

**BUSINESS READY COMMUNITY GRANT AND LOAN PROGRAM
LOAN AGREEMENT BETWEEN THE WYOMING BUSINESS COUNCIL AND
THE CITY OF GILLETTE**

1. **Parties.** The parties to this Loan Agreement are the State of Wyoming, by and through the Wyoming Business Council ("WBC"), whose address is 214 West 15th Street, Cheyenne, Wyoming 82002 and the City of Gillette, a political subdivision of the State of Wyoming ("Borrower"), whose address is 205 East 5th Street/ P.O. Box 3003, Gillette, WY 82717.

2. **Purpose of Loan Agreement.** The WBC shall provide Business Ready Community Grant and Loan Program ("BRC") Community Readiness and Special Assistance Loan funds to Borrower in the amount set forth in Section 4, and Borrower shall undertake and complete materials, projects and/or services (collectively, the "Project") described in Attachments A, B, C, D, and E attached hereto. Performance by Borrower of the requirements of this Loan Agreement ("Loan") and compliance with all BRC program rules and regulations is a condition to Borrower's receipt of monies hereunder.

3. **Term of Loan Agreement.** The Borrower shall repay the Loan in accordance with the Business Ready Community Promissory Note and as further described in Attachment B which is attached and made a part of this Loan Agreement. This Loan Agreement shall commence upon the date the last signature is affixed hereto. All construction services shall be completed by June 30, 2017. The term of repayment of the Loan is twenty (20) years at an interest rate of one percent (1%) per annum, and a loan fee of one-half of one percent (.5%).

4. **Disbursement of Loan Monies.** WBC agrees to loan monies to Borrower for performance of the Project, completed in accordance with the requirements of this Agreement and the BRC program. The total payment to Borrower under this Loan Agreement shall not exceed two million six hundred forty-five thousand forty-six dollars (\$2,645,046) ("Loan"). Payment will be made following Borrower's delivery to WBC of invoices detailing services performed in connection with the Project in a form satisfactory to WBC. Loan funds shall not be used for any services performed in connection with the Project prior to the date upon which the last required signature is affixed to this Loan Agreement.

5. **Responsibilities of Borrower Regarding the Project.** The Project to be undertaken is described in Attachment A which is attached and made a part of this Loan Agreement. The Borrower shall execute a Promissory Note to evidence its obligation to repay the Loan, and shall execute a Security Agreement to evidence its intention to be legally bound to the WBC. A copy of the Promissory Note, Attachment C, and Security Agreement, Attachment E, are attached hereto and hereby incorporated herein by reference.

6. **Loan Security.** The Loan shall be secured by an assignment and pledge of revenues by the Borrower to the WBC of all of the Borrower's right, title, and interest in and to revenues received by the Borrower. This assignment and pledge of revenues shall be in effect until the Loan has been repaid in full. A copy of the assignment and pledge of revenues, Attachment D, is attached to this Agreement and hereby incorporated herein by reference.

7. **Repayment.** The Borrower agrees to arrange for the repayment of the Loan in the event that the Business Ready Community Grant and Loan Program is invalidated by any Court.

8. **Responsibilities of WBC.** WBC will, at its discretion, assist in providing Borrower access to information, including without limitation providing Borrower with information concerning BRC program requirements, rules and other statutes and regulations referred to herein, and will cooperate with Borrower whenever possible. WBC shall have no obligations, other than those specifically set forth herein, regarding the Project or its performance.

9. **Servicing Agent.** WBC may contract with an independent party to act as a servicing agent for the BRC loans. WBC will notify Borrower of the servicing agent's name, address, and other contact information.

10. **Special Provisions.**

A. **Audit.** The Borrower agrees to an annual audit to assure all funds are used for the purposes for which the Loan has been made.

B. **Budget Transfer Limitation.** Borrower agrees it will not exceed any of the line item totals listed in Attachment B by more than twenty percent (20%) without prior approval from WBC. Such changes will not result in any change in the total Project costs, or a change in the Loan amount.

C. **Default and Remedies.** Failure by Borrower to meet the conditions of this Agreement shall entitle the Council to declare the whole of the unpaid balance of principal and accrued interest on the Promissory Note due and payable on demand.

D. **Monitor Activities.** The WBC shall have the right to monitor all Project related activities of the Borrower. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe personnel in every phase of performance of the Project.

E. **No Finder's Fees.** No finder's fee, employment agency fee, broker fee or other such fee related to this Loan Agreement shall be paid by either party.

F. **Non-Supplanting Certification.** Borrower hereby affirms that BRC loan funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose.

G. **Publicity.** Any publicity given to the Project or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Borrower, shall identify the Business Ready Community Grant and Loan Program as the funding program. Borrower shall advertise BRC funded property and/or buildings on WyomingSites.com, and will be responsible for updating information every ninety (90) days (required on all real estate and building Projects).

H. Procurement Requirements. Upon completion of construction of this Project, Borrower will be required to provide the WBC a letter from Borrower's attorney confirming:

(i) Borrower has followed all procurement standards have been followed as per W.S. § 15-1-113 and W.S. § 16-6-101 et. Seq.

(ii) Borrower has followed the Wyoming Preference Act (W.S. § 16-6-201 through 16-6-206).

I. Reporting. Within fifteen (15) calendar days at the conclusion of each calendar year during the Term of this Loan Agreement, Borrower shall furnish WBC with a written progress report. Each progress report shall set forth, in narrative form; the Project work accomplished under the Loan during the quarter and shall include a financial status report. At the end of the term, Borrower shall furnish WBC with a comprehensive report of the Project and accomplishments pursuant to the Loan. Borrower shall likewise furnish WBC with a cumulative financial statement, reflecting total expenditures pursuant to this Loan Agreement.

J. Retention of Records. Borrower agrees to retain all records related to the Project which are required to be retained pursuant to this Loan Agreement or the BRC program rules and regulations for 10 years following WBC's date of notice to Borrower of closeout of the Loan.

K. Certification and Constitutional Compliance. No loan will be executed without certification that the Borrower is in compliance with Article 16 Section 5 of the Wyoming Constitution and all other Wyoming constitutional and statutory requirements.

11. General Provisions

A. Amendments. Any changes, modifications, revisions or amendments to this Loan Agreement which are mutually agreed upon in writing by the parties hereto shall be incorporated by written instrument, signed by all parties to this Loan Agreement.

B. Applicable Law/Venue. The construction, interpretation and enforcement of this Loan Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Loan Agreement and the parties, and venue for any action shall be in the First Judicial District, Laramie County, Wyoming.

C. Assignment. Borrower shall not assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Loan Agreement without the prior written consent of the other party. Borrower shall not use this Loan Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of WBC.

D. Assumption of Risk. The Borrower shall assume the risk of any loss of state funding due to the Borrower's failure to comply with state requirements. The WBC shall notify the Borrower of any state determination of noncompliance.

E. Audit/Access to Records. The WBC and any of its representatives shall have access to any books, documents, papers, and records of the Borrower that are pertinent to this Loan Agreement.

F. Availability of Funds. Each payment obligation of the WBC is conditioned upon the availability of government funds that are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Borrower, the Loan may be terminated by the WBC at the end of the period for which the funds are available. The WBC shall notify the Borrower at the earliest possible time of the services that will or may be affected by a shortage of funds. No penalty shall accrue to the WBC in the event this provision is exercised, and the WBC shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the WBC to terminate this Loan Agreement to acquire similar services from another party.

G. Award of Related Agreements. The WBC may undertake or award supplemental or successor Agreements for work related to this Loan Agreement. The Borrower shall cooperate fully with other Borrowers and the WBC in all such cases.

H. Compliance with Laws. The Borrower shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Loan Agreement.

I. Entirety of Loan Agreement. This Loan Agreement consisting of eight (8) pages, Attachment A, consisting of one (1) page, Attachment B, consisting of one (1) page, Attachment C, consisting of two (2) pages, Attachment D, consisting of one (1) page, and Attachment E, consisting of eleven (11) pages, represents the entire and integrated Loan Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

J. Extensions. Nothing in this Loan Agreement shall be interpreted or deemed to create an expectation that this Loan Agreement will be extended beyond the term described herein. This Loan Agreement may be renewed by agreement of both parties in writing, provided that there is no right or expectation of renewal or extension beyond the Term, and any renewal or extension will be determined at the discretion of WBC and subject to any necessary WBC approval. Any agreement to extend this Loan Agreement shall include, but shall not be limited to: an unambiguous identification of the Loan Agreement being extended; the term of the extension; a statement that all terms and conditions of the original Loan Agreement shall, unless explicitly delineated in the exception, remain as they were in the original Loan Agreement; and, if the duties of either party will be different during the extension than they were under the original Loan Agreement, a detailed description of those duties.

K. Indemnification. Borrower shall indemnify, defend and hold harmless the State, WBC, and its officers, agents, employees, successors and assigns from any cause of action, losses, injuries, liabilities, damages, claims, demands or costs (including reasonable attorneys' fees) (collectively "Claims") arising out of all activities in connection with the Project,

Borrower's performance under this Loan Agreement, or failure by Borrower to comply with the terms of this Agreement or any BRC program statutes, rules and/or regulations. Borrower shall be solely liable and responsible for all acts or omissions in connection with the Project or the performance of the Project or this Agreement, including without limitation all Claims arising in connection therewith, and WBC (its officers, agents, employees, successors and assigns) shall have no liability to Borrower, any sub-contractor or any third party for, and shall be released from, all such Claims.

L. Independent Contractor. Borrower shall function as an independent contractor for the purposes of this Loan Agreement, and shall not be considered an employee of WBC for any purpose. Borrower shall assume sole responsibility for any debts or liabilities that may be incurred by the Borrower in fulfilling the terms of this Loan Agreement, and shall be solely responsible for the payment of all federal, state and local taxes, which may accrue because of this Loan Agreement. Nothing in this Loan Agreement shall be interpreted as authorizing Borrower or its agents and/or employees to act as an agent or representative for or on behalf of WBC, or to incur any obligation of any kind on the behalf of WBC. Borrower agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to WBC employees will inure to the benefit of Borrower or Borrower's agents and/or employees as a result of this Loan Agreement.

M. Kickbacks. The Borrower certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Loan Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Loan Agreement. If the Borrower breaches or violates this warranty, the WBC may, at its discretion, terminate this Loan Agreement without liability to the WBC, or deduct from the Loan Agreement or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

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

O. Notices. All notices arising out of, or from, the provisions of this Loan Agreement shall be in writing and given to the parties at the address provided under this Loan Agreement, either by regular U.S. mail or delivery in person. Delivery shall be deemed to have occurred 3 days following deposit in the U.S. mail or upon delivery in person.

P. Ownership of Documents/Work Product/Materials. All documents, records, field notes, data samples, specimens, and materials of any kind resulting from performance of this Loan Agreement are at all times the property of the WBC.

Q. Prior Approval. This Loan Agreement shall not be binding upon either party, no services shall be performed under the terms of this Loan Agreement, and the Wyoming State Auditor shall not draw warrants for payment on this Loan Agreement, until this Loan Agreement has been reduced to writing and approved as to form by the Office of the Attorney General.

R. Severability. Should any portion of this Loan Agreement be judicially determined to be illegal or unenforceable, the remainder of this Loan Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

S. Sovereign Immunity. The State of Wyoming and WBC do not waive sovereign immunity by entering into this Loan Agreement and the Borrower does not waive governmental immunity, and each specifically retains all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. § 1-39-101, et seq., and all other applicable law. 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.

T. Taxes. The Borrower shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to social security taxes, workers' compensation, unemployment insurance and sales taxes in connection with performance of the Project and this Loan Agreement.

U. Termination of Loan Agreement. The WBC may terminate this Loan Agreement immediately for cause if the Borrower fails to perform in accordance with the terms and conditions of this Loan Agreement. Should the Borrower fail to perform in a manner consistent with the terms and conditions set forth in this Loan Agreement, payment under this Loan Agreement may be withheld until such time as the Borrower performs its duties and responsibilities. In the event of termination under this section, any and all loan repayments obligation shall survive. The WBC retains all collection rights contained in this agreement or any related documents.

V. 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 Loan Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Loan Agreement shall operate only between the parties to this Loan Agreement, and shall inure solely to the benefit of the parties to this Loan Agreement. The provisions of this Loan Agreement are intended only to assist the parties in determining and performing their obligations under this Loan Agreement.

W. Time is of the Essence. Time is of the essence in the performance by Borrower all provisions of the Loan Agreement.

X. Titles Not Controlling. Titles of sections are for reference only, and shall not be used to construe the language in this Loan Agreement.

Y. Unused/Misused Funds. The WBC shall be entitled to recover from Borrower any full or partial payment made under this Loan Agreement for: 1) any payments used for purposes not authorized, or performed outside this Loan Agreement, 2) any payments for services the Borrower is unable to provide, 3) any payments for services the borrower did not provide but was required to provide under the terms of this Loan Agreement.

Z. Waiver. The waiver of any breach of any term or condition in this Loan Agreement shall not be deemed a waiver of any prior or subsequent breach.

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12. **Signatures.** By signing this Loan Agreement, the parties represent and warrant that they have read and understood it, that they agree to be bound by the terms of the Loan Agreement, that they have the authority to sign it, and that they have received a signed and dated copy of the Loan Agreement.

The effective date of this Loan Agreement is the date of the signature last affixed to this page.

WYOMING BUSINESS COUNCIL

Shawn Reese
Chief Executive Officer

Date

Molly Spangler, Director
Investment Ready Communities Division

Date

CITY OF GILLETTE

Louise Carter-King, Mayor
City of Gillette

Date

STATE OF WYOMING)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me by

_____, _____, of _____ this _____ day of _____, 201__

Witness my hand and official seal.

Notary Public
My commission expires: _____

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

S. Jane Caton #137034
S. Jane Caton
Senior Assistant Attorney General

7-27-15
Date