



PROPOSED CHANGES TO THE BUSINESS READY COMMUNITY (BRC) PROGRAM RULES

Existing BRC Rules are being repealed. Below, only the proposed rules are shown.

CHAPTER 1 GENERAL PROVISIONS

Section 1. Purpose. The purpose of the program is to promote economic development in order to grow resilient communities that can identify and solve barriers to economic growth 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 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 Building Resilient Communities 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) “Barrier to growth” is a factor or factor(s) verified by data that limit a region from experiencing economic growth and contributing to a stronger state economy.

- (e) “Block grant” means pre-approved funding offering a fixed amount of grant funding during a specific timeframe for a specific purpose, and typically smaller amounts.
- (f) “Board” means the Wyoming State Loan and Investment Board.
- (g) “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 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.
- (h) “Committed business” means a business that is committed to start-up, expand, locate and/or retain jobs in the community. A project with a committed business 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 committed business.
- (i) “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.
- (j) “Council” means the Wyoming Business Council Board of Directors.
- (k) “Council staff” means the staff of the Wyoming Business Council assigned to administer the BRC.
- (l) “Economic development” means creating economic growth and a stronger state economy.
- (m) “Eligible project costs” means total project costs, less ineligible project costs. Eligible project costs for infrastructure projects include affixed equipment and other permanent fixtures.
- (n) “Gross Wages” means employee wages before taxes, but does not include employer match or employer-provided benefits.
- (o) “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.
- (p) “In-kind match” means a contribution with value and applicable to the period to which the matching requirement applies that is 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 an appraisal set by an independent appraiser.

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

(ii) Real estate purchased with or developed through the use of BRC funds is ineligible for consideration as part of the minimum required match. Such real estate may be considered as part of the project's match once the minimum required match is met.

(q) "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.

(r) "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%) of the project's expected employment is located in one county. Additionally, the Median Wage of a project must also meet the State or National Average Wage for the industry from which employees will be hired, whichever is higher, to be considered "median wage."

(s) "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.

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

(u) "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.

(v) "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.

(w) "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.

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

(y) “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 Wage.

(z) “Revenue generating project” means real property developed with BRC funds that can generate revenue from lease payments or the proceeds from the sale of real property.

(aa) “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.

(e) An otherwise eligible Applicant that is delinquent on any outstanding previous BRC debts shall be deemed ineligible until the delinquent debt payments are made current.

Section 5. Type of Projects.

(a) An infrastructure project is a project that funds the construction of physical structures and facilities that contribute to solving a barrier to growth, with or without

the involvement of a committed business. Upon a specific finding of extraordinary circumstances, the Council may recommend, and the Board may approve, a lower match amount and/or a lower recapture amount to the BRC account, provided that such an adjustment is consistent with the purpose of the BRC. The maximum grant and/or loan amount per project is the amount remaining in the BRC account at the time of application submittal.

(b) A planning project is a project in which an Applicant develops a community strategic planning process and the resulting plan which contributes to addressing or identifying a barrier to growth or multiple barriers to growth. The maximum award is one hundred thousand dollars (\$100,000). Specific examples of plans and strategic planning processes will be posted on the Wyoming Business Council website. Planning projects will be awarded through a block grant process. Council staff shall update Council and Board, at their next regularly scheduled meeting, on awarded block grants.

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 (unless a new position is created for these purposes), travel costs for anyone other than the planning consultant(s), or reproduction of any promotional materials, and must address barriers to growth.

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

(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 Applicant's investment. Revenue recapture requirements may be satisfied via revenue recapture payments unless otherwise prohibited by applicable statutes, 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 and up to one hundred percent (100%).

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

(d) No more than fifty percent (50%) of local recapture may be used for operational expenses, majority for personnel expenses, of the Applicant or the agent of the Applicant, and must be matched dollar-for-dollar by local funds. Not less than twenty-five percent (25%) of local recapture shall be used for the next revenue-generating project. 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 a servicing fee due and owing to the Council, as set by the Council's servicing agent.

Section 9. Projects Involving a Private Developer.

(a) Projects involving a private developer shall demonstrate that economic impact exists by showing that the expected benefit to the State is at least as great as the BRC assistance. The analysis of whether economic impact 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.

(a) An Applicant is required to inform and educate the public and business community to the greatest extent possible about the proposed economic development project (including, but not limited to the economic development opportunity, possible funding sources, and alternative solutions) utilizing a variety of techniques and media. The Applicant must make 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) Highlight the identified barrier to growth;

(B) Identify the economic development opportunity or opportunities;

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

(D) Be advertised with a comprehensive description of the proposed project;

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

(F) 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. Each application shall address the barrier(s) to growth, and evidence shall be provided to Council staff at time of submittal.

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

(c) 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.

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

(e) The Applicant, except in the case of planning applications, shall provide the Council staff and Council with a summary document and presentation of each application and present it at all required public meetings, including those of the Board.

(i) The Council staff shall provide the Council with an analysis and recommendation as to that application.

(ii) Approval of planning applications through the Block Grant process shall be determined by Council staff in accordance with the terms of any Block Grant amount previously approved by the Council and the Board.

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

(g) The Applicant, except in the case of planning applications, shall provide the Board with a summary document and presentation of each application and present it at all required public meetings, including those of the Board. The Council staff shall provide the Board with an analysis and recommendation as to that application.

Section 12. Allocation Plan and Funding Cycles.

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

(i) Applications involving a committed business shall be accepted no later than seven (7) weeks prior to the next Council meeting.

(b) BRC awards per Applicant are limited to one per calendar year, except for those applications involving a committed business.

Section 13. Grant Match Requirements.

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

(b) Half of the required match must be cash sources.

(c) BRC loans do not require a match.

(d) Fifty percent (50%) of a BRC loan may be used to satisfy the grant match requirement.

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

(i) Funds derived through personal property and fixtures purchased with, and real property, real property improvements, and infrastructure constructed as part of prior BRC projects are ineligible to be considered as part of the minimum required match. Such funds, personal property, fixtures, real property, real property improvements, and infrastructure may be considered as part of the project's match once the minimum required match is met.

(f) For applications involving a committed business, 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.

(g) BRC grants shall pay no more than 25% of pre-construction costs including engineering, design, and others, as determined by Council staff.

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.

(i) Funds shall be disbursed to the Applicant only as needed to discharge obligations incurred in accordance with Board-approved eligible project costs, or Council staff-approved eligible project costs for planning projects. Requests 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.

(ii) In the event Applicant has applied for a BRC Loan and a Grant in conjunction with the same project, Grant funds provided through the BRC shall not be disbursed until Applicant has demonstrated, to the satisfaction of Council staff, that eighty percent (80%) of the loan funds associated with the project have been expended. The Applicant shall provide Council staff with appropriate documentation and evidence of Loan fund utilization prior to the release of any Grant funds.

(iii) The progress reports, as defined 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 account.

(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 with necessary evidence, 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) Council staff may require award recipients to report to Council staff in person or virtually at Council staff's request.

(f) Project Evaluation.

(i) Reports. Once the construction period is complete, the Applicant shall submit annual reports for an additional minimum of five (5) years to evaluate project outcomes against established measures on an annual basis, as well as an assessment on progress on addressing barriers to growth, bringing quantitative and qualitative data to back the analysis. Projects involving a loan and/or revenue recapture shall

report to Council staff until the loan and/or revenue recapture requirements have been met. 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 apply to any subsequent owner of 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 to improve program performance, and support efforts to address barriers to growth. Evaluation results shall be available to other award recipients.

(iii) Project outcomes reported shall be substantiated by the Applicant with a combination of quantitative and qualitative evidence.

(iv) At the end of the 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, with a combination of quantitative and qualitative evidence. 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.

(g) Council staff may require award recipients to report to Council staff, Council, or Board in-person or virtually at Council staff's request.

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 wbc.public-comment@wyo.gov; or

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

Wyoming Business Council
Attn: Public Comment
214 West 15th 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 project involving a committed business or loan shall be made without the written opinion of the Attorney General as to the legality of the project.

CHAPTER 2 BUILDING RESILIENT COMMUNITIES 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 Building Resilient Communities (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 the 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:

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

(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. Interest Rate and Term.

(a) A BRC 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 5. 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 6. 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 7. Loan Evaluation.

(a) In addition 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.

(b) An otherwise eligible Applicant that is delinquent on previous debt payments will be deemed ineligible for a new loan or future project until the Applicant is made current on outstanding debt payments.

Section 8. 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 9. Subordination. Applicant agrees that a BRC Loan shall not be subordinate or junior in right of payment or security interest to any other indebtedness, whether now existing or hereafter incurred, without the prior written consent of the Council. Any attempt to subordinate the BRC Loan without such consent shall be null and void and may be considered as a default under Section 5(b) of this Chapter.

Section 10. Disbursement of Loan Proceeds. Funds shall be disbursed to the Applicant as described in Chapter 1, Section 14(b) of these Rules.

CHAPTER 3 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 committed 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 private capital investments in taxable items. The following table shows three (3) examples of grant amounts and the required match. The match can be realized up to five (5) years.

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 committed 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) of the total amount in addition to the unused balance available from previous grant years.

(ii) If the Council staff determines that a committed business participating in a Managed Data Center Cost Reduction project does not begin or ceases 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 committed business must start operations.

(iii) If the Council staff determines that five (5) years has elapsed since the commencement of operations of a committed 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 of 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.