option to submit a new application or may request an extension or modification of the contingency terms through the Council staff. Council staff may recommend and the Council may grant an extension of time or grant a modification to the contingency terms.

(d) Construction Monitoring.

(i) Reports. Within fifteen (15) calendar days of the conclusion of each calendar quarter during the term of the award contract, the Applicant shall provide Council staff with a progress report. Each progress report shall set forth, in narrative form, the work accomplished under the grant, loan, or grant and loan during the quarter and shall include a financial status report.

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

(iii) At the end of the construction period, the Applicant shall provide Council staff a comprehensive report of the project and a cumulative financial statement that reflects the total fund expenditure pursuant to the award contract.

(e) Project Evaluation.

(i) Reports. Once the construction period is complete, the Applicant shall submit annual reports for an additional five years to evaluate project outcomes against established measures on an annual basis. The Board may approve a longer reporting period on a finding that a longer reporting period would be beneficial to the State for the project. Council staff shall tailor reports to the specific nature of each grant or loan, in agreements between the Council and award recipient. This requirement shall transfer with the transfer of any ownership interest in the infrastructure or building constructed with BRC funds.

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

(iii) Project outcomes reported shall be substantiated by the Applicant.

(iv) At the end of the five-year reporting requirement or at the sale of the public asset (if applicable), the award recipient shall provide a comprehensive report to the Council staff in a format prescribed by the Council staff that is a cumulative financial and performance report of the project. This report shall, at a minimum, include:

(A) A detailed accounting of project expenditures that were paid for with BRC grant and/or loan funds;

(B) The match contributed and the source of the match monies;

(C) Recapture revenue(s) received, including an accounting of how recaptured revenues were or will be used, how recaptured revenue use complies with the rules of the BRC program and the project grant/loan agreement; and

(D) The accomplishments that resulted from the grant and/or loan. An authorized official of the award recipient shall certify, under penalty of false swearing, that the information in the report is true.

(v) The Council staff reserves the right to require the award recipient to request a BRC project audit be conducted by the director of the department of audit or his designee. The award recipient shall be responsible to pay the cost of this audit.

(vi) Record retention. Award recipients shall agree to retain all records related to the project for five (5) years following the Council staff's date of notice to award recipient of closeout of the grant.

## Section 15. Public Comments on Applications Submitted and Under Board Consideration for Funding Recommendations.

(a) Comments regarding any application submitted under this program may be offered by any interested party.

(b) Written comments shall be received by the Council staff no less than fourteen (14) calendar days prior to the public meeting at which the application is to be considered by the Council and:

(i) May be submitted using an online form to be prescribed by the Council staff;

(ii) May be submitted by email to the <u>wbc.public-comment@wyo.gov;</u>

or

(iii) May be submitted by mail or courier service as follows:

Wyoming Business Council Attn: Public Comment 214 West 15<sup>th</sup> Street Cheyenne, WY 82002

(c) Written comments submitted by any means other than those set forth in Subsection 15(b) of this Chapter shall not be considered.

(d) Prior to taking action on any application, the Council may accept oral comments during public session from any interested party. In accordance with W.S. 16-4-403(b), any party

wishing to offer oral comments shall notify the Council as set forth below. Such notification shall include:

- (i) The first and last name of the person offering comment; and
- (ii) The affiliation(s) of the person offering comment; and

(iii) If applicable for commenters participating virtually, the unique identifier (such as screen name or user name) of the person offering comment such that the Council can identify the person offering comment and enable them to speak.

(e) Notwithstanding Subsection 15(d) of this Chapter, the Council reserves its right to forego public comments during any meeting of the Council or to otherwise impose reasonable limitations, such as limitations on comment length, on any comment period.

**Section 16.** Attorney General Opinions. No Business Committed grant shall be made without the written opinion of the Attorney General as to the legality of the grant.
### Chapter 3

#### **BUSINESS READY COMMUNITY LOAN INFORMATION**

**Section 1. Authority.** Rulemaking for this program is the responsibility of the Wyoming Business Council as authorized by W.S. 9-12-104(a)(iv) and W.S. 9-12- 601.

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

#### Section 3. Application Submittal Requirements.

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

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

(ii) If applicable, documentation of any environmental remediation or review requirements to be undertaken or that have been or will be undertaken at the expense of the Applicant. Council staff shall determine the level of environmental review required and, if after consultation with the Attorney General's Office, Council staff determine that further review or remediation is required, the Applicant shall undertake that review or remediation at its own expense;

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

(iv) If applicable, an Applicant shall include guarantees, letters of credit and any other proposed security for the loan;

- (v) A letter from the Applicant's attorney addressing the following in detail:
  - (A) The Applicant's authority to enter into the loan;
  - (B) The Applicant's current indebtedness and borrowing capacity;
  - (C) Whether or not the loan will require an election;
  - (D) The proposed method of repayment and identified revenue sources

for that repayment; and

(E) An affirmation that the Wyoming State Constitution debt provisions and all other applicable statutory duties of the Applicant shall be followed.

(vi) In order for the Council to determine the ability of the Applicant to repay a loan and to aid the Applicant's attorney in evaluating the legality of the proposed indebtedness, each Applicant shall provide:

(A) An annual budget for the preceding and current fiscal years; and

(B) A completed financial statement provided on a "General Financial Information" form provided by the Council staff, that includes, but is not limited to the following information:

fiscal years;

(I) Assessed valuation for the current and two (2) preceding

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

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

(IV) Sales and use tax imposed within the jurisdiction of the

Applicant; and

(V) A summary of the Applicant's total investments and cash balances for the three (3) preceding fiscal years.

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

**Section 4. Maximum Loan Amount.** The maximum loan amount is five million dollars (\$5,000,000) per application.

Section 5. Interest Rate and Term.

(a) A Business Ready Community Loan shall be made at the following interest rates as recommended by the Council and established by the Board and reflective of market rates.

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

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

(iii) Loans may have a one-time servicing fee of one-half of one percent

(0.5%) not to exceed five thousand dollars (\$5,000) and will be serviced through a third-party contract.

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

(v) The term of the loan shall be based upon the useful life of the asset not to exceed thirty (30) years.

### Section 6. Security Interest.

(a) A loan shall be adequately collateralized as recommended by the Council and determined by the Board. The Council may recommend, and the Board may require a first position security interest in the revenue generating facility and the related user fees or assessments. Other security may be required as determined by the Council and approved by the Board. A borrower shall be required to maintain adequate insurance on the proposed infrastructure, pay applicable taxes and assessments when due and maintain the infrastructure in good condition. An Applicant shall be required to provide a complete appraisal of the collateral. The Council reserves the right to review and accept the appraisal or to hire a third party to perform an appraisal at the cost of the Applicant. An appraisal may be waived in the event Council staff determine the project has sufficient equity coverage without considering the value of the collateral.

(b) Loans may be made as non-recourse loans. If the borrower defaults, the Council may seize collateral in line with the terms of the loan agreement, but shall not seek any further compensation from the borrower except as contemplated in the loan agreement.

**Section 7.** Election Determination. No funds shall be disbursed to an Applicant unless the Applicant provides proof that an election approving the project and borrowing for the project by the qualified electors of the borrowing entity has occurred or is not required by law.

### Section 8. Loan Evaluation.

(a) In additional to Application Evaluation criteria in Chapter 1, Council staff shall evaluate a loan application utilizing the following criteria:

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

(ii) If applicable, whether the Applicant is current on repayment obligations to the BRC account or other state loan accounts on any other existing loans.

**Section 9.** Council Consideration. The Council shall consider each application; allow for comments from the public, the Applicant and the Council staff; and refer to the Board a recommendation including the amount of the loan, the term of the loan and the type of security

required to secure the loan.

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

#### Chapter 4

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

**Section 1. Authority.** Rulemaking for this program is the responsibility of the Wyoming Business Council as authorized by W.S. 9-12-104(a)(iv) and W.S. 9-12- 601.

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

(a) The maximum grant amount for a Managed Data Center Cost Reduction project is two million two hundred fifty thousand (\$2,250,000). The grant amount shall be determined by the business's match amount.

(b) The grant shall require a minimum private investment match that is at least one hundred twenty-five percent (125%) greater than the "Managed Data Center Cost Reduction" grant. No less than fifty percent (50%) of the match shall be calculated by the Gross Wages of those employees earning one hundred fifty percent (150%) of the median wage for all occupations in all industries within the county in which the project will take place and are at the state industry average wage. No more than fifty percent (50%) of the match shall be calculated by the grivate capital investments in taxable items. The following table shows three (3) examples of grant amounts and the required match. The match can be realized up to five (5) years.

Total Grant Amount		Percent of Minimum Consideration	um Required Match (Realized over 4		Comprised of Wages		Minimum Required Wages (100% of which are 150% above County Median)		Maximum Private Capital Investment in Taxable Items Allowable as Consideration	
\$	2,250,000	125%	\$	2,812,500	50%	\$	1,406,250	\$	1,406,250	
\$	1,500,000	125%	\$	1,875,000	50%	\$	937,500	\$	937,500	
\$	750,000	125%	\$	937,500	50%	\$	468,750	\$	468,750	

#### Section 3. Eligible Project Activities.

(a) Grants for Managed Data Center Cost Reduction projects may be used for the reduction of the costs of electrical power, broadband or both for Managed Data Centers.

(b) The employees and those employees' gross wages, as defined in Chapter 1, Section 3, must be created positions.

#### Section 4. Fund Disbursement, Project Monitoring and Project Evaluation.

(a) Managed Data Center Cost Reduction projects are subject to all requirements listed in Chapter 1, Section 14 and the following:

(i) Funds shall only be disbursed for businesses that are in operation in the

jurisdiction of the Applicant. Funds may be disbursed over five (5) years if the Applicant achieves the match requirement. Annual grant disbursements may total no more than one-third (1/3) the total amount in addition to the unused balance available from previous grant years.

(ii) If the Council staff determines that a business participating in a Managed Data Center Cost Reduction project is not operating within one (1) year from the time the grant is approved, the grant will automatically expire. Based on information supplied by the award recipient, Council staff may grant an extension of time in which the business must start operations.

(iii) If the Council staff determines that five (5) years has elapsed since the commencement of operations of a business participating in a Managed Data Center Cost Reduction project and the match requirement has not been met, then the full or partial amount of grant disbursed to the Applicant may be reimbursed to the BRC account.

### Section 5. Application Procedures.

(a) Each Applicant under this Chapter shall follow the application requirements in Chapter 1.

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

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

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

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

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

(v) A written timeline for the business to become operational and a signed commitment to meet the milestones within that timeline;

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

(vii) If applicable, a signed lease agreement or memorandum committing the Applicant and business to follow the terms of lease agreement.

(c) Council staff shall utilize a scoring matrix to evaluate an application.

(d) At the Applicant's expense, Council staff may request a disinterested third party review the Applicant's business plan or examine other aspects of an application made under this Chapter. Selection of the disinterested third party is at the sole discretion of Council staff.



BUSINESS COUNCIL

Business Ready Communities (BRC) Grant & Loan Program

**Community Project Application** 

# SENIOR CENTER & LIBRARY EXPANSION

**Town of Guernsey** 

\$750,000 Grant Request \$486,880 Match Total Project Costs: \$1,236,880

wyomingbusiness.org

## **PROJECT OVERVIEW**

The Town of Guernsey requests a \$750,000 Community Project grant to add 2,500 square feet of space to the Guernsey Senior Center and the Guernsey Public Library. This additional space will enable the community to provide additional services in the areas of public health, mental health, veteran services, and public meeting space. In addition, this project will create a space within the library for job training, job exploration, and entrepreneurial endeavors.



The Senior Center currently has very limited space for existing public health services, and these services are often offered in a reading room located off the library that is not always private. Furthermore, the community also experiences a void in technology accessibility. This project has the potential to foster entrepreneurship, job exploration, and job training opportunities. Finally, this facility not only serves members of the Guernsey community, but also neighboring towns of Hartville, Wendover, and Lingle.



# **PROJECT EVALUATION**

## **COMMUNITY ENGAGEMENT**

This project aligns with the community's 2019 Comprehensive Plan by addressing the need for reliable high-speed internet, as well as retention by offering amenities that make life in a small community more attractive.

The project involves several community partners, including Platte County School District #2, the Guernsey Economic and Tourism Development Corporation, and the Veteran's Commission. The school district and the Veteran's Commission have both indicated they would use the facility for counseling services. John Bunning Transport also has indicated this project would be useful to them with trainings and skills development as they expand their operations in Guernsey.

The Town of Guernsey also has shared that there is potential to partner with Eastern Wyoming College (EWC) to offer non-credit and credit classes in Guernsey for entrepreneurs.

### **STAFF ANALYSIS**

- Several partnerships developed to ensure success.
- Community has committed more than the required level of matching funds.
- Potential for increased entrepreneurial activity in the area.
- Increased and improved access to public services (i.e. mental health, veteran, and counseling services, with the potential for afterschool programming).

## LOCAL MATCH IS 29% HIGHER THAN REQUIRED

JOB QUALITY Not applicable for this application

### COMPANY STRENGTH Not applicable for this application



# **PROJECT EVALUATION**

## STATE CONSIDERATIONS

This project aligns with the State's Economic Development Strategy by investing in downtowns, connectivity, and recreation to attract and retain skilled know-how and people. It also aligns by adding value to core industries via the improvement of technology and access to web-based training.

### **STAFF ANALYSIS**

- Potential to improve the quality of life by providing opportunities for those who want to be there.
- Project aligns with local plans and the State Economic Development Strategy.



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EST. 1998

## **PROJECT EVALUATION** SOURCES & USES

The Town of Guernsey has committed to provide the land, valued at \$66,880, plus \$300,000 cash for the project. The Guernsey Economic and Tourism Development Corporation also has committed \$120,000 to the project. This contribution is possible because of the development of the Guernsey Industrial Park and the sale and lease of lots in the park.

The Town is also contributing \$15,000 in ineligible project costs.

Finally, Platte County School District #2 has applied for a Wyoming Community Foundation technology grant in the amount of \$23,300.



Sources							
BRC Grant	\$	750,000					
Cash Match	\$	420,000					
In-Kind Match	\$	66,880					
Total Costs	\$	1,236,880					
BRC % of total eligible project costs		61%					
Local % of total eligible project costs		39%					
Uses							
Non-Construction							
Land	\$	66,880					
Architecture & Engineering Fees	\$	89,955					
Surveys, Tests, etc.	\$	10,000					
Project Inspection Fees	\$	5,000					
Site Work	\$	48,500					
Demolition and removal	\$	32,000					
Construction							
Electrical Systems	\$	94,452					
Mechanical, Plumbing, HVAC	\$	226,012					
Landscaping	\$	10,000					
Foundation and Structural Framing	\$	158,137					
Interior Finishes	\$	181,080					
Fire Protection	\$	105,792					
Exterior Doors & Windows	\$	96,628					
Contingencies	\$	112,444					
Total Uses	\$	1,236,880					



## **PROJECT RECOMMENDATION**

## CONSIDERATIONS

### COMPELLING

- Local match percentage is 29% higher than required.
- Several partnerships have been established and there is strong support from the local community.
- Community is willing and eager to build their capacity.

### CONCERNING

- Community is still developing local entrepreneurial ecosystem tools, resources, and services.
- Project has low potential to attract business or workforce.
- While the desirability of a community can be a barrier to economic growth, there is little evidence it is the barrier for Guernsey.
  - Staff suggests community look at updating its Economic Development Plan and/or work with their WBC Regional Director to determine actual barriers to growth.





## BRC Guernsey Senior Center & Library Expansion – Letters of Support



Platte County Public Health 718 9<sup>th</sup> Street, Coleman Building Wheatland, Wyoming 82201 Phone: (307) 322-2540 Fax: (307) 322-2846 pnhwheatland@wyo.gov

July 17, 2024

Town of Guernsey

81 W Whalen St

Guernsey, WY 82214

To whom it may concern:

It is my pleasure to write a letter in support of Services for Seniors, Guernsey Center and their pursuit to expand the current center. Platte County continues to be an overall impoverished county. Not only do our local governments have very little "extra" in the budgets to provide direct assistance to those that are in need, but many local families struggle to make ends meet. All too often, this type of deficiency adversely affects our vulnerable senior population. The center in Guernsey provides vital and necessary services to those residents of Platte County.

Platte County Public Health offers many different services to the clients of the Senior Center located in Guernsey. These include referrals to support families, resources (chronic disease management, caregiver support, monthly education), as well as hands on direct care services (blood pressures, nail care, etc.). Many of the activities must be conducted in other parts of the building or in areas where others can potentially overhear private medical/confidential information.

Expanding the current center will help to enhance the opportunity for Public Health staff and other medical professionals to provide the necessary services in a safe and confidential manner that is not accessible at the current center. The facility has a need for private consultation areas and increased office space to facilitate these needs. I am fully aware of the needs and growth of our senior population. In the current facility there is lack of space which inhibits our ability to implement new programs that best assist this vulnerable population. I fully support the endeavors of the committee to move forward and expand the senior center.

Should you need anything further from me, please do not hesitate to reach out.

Sincerely,

Penny Simonton, BSN, RN

County Nurse Manager

Platte County Public Health



Services for Seniors, Inc. Serving the Senior Community of Platte County With Senior Centers in: Wheatland, WY • Guernsey, WY • Glendo, WY • Chugwater, WY 1605 16<sup>th</sup> St. 100 S. Wyoming 206 S. Warren Main & Clay

July 23, 2024

To Whom It May Concern,

I am writing this letter in regards to the grant for a new building for the Guernsey Senior Center.

The Guernsey Senior Center does not only provide services to the 60 and over community, but also a place to provide services to the entire town. We have a mental health counselor that comes in twice a week and uses our only spare room. She sees patients that live in Guernsey and a couple from Wheatland as well. She would like to be able to use the room more often, but due to the room being shared between the library and senior center she is unable to.

We also provide classes to the community for diabetes, all adults are welcome, and provides education and awareness on everything that pertains to diabetes and how to handle the disease. The room is also used by TOPS, which is a weight loss group, and AA. It's nice to have a room that is accessible to all in the community, but we could use more space so that we are able to provide more services to everyone.

Beyond the room we have more issues that need to be addressed. Currently we only have two bathrooms one for each gender. Unfortunately, the bathrooms are extremely small and for those in wheelchairs and scooters they are inaccessible. Anyone using any type of wheelchair must park their chair outside of the bathroom and walk in. Many people have quit coming to the center as they are unable to walk even a short distance to the bathroom. We need to have ADA compliant bathrooms as the Department of Agriculture requires them.

One more thing we need to have installed is a janitors closet with drain. Currently all mop water is disposed of into the drain in the kitchen. We have been told by the Health Inspector that we need to have a disposal area separate from the kitchen, but she understands that we do not have the money or space to put one in. Unfortunately, she will be retiring soon and will be replaced. We are unsure if the new inspector will be as understanding as she has been.

I appreciate your time in considering us for the grant money. If you have any questions, please feel free to contact me.

Sincerely, Mistina Smith

Site Manager Guernsey Senior Center 307-836-2777 Guernsey@servicesforseniorspc.org



13 August 2024

Dear Grant Committee,

The Wyoming Army National Guard along with Camp Guernsey Garrison Training Center has a long history of partnering with the Town of Guernsey. Our service members, military retirees, employees, and their families all live and work within this great community. One of our top priorities is to build strong, valuable, and sustainable relationships that contribute to an improved quality of life in the Town of Guernsey. The planned improvements to the Guernsey Library and Senior Center will support community care, educational resources, and provide a meeting forum within our community.

The Guernsey Library has supported military retirees by providing a meeting space for the Wyoming Veteran's Commission. Library space is very limited, and so we appreciate the library creatively arranging schedules so that they can accommodate Veteran Support Services. The Camp Guernsey's Firefighters support literacy programs in the community by reading books to children. Expanding this space and improving its capabilities will ensure more families can participate in programs which the library offers.

Enhancing the Senior Center's capabilities gives support and assistance to retired military, current services members, and employee's families through the programs provided for their elderly family members. While caring for a parent, spouse, or family member can be difficult, the Senior Center's services help to provide support and care that are essential for a healthy workforce and community.

We cannot thank the Guernsey Library and Senior Center enough for their dedication to our community. The Wyoming Army National Guard and Camp Guernsey Garrison Training Center Leadership supports this project and appreciates your full consideration for the grant.

Sincerely,

ales.

Mr. Rob Cain Camp Guernsey Base Operations Manager



## Wyoming Veterans Commission Wyoming Military Department

5410 Bishop Blvd, Cheyenne, WY 82009 Phone: 307-777-8152 Fax: 307-777-8150 Toll-Free Veteran's Hotline 1-800-833-5987

July 31, 2024

Mr. Ed Delgado

Mayor

Guernsey, Wyoming

Dear Mr. Mayor,

The Wyoming Veterans Commission wishes to thank you for the use of space in your Senior Center for our Veteran Service Officer to conduct appointments with Veterans. We understand there is an effort to create more office like spaces in the Senior Center. We strongly support this effort and would love to use such space for these important appointments.

Thanks again,

Tim sheppard

Executive Director Wyoming Veterans Commission PETROLEUM, OILFIELD, MOLTEN SULFUR, ACID HEAVY HAULING GENERAL COMMODITIES



307-362-3791 Fax 307-362-9040 1-800-443-2753

P. O. BOX 128, ROCK SPRINGS, WYOMING 82902-0128

Mayor Delgado and the Town of Guernsey;

I am writing this letter in support of the proposed library improvements and the grant to finance them. Increased technological resources, including access to high speed internet will be a boon to the community and will be a useful tool for not only our company but our individual employees as well.

As a company who strives to stay up on the most current trends in safety and efficiency, a space where we can hold webinars, group trainings and individual consultations would be a very desirable addition to the library and an asset to the area. Too often our abilities to communicate with customers and trainers are limited by spotty internet speeds and a lack of up to date tools. A local space where those things are available will ensure that we can stay up to date with our customers and vendors.

I am also in support of anything that makes Guernsey a more desirable place to relocate than it already is. Libraries are community hubs that make great towns even better. A library with the latest and greatest technological tools adds a level of connectedness to resources that are only available in larger communities and makes small towns feel a little less remote. All of that adds up to a place that is easy to recruit new hires to, and a place where current employees want to stay.

I would be in support of any upgrades to the library no matter how they were paid for but if grant money is available that seems like a "no-brainer". Improving access to resources such as these while bettering a community space is an investment in the future and one that I, and John Bunning Transfer Company wholeheartedly support.

Thank you for your time and dedication to this community.

Andy Fletcher President John Bunning Transfer Company, Inc.



July 15, 2024

Platte County Library Board 904 9<sup>th</sup> St Wheatland, WY 82201

Town of Guernsey 81 W. Whalen St. Guernsey, WY 82214

Town of Guernsey:

This letter is in support of the grant for the Guernsey community library. The changes made with the grant funds would be substantial. It would allow the community better access to technology for job training, Webinars, current job training and access to job opportunities in the area.

The technology changes would also be an excellent source of information on new jobs and the training needed to be ready for these jobs. This system is proven to be working in the other branches of the county library system, and it would be a great service for the Guernsey community.

Additional space and technology in the Guernsey library would also provide a positive, healthy space for kids to learn and grow. With the additional technology, kids would be able to use this resource for school projects and research. The possibilities are truly endless with additional space and technology for the entire community.

Platte County operates on an extremely slim budget and every year the funds are less. The Platte County Library Board must be very careful with library funds, so this expansion of the Guernsey library, and the services it will be able to provide, is an incredible opportunity we could only dream of previously. As a Board, we will do anything we can to help make this a reality. Thank you for your consideration. We look forward to hearing from you!

Platte County Library Board

Shirley Shockley Christine Harmon Peggy Ervin

Reggyk



PLATTE COUNTY CHAMBER OF COMMERCE 65 16<sup>th</sup> Street Wheatland, WY 82201 307-322-2322 phone 307-322-3419 fax

July 29, 2024

To Whom It May Concern,

The Platte County Chamber of Commerce is delighted to express our enthusiastic support for the proposed remodel of the Guernsey Library and Senior Center. Nestled in the heart of our charming town of Guernsey, Wyoming, this vital community hub serves as a cornerstone for our population of approximately 1,200 residents. The proposed remodel is a visionary project that promises to bring renewed energy and essential resources to our beloved town.

Guernsey is characterized by its tight-knit community and its rich history, where neighbors support each other and work together for the common good. One-third of Platte County's population is over the age of 65, underscoring the importance of providing our senior citizens with a welcoming, accessible, and well-equipped space. The Guernsey Library and Senior Center is more than just a building; it is a lifeline for our elderly residents, offering a place for social interaction, lifelong learning, and meaningful engagement. A remodel will significantly enhance the quality of life for our seniors, ensuring they have a safe and inviting environment to enjoy.

Furthermore, the remodel will create an invaluable meeting place for our local businesses and individuals. In a small town like Guernsey, the availability of versatile, modern meeting spaces is crucial for fostering economic growth and community collaboration. The remodeled facility will provide an ideal venue for meetings, workshops, and events, enabling local businesses to thrive and community groups to flourish. This project will undoubtedly contribute to the economic vitality and social cohesion of Guernsey.

Additionally, our children are the future of Guernsey, and it is our collective responsibility to provide them with safe, conducive environments for learning and growth. The Guernsey Library has always been a beacon of educational support, offering a treasure trove of resources and programs that inspire curiosity and a love for learning. A renovated library will offer an enhanced atmosphere for study, reading, and educational activities, fostering an environment where our youth can excel academically and personally.

The remodel of the Guernsey Library and Senior Center is not just a renovation; it is an investment in the future of our community. It symbolizes our commitment to supporting our seniors, empowering our businesses, and nurturing the educational development of our children.

"A Community of Good Neighbors"

We believe this project will have a profound and lasting positive impact on Guernsey and the greater Platte County community.

We strongly urge you to support this transformative project. Together, we can ensure that the Guernsey Library and Senior Center continues to serve as a vibrant and essential resource for all members of our community.

Thank you for your consideration.

Warm regards,

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Shawna Reichert CEO, Platte County Chamber of Commerce



### Platte County School District No. 2

555 South Wyoming

P.O. Box 189 • Guernsey, Wyoming 82214

877-202-1020 Fax (307) 293-8040

July 15, 2024

To: Mr. Bruce Heimbuck

RE: Letter of Support for Platte County Library Expansion Project

I am writing to express our strong support for the proposed funding to expand the Platte County Library - Guernsey Branch. As the Superintendent of Platte County School District #2 as well as a community member, I know the essential role our community library serves in supporting and enriching the lives of students and residents of all ages and backgrounds within our community. As a young child growing up in the community of Guernsey, I spent numerous hours in our public library and the positive influence of our community librarian had a lasting impact on me as a student, educator, local, district and state education leader.

While the project expansion will enhance the current building space and structure, it's not just a project that will increase space, this project serves as an investment in the future of our community.

Our community library is a strong partner with Platte County School District #2 - offering early literacy groups for our early learners and families, provides resources to our students during the summer and after school hours, and with additional resources and space could serve as a space for potential off- site learning and collaboration with students, staff other educational community resources.

Investing in our public library is an investment in the success and well-being of our community. The benefits of a well-funded, modern library with updated resources and space, will leave an impact for generations to come, as it supports the education, economic development, and social growth for our community.

Thank you for the opportunity to share my support for this innovative and so needed project. I look forward to seeing our library grow and continue to change the lives of our community members!

My Best

Lisa Weigel, Superintendent Platte County School District #2 Guernsey, WY 82214

The State of Wyoming provides Hathaway Merit and Need Scholarships to Wyoming students attending the University of Wyoming and Wyoming community colleges. Every Wyoming student who meets the merit requirements can earn a Hathaway Merit Scholarship. Contact your school counselor for more information and Experimentation of 209

PO Box 52 Lingle, WY 82223 Phone: (307) 575-5788



148 Reid Avenue Lingle, WY 82223 Phone: (307) 575-5788

## **Restoring Oaks Counseling**

Cynthia L. Winget, MA LPC

August 27, 2024

Mayor Ed Delgado Town of Guernsey 81 West Whalen Street Guernsey, WY 82214

Dear Mayor Delgado:

It's with pleasure I write this letter in support of the grant for construction of an addition to the senior center and library. I have utilized the reading room at the center for ten years. It has been a privilege to provide counseling services to your community. Clients have ranged from preschool to adults.

The only draw-back to the room is the privacy. There are too many doors into the room and I cannot fully guarantee privacy for my clients. Having a room with full privacy would allow emotional safety.

Thank you for considering this matter. If you have any additional questions, please let me know.

Sincerely,

Cynthia L. Winget, MA LPC

Guernsey Economic and Tourism Development Corp PO Box 856 Guernsey, WY 82214

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

September 10, 2024

To Wyoming Business Council,

The Guernsey Economic and Tourism Development Corporation (GETDC) understands that a grant request is being sought by the Town of Guernsey to expand our current Library/Senior Center building in Guernsey. Our organization is in full support of this project, even committing our own financial resources as a part of the "matching funds" in the proposal. There are three main reasons why this project is in-line with our own organization's purpose and values: this added space will improve the quality-of-life of our residents, increased short-term and permanent jobs will be created, and the new area can allow for temporary business space.

The current space being utilized as both the Senior Center and Guernsey Library is no longer adequate to meet the needs of our residents. Both entities are certainly being utilized despite the lack of size and out-dated amenities, but the usage would increase greatly with updated technology and simply more space. Guernsey lacks "gathering" space and this project would help with that. The expanded opportunities that a larger, better technology equipped library could provide our residents would be an enormous boost to the quality-of-life for our residents.

Guernsey would welcome the increased jobs that would be created if this project is awarded to our community. The actual construction creates short-term jobs, which gives a boost to an economy of our size, as well as exposing the construction company and workers to Guernsey. We have found that employees of companies doing work in Guernsey are more likely to return to the community as tourists, and sometimes as full-time residents. There could also be some increase in permanent employment based upon this project, as both the Senior Center and Llbrary could look to increase the amount of time they are open and increase the number of offerings to the community.

Lastly, this project would allow usable space for businesses, especially home-based and remote workers. With the increase of people "working from home," the need for temporary public office space has increased. Whether it's to participate in Zoom meetings, conduct an in-person interview, or host a small gathering, having public space paired with at-home settings is a very cost-efficient way to operate a business in today's business climate.

As your organization considers the many great applications for this round of grant awards, GETDC believes that this project in Guernsey is a very worthy choice. The quality-of-life and

economic impact that a project of this nature would have on our community is unmatched, especially in terms of the additional technology opportunities potentially available for our residents.

Thank you for your consideration of this grant proposal.

Sincerely,

Craig Frederick

President of the Guernsey Economic and Tourism Development Corporation

To whom it may concern 2024

I am writing in support of improvements at the Platte County Branch Library in Guernsey.

As the past Guernsey Sunrise School Librarian for 38 years, and volunteer at the Public Library for the past 10 years, I have worked with Guernsey children and teens for almost 50 years. As a school librarian, I taught library skills, read to students, taught and helped with research in both elementary and High School, and purchased, book-talked, and suggesting reading materials K-12. My primary focus at the public library has been story and craft times with preschoolers, home-schoolers, and elementary Summer Library programs. In addition, I personally use the library for reading and book club.

During the years I have used the Guernsey library, I have often noted the attempts to accommodate all of the various activities necessary in a good library. In a very small space, different librarians have tried to fit in all the materials for checkout: books, videos, and magazines. Spaces must be available for reading and work space for adults and children. Technology is a requirement, both the space for computers and the equipment and infrastructure. And workspace and storage for the librarian is a necessity. These librarians have tried a variety of arrangements to make the space useable and attractive.

A library should be a welcoming space. Patrons, both adult and child, should be able to walk in and feel they are part of the library. The staff is a huge part of this atmosphere but the space itself is as well. Open space, room between shelves (ADA requirements), quiet work space, and sufficient materials and open hours are necessary to any library.

Numerous Guernsey adults use the library for reading....both in the library and to check out. They need a variety of materials, both current and historical. Many of these patrons are unable to purchase books or do not have computers/internet at home. They depend on the library for this service in the current technological world. Without access, both in time, equipment, and materials, they are at a disadvantage, both personally and professionally. Studies have shown how important books and reading are to children. Some parents are unable to provide this at home and additional social reading at a library is also advantageous to those children who do have books at home and/or parents who read For school age children and teens, access to a library outside of school can make a difference in their education and social growth.

To sum up, I feel improvements in the Guernsey Branch Library would be advantageous to a high percentage of the population of Guernsey, as well as visitors to our town. Staffing, hours, materials, space, and infrastructure could all be increased/improved. I hope that a way can be found to make these improvements.

Sally Mack

PO Box 532, Guernsey Wyoming 307-836-2180, sshambaugh22@yahoo.com



3200 West C Street • Torrington, WY 82240 307.532.8200 • 866.327.8996 307.532.8229 Fax • ewc.wy.edu

Greetings and Support from Eastern Wyoming College,

On behalf of Eastern Wyoming College (EWC), I am writing to express our strong support for the Town of Guernsey's initiative to expand services in their community. We believe this project will play a vital role in providing essential services and support to residents throughout the surrounding area.

EWC is eager to partner with this endeavor. We are committed and see that there will be the opportunity to collaborate on areas such as, business development, entrepreneurial skills, IT courses, career planning, and VA outreach services. Moreover, we are enthusiastic about supporting the development of a technology training space in the local library. This space will serve as a valuable resource for entrepreneurs and businesses, providing access to training, job opportunities, and high-speed internet as outlined in the Town of Guernsey Comprehensive Plan.

We understand that reliable high-speed internet is crucial for fostering entrepreneurial growth, and we fully support the efforts to rewire the building to enable even faster internet as it becomes available. By working together, we can create a well-equipped library that serves as a hub for workforce training and economic development, benefiting both current and future businesses. This partnership will help us build a stronger economic base in Guernsey and provide valuable support to entrepreneurs and their families, helping to retain the workforce in a vital part of the EWC service area.

We look forward to continuing our partnership with the residents of Guernsey and working together to meet the needs of our local community.

Please feel free to contact me if there are any specific areas where we can provide additional support.

Warm regards,

John A. Hansen Vice President of Student and Academic Services Eastern Wyoming College