

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

Borrower will receive the sum of \$2,645,046 of the Business Ready Community (BRC) program funds. Borrower will, in turn, use the funds to provide redundant, stable and increased power to the Southern Industrial Addition located south of the city of Gillette and west of Highway 59. The Southern Industrial Addition is 413 acres of industrial land with more than 120 commercial and industrial businesses, and additional lots available for business development. All developed lots are privately owned.

Funds will be used for the purchase and installation of new infrastructure including transformers, switch cabinets J-boxes, service meters, and a substation. The project will allow the Grantee to provide electrical service to numerous commercial and industrial businesses in the area supporting existing operations and future expansion plans.

Borrower received the sum of \$1,645,046 in Business Ready Community Program Community Readiness Grant funds. All Grant funds will be drawn down before any Loan funds are released for reimbursement.

The Project is more particularly described in the BRC application received by the WBC on September 1, 2014.

Borrower will be required to provide information as requested by the State of Wyoming, by and through the WBC, about job creation, revenue recapture, additional private investment leveraged, business recruitment and development efforts, and infrastructure development.

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

Projected Grant Expenditure Schedule for Gillette Southern Industrial Addition Project				
DESCRIPTION	BRC	MATCH		TOTAL
		Cash (BRC Loan)	In-kind (City)	
Non Construction Costs	\$ 70,939	\$ 114,061	\$ -	\$ 185,000
Construction Costs	\$ 1,574,107	\$ 2,530,985	\$ 700,000	\$ 4,805,092
Total Project Cost	\$ 1,645,046	\$ 2,645,046	\$ 700,000	\$ 4,990,092

For the above Projected Loan Expenditure Schedule, "Non Construction Costs" include: appraisal, architectural, engineering, and project inspection fees; "Construction Costs" include: site work, materials, labor, utilities, and contingencies.

Borrower agrees to include invoices detailing services performed in connection with the Project as a part of the quarterly reports.

WBC agrees to loan monies to Borrower incrementally as costs are incurred according to the above Projected Loan Expenditure Schedule, and 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"). 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.

Borrower shall submit one (1) reimbursement request per monthly cycle or one (1) request every thirty (30) days. If more than one request is received during that monthly cycle, the WBC will return each additional request to Borrower for submittal in the next appropriate monthly cycle.

Grant funds will be fully expended prior to any Loan expenditures.

The WBC will release funds only after invoices approved by the Borrower are submitted to the WBC. After receipt of cash requests and billing documentation, the WBC will pay the amounts of invoices.

If actual costs of the project are more than the available funds indicated in Attachment B, Borrower agrees to pay the difference in the amount of funds awarded through the BRC Program and the actual costs of the completed Project.

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

PROMISSORY NOTE

For the value received, the City of Gillette, a political subdivision of the State of Wyoming (hereinafter "Borrower") promises to pay to the order of the Wyoming Business Council, (hereinafter "WBC") whose address is 214 West 15th Street, Cheyenne, Wyoming 82002 Cheyenne, Wyoming, the amount of funds to be disbursed not to exceed two million six hundred forty-five thousand forty-six dollars (\$2,645,046) together with interest at the rate of one percent (1%) per annum, and loan origination fee of one-half of one percent (.5%). This loan is made pursuant to the Loan Agreement between the Borrower and WBC.

Borrower agrees that the WBC will release monies to Borrower for performance of the project, incrementally as invoices are submitted for work done in connection with the project, completed in accordance with the requirements of the Loan Agreement and the Business Ready Community program ("BRC").

1. **Definitions.** Terms used in this Promissory Note shall have the same meaning as in the Loan Agreement.
2. **Interest Rate.** This Promissory Note shall bear interest on the unpaid principal balance at the annual rate of one percent (1%), from the date of actual disbursement of the funds, or any portion thereof, to the Borrower until this Promissory Note is paid in full. Interest shall be computed based upon a 365-day year.
3. **Term.** The Promissory Note shall commence on the date in which the Loan Agreement has commenced. All principal and accrued interest and other amounts owed hereunder being due and payable not later than twenty years after the date of final disbursement.
4. **Payment.** Once all necessary funds have been disbursed, the principal and interest of this note shall be paid in amortized installments payable annually in the manner and form as follows: There will be a one year deferred interest only payment and nineteen annual payments of one hundred seventy-five thousand six hundred fifty-one dollars (\$175,651), due on the second anniversary date of the final disbursement for a total repayment amount of three million three hundred thirty-seven thousand three hundred sixty-nine dollars (\$3,337,369). All unpaid principal and interest due on the twentieth anniversary date of final disbursement. Interest on the payment will be calculated from the date all necessary BRC loan funds are released through the final payment date. Payments shall be applied first to interest accrued to date of receipt, and the balance, if any, to principal.
5. **No Prepayment Penalty.** Borrower may prepay the principal of this loan without penalty. Any prepayment will not reduce the annual installments but will operate only to mature this note at an earlier date.

6. Terms of Payment.

- a. Time is of the essence and if the annual payment is not received by the annual anniversary date of the final loan disbursement the Borrower will be in default, and the WBC may proceed against the fund described below, pursuant to the security given to secure this Note.
- b. Failure by Borrower to pay any installment or installments hereon when due shall entitle the WBC to declare the whole of the unpaid balance on this note due and payable on demand.
- c. The Borrower hereby accepts the conditions herein and expressly waives presentment for payment, protest and notice of protest for nonpayment hereof and all defenses on the grounds of any extension of time of payment that may be given by the WBC to them.
- d. In the event of suit to enforce payment of this note for any installment, interest, or part thereof, the Borrower agrees to pay, in addition to the costs and disbursements provided and allowed by law, a reasonable attorney's fee.

CITY OF GILLETTE

By: _____

Name: _____

Title: _____

STATE OF WYOMING)

)ss.

COUNTY OF)

The foregoing instrument was acknowledged before me by

_____, _____, of _____ this _____ day of _____, 20__

Witness my hand and official seal.

Notary Public

My commission expires: _____

**ATTACHMENT D TO
BUSINESS READY COMMUNITY GRANT AND LOAN PROGRAM
LOAN AGREEMENT BETWEEN THE WYOMING BUSINESS COUNCIL AND THE
CITY OF GILLETTE
ASSIGNMENT AND PLEDGE OF REVENUES**

For value received, the City of Gillette, a political subdivision of the State of Wyoming (hereinafter "Borrower"), does hereby assign and pledge to the Wyoming Business Council, (hereinafter "WBC") whose address is 214 West 15th Street, Cheyenne, Wyoming 82002 all of its right, title and interest in and to the following revenues:

Power Fund Rate Revenues – Special Fund, Power Fund General Ledger Account number 504-00-00-380-00-38001 located in the following bank accounts: First Interstate Bank, account number 0353351091 and WYO-Star, account number 5072-905.

The funds are available on a parity with the City's lease payments on outstanding obligations for the financing of the Wygen III power plant lease-purchase, and the CT-II combustion turbine lease purchase, which are year to year and subject to annual appropriation.

IN WITNESS WHEREOF, the Borrower, the City of Gillette, Wyoming has caused this Assignment to be signed this _____ day of _____, 20__.

CITY OF GILLETTE

By: _____

Name: _____

Title: _____

STATE OF WYOMING)
)ss.
COUNTY OF)

The foregoing instrument was acknowledged before me by
_____, _____, of _____ this _____ day of _____, 20__

Witness my hand and official seal.

Notary Public

My commission expires: _____

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

This **SECURITY AGREEMENT** (this "Agreement") is made as of _____, 2015, between the **City of Gillette, a political subdivision of the State of Wyoming**, whose address is 205 East 5th Street, P.O. Box 3003, Gillette, WY 82717 (the "**Debtor**"), and **Wyoming Business Council** (the "Council"), **a body corporate organized under the laws of the State of Wyoming and operating as a state instrumentality operated solely for the public benefit**, whose principal office and mailing address is located at 214 West 15th Street, Cheyenne, Wyoming 82002.

Under the terms hereof, the Council desires to obtain and the Debtor desires to grant the Council security for all of the Obligations (as hereinafter defined).

NOW, THEREFORE, the Debtor, intending to be legally bound, agrees as follows:

1. Definitions.

1.1. "*Collateral*" shall include all of the Debtor's interest in and to the personal property described on **Exhibit A** attached hereto and made a part hereof by this reference.

1.2. "*Loan Documents*" means the Loan Agreement, Note (as defined below), this Agreement, and all other documents and instruments evidencing, securing or executed in connection therewith.

1.3. "*Note*" means that certain Promissory Note, dated as of _____, 2015, made by Debtor to the order of Council in the original principal amount of \$2,645,046.00.

1.4. "*Obligations*" shall include all debts, liabilities, obligations, covenants and duties owing from the Debtor to the Council of any kind or nature, present or future (including any interest accruing thereon after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Debtor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), whether evidenced by or arising under the Note or this Agreement or, whether absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, and all costs and expenses of the Council incurred in the enforcement, collection or otherwise in connection with any of the foregoing, including reasonable attorneys' fees and expenses.

1.5. "*UCC*" means the Uniform Commercial Code, as adopted and enacted and as in effect from time to time in the State of Wyoming. Terms used herein which are defined in the UCC and not otherwise defined herein shall have the respective meanings ascribed to such terms in the UCC.

2. Grant of Security Interest. To secure the Obligations, the Debtor, as debtor, hereby assigns and grants to the Council, as secured party, a continuing lien on and security interest in the Collateral.

3. Change in Name or Locations. The Debtor hereby agrees that if the location of the Collateral changes from the locations listed on **Exhibit A**, attached hereto and made part hereof by this reference, or if the Debtor changes its name or form or jurisdiction of organization, or establishes a name in which it may do business, the Debtor will immediately notify the Council in writing of the additions or changes.

4. Representations and Warranties. The Debtor represents, warrants and covenants to the Council that: (a) the Debtor has good, marketable and indefeasible title to the Collateral, has not made any prior sale, pledge, encumbrance, assignment or other disposition of any of the Collateral, and the Collateral is free from all encumbrances and rights of setoff of any kind except the lien in favor of the Council created by this Agreement; (b) except as herein provided, the Debtor will not hereafter without the Council's prior written consent sell, pledge, encumber, assign or otherwise dispose of any of the Collateral or permit any right of setoff, lien or security interest to exist thereon except to the Council; and (c) the Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

5. Debtor's Covenants. The Debtor covenants that it shall:

5.1. From time to time and at all reasonable times allow the Council, by or through any of its officers, agents, attorneys, or accountants, to examine or inspect the Collateral, and obtain valuations and audits of the Collateral, at the Debtor's expense, wherever located. The Debtor shall do, obtain, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments as the Council may require to vest in and assure to the Council its rights hereunder and in or to the Collateral, and the proceeds thereof, including waivers from landlords, warehousemen and mortgagees;

5.2. Keep the Collateral in good order and repair at all times and immediately notify the Council of any event causing a material loss or decline in value of the Collateral, whether or not covered by insurance, and the amount of such loss or depreciation;

5.3. Only use or permit the Collateral to be used in accordance with all applicable federal, state, county and municipal laws and regulations; and

5.4. Have and maintain insurance at all times with respect to all Collateral against any risks as the Council may reasonably require, in such form, in the minimum amount of the outstanding principal balance of the Note and written by such companies as may be reasonably satisfactory to the Council with deductibles acceptable to Council. Each such casualty insurance policy shall contain a standard Council's Loss Payable Clause issued in favor of the Council under which all losses thereunder shall be paid to the Council as the Council's interest may appear. Such policies shall expressly provide that the requisite insurance cannot be altered or canceled without at least thirty (30) days prior written notice to the Council and shall insure the

Council notwithstanding the act or neglect of the Debtor. Upon the Council's demand, the Debtor shall furnish the Council with evidence of insurance as the Council may require. In the event of failure to provide insurance as herein provided, the Council may, at its option, obtain such insurance and the Debtor shall pay to the Council, on demand, the cost thereof. Proceeds of insurance may be applied by the Council to reduce the Obligations or to repair or replace Collateral, all in the Council's sole discretion.

5.5. If any of the Collateral is, at any time, in the possession of a bailee, Debtor shall promptly notify Council thereof and, if requested by Council, shall promptly obtain an acknowledgment from the bailee, in form and substance satisfactory to Council, that the bailee holds such Collateral for the benefit of Council and shall act upon the instructions of Council, without the further consent of Debtor.

6. Negative Pledge; No Transfer. The Debtor will not sell or offer to sell or otherwise transfer or grant or allow the imposition of a new lien or any additional security interest upon the Collateral or use any portion thereof in any manner inconsistent with this Agreement or valid prior obligations or with the terms and conditions of any policy of insurance thereon.

7. Further Assurances. Debtor hereby irrevocably authorizes Council at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Wyoming Uniform Commercial Code or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Wyoming Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment, including, but not limited to (i) whether Debtor is an organization, the type of organization and (ii) any organization identification number issued to Debtor. Debtor agrees to furnish any such information to Council promptly upon request. Debtor also ratifies its authorization for Council to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof.

8. Events of Default. The Debtor shall, at the Council's option, be in default under this Agreement upon the happening of any of the following events or conditions (each, an "Event of Default"):

- 8.1. a failure to pay any amount due under the Note or this Agreement when due;
- 8.2. the failure by the Debtor to perform any of its other obligations under this Agreement within thirty (30) days of notice from Council of the same;
- 8.3. falsity, inaccuracy or material breach by the Debtor of any written warranty, representation or statement made or furnished to the Council by or on behalf of the Debtor;

8.4. an uninsured material loss, theft, damage, or destruction to any of the Collateral, or the entry of any judgment against the Debtor or any lien against or the making of any levy, seizure or attachment of or on the Collateral;

8.5. the failure of the Council to have at all times during which the Loan is outstanding, a perfected first priority security interest in the Collateral on a parity with the City's lease payments on outstanding obligations for the financing of the Wygen III power plant lease-purchase, and the CT-II combustion turbine lease-purchase, which are year to year and subject to annual appropriation;

8.6. the Debtor becomes insolvent; or admits in writing its inability to pay its debts as they mature; or applies for, consents to or acquiesces in the appointment of a trustee, receiver or custodian for it or a substantial part of its property; or, in the absence of such application, consent or acquiescence, a trustee, receiver or custodian is appointed for the Debtor or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against the Debtor and, if instituted against the Debtor, is consented to or acquiesced in by the Debtor or is not dismissed within sixty (60) days;

8.7. should the Council determine that a proposed merger, consolidation, reorganization, sale, or transfer is not consistent with the continued satisfactory performance of the Debtor's obligations under the Loan;

8.8. any indication or evidence received by the Council that the Debtor may have directly or indirectly been engaged in any type of activity which, in the Council's discretion, might result in the forfeiture of any property of the Debtor to anyone; or

9. Remedies.

9.1. Upon the occurrence of any Event of Default and at any time thereafter, the Council may declare all Obligations secured hereby immediately due and payable and shall have, in addition to any remedies provided herein or by any applicable law or in equity, all the remedies of a Council under the UCC.

9.2. The Council's remedies include, but are not limited to, to the extent permitted by law, the right to (a) peaceably by its own means or with judicial assistance enter the Debtor's premises and take possession of the Collateral without prior notice to the Debtor or the opportunity for a hearing, (b) render the Collateral unusable, (c) dispose of the Collateral on the Debtor's premises, and (d) require the Debtor to collect the Collateral and make it available to the Council at a place designated by the Council.

9.3. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Council will give the Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or any

other intended disposition thereof is to be made. The requirements of commercially reasonable notice shall be met if such notice is sent to the Debtor at least five (5) days before the time of the intended sale or disposition. Expenses of retaking, holding, preparing for sale, selling or the like shall include the Council's reasonable attorney's fees and legal expenses, incurred or expended by the Council to enforce any payment due it under the Loan Documents either as against the Debtor, or in the prosecution or defense of any action, or concerning any matter growing out of or connection with the subject matter of this Agreement and the Collateral pledged hereunder.

9.4. The Debtor waives all relief from all appraisalment or exemption laws now in force or hereafter enacted.

10. Payment of Expenses. At its option, the Council may, but is not required to: discharge taxes, liens, security interests or such other encumbrances as may attach to the Collateral; pay for required insurance on the Collateral; and pay for the maintenance, appraisal or reappraisal, and preservation of the Collateral, as determined by the Council to be necessary. The Debtor will reimburse the Council on demand for any payment so made or any expense incurred by the Council pursuant to the foregoing authorization, and the Collateral also will secure any advances or payments so made or expenses so incurred by the Council.

11. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be delivered as provided in the Note.

12. Preservation of Rights. No delay or omission on the Council's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Council's action or inaction impair any such right or power. The Council's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Council may have under other agreements, at law or in equity.

13. General Provisions.

13.1. *Severability.* In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

13.2. *Entire Agreement.* This Agreement (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

13.3. *Counterparts.* This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed

counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission. The term "facsimile transmission" shall include images of documents sent by email.

13.4. *Successors and Assigns.* This Agreement will be binding upon and inure to the benefit of the Debtor and the Council and their respective heirs, executors, administrators, successors and assigns; provided, however, that the Debtor may not assign this Agreement in whole or in part without the Council's prior written consent and the Council at any time may assign this Agreement in whole or in part.

13.5. *Interpretation.* In this Agreement, unless the Council and the Debtor otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivisions of sections) or exhibits are to those of this Agreement unless otherwise indicated. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. If this Agreement is executed by more than one Debtor, the obligations of such persons or entities will be joint and several.

13.6. *Governing Law; Jurisdiction.* This Agreement has been delivered to and accepted by the Council and will be deemed to be made in the State of Wyoming. The Debtor hereby irrevocably consents to the exclusive jurisdiction of any state or federal court located in the State of Wyoming; provided that nothing contained in this Agreement will prevent the Council from bringing any action, enforcing any award or judgment or exercising any rights against the Debtor individually, against any security or against any property of the Debtor within any other county, state or other foreign or domestic jurisdiction. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties.

13.7. *No Finder's Fees.* No finder's fee, real estate commission, or other similar fee or charge related to this Agreement shall be paid by either party.

13.8. *Audit/Access to Records.* The Council and its representatives shall have access to any books, documents, papers, electronic data and records of the Debtor which are pertinent to the Collateral. The Debtor 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 Debtor. The Debtor shall cooperate fully with any such independent auditor or accountant during the entire course of any audit authorized by the Council.

13.9. *Compliance with Laws.* The Debtor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of its operations.

13.10. *Ethics.* Debtor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, et seq.), to the extent applicable.

13.11. *Indemnification.* The Debtor shall indemnify, defend, and hold harmless the Council, and its officers, agents, employees, successors, and assignees, from any and all claims, lawsuits, losses, and liability arising out of Debtor's failure to perform any of Debtor's duties and obligations under this Agreement.

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

13.13. *Notice and Approval of Proposed Sale or Transfer.* The Debtor shall provide the Council with the earliest possible advance notice of (i) any proposed sale or transfer of any interest in the Debtor or any of the Collateral; (ii) any merger in which Debtor proposes to participate, whether or not it is the surviving entity, (iii) any consolidation of the assets of the Debtor; and (iv) any voluntary reorganization or other change in the form or constitution of the Debtor.

13.14. *Proof of Insurance.* The Debtor shall obtain and maintain all the insurance required and approved by the Council. The Debtor shall provide to the Council a certificate or other acceptable written evidence of insurance verifying each type of coverage required.

(a) Payment of Premiums and Notice of Revocation. All policies required under this Agreement shall be in effect for the duration of the Loan Agreement. All policies shall be primary and not contributory. All insurance certificates must include a clause stating that the insurance may not be revoked, canceled, amended or allowed to lapse until the expiration of at least thirty (30) days advance written notice to the Council. The Debtor shall pay the premiums on all required policies.

(b) Council May Insure for Debtor. In case of a breach of any insurance provision of this Agreement, the Council may, at its sole option, purchase and maintain, at the expense of the Debtor, such insurance in the name of the Debtor, as the Council may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which may be due or become due to the Debtor.

(c) Council's Right to Reject. The Council reserves the right to reject a certificate of insurance if the Debtor's insurance company is widely regarded in the insurance industry as financially unstable. This includes, but is not limited to, insurance companies with an "Omit" rating in the A.M. Best insurance rating guide.

(d) Council's Right to Contact Insurer. The Council shall have the right to

consult with the Debtor's insurance agent or its principal for disclosure of relevant policy information. Relevant information includes, but is not limited to:

- 1) Exclusions from coverage;
- 2) Claims in progress which could significantly reduce the annual aggregate limit;
- 3) Any applicable deductible amounts; and
- 4) If the policy is a "claims made" policy instead of an "occurrence" policy, the information provided shall include, but not necessarily be limited to, retroactive dates and extended reporting periods or tails.

13.15. *Sovereign Immunity.* The State of Wyoming and the Council do not waive sovereign immunity by entering into this 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 should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement 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.

13.16. *Taxes.* The Debtor 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.

13.17. *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 Agreement shall not be construed so as to create such status. The rights, duties, and obligations under this Agreement shall operate only between the Debtor and the Council and shall inure solely to the benefit of them.

13.18. *Titles Not Controlling.* Titles of sections and subsections are for reference only and shall not be used to construe the actual language of the applicable provisions.

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

14. WAIVER OF JURY TRIAL. EACH OF THE DEBTOR AND THE COUNCIL IRREVOCABLY WAIVES ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS

AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE DEBTOR AND THE COUNCIL ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY AND MADE AFTER AMPLE OPPORTUNITY TO CONSULT WITH THEIR RESPECTIVE LEGAL ADVISORS.

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IN WITNESS WHEREOF, the Debtor has caused this Agreement to be executed by all of its Members as of the date first written above.
City of Gillette

By: _____
[enter signee]

By: _____
[enter signee]

WYOMING BUSINESS COUNCIL

By: _____
Shawn Reese
Chief Executive Officer

By: _____
Ben Avery, Director
Business & Industry Division

Approved as to Form Only:

Michael M. Robinson
Senior Assistant Attorney General

STATE OF WYOMING
COUNTY OF CAMPBELL

This instrument was acknowledged before me on this _____ day of _____, 2015, by *[enter name(s) of City signees]*, as **legally authorized representatives of the City of Gillette.**

Notary Public
My Commission Expires: _____

STATE OF WYOMING
COUNTY OF LARAMIE

This instrument was acknowledged before me on this _____ day of _____, 2015, by **SHAWN REESE, the Chief Executive Officer, and BEN AVERY, the Director, Business & Industry Division, of WYOMING BUSINESS COUNCIL.**

Notary Public
My Commission Expires: _____

EXHIBIT A
DESCRIPTION AND LOCATION OF THE COLLATERAL

The capital assets related to the Southern Industrial Addition Annexation that are purchased with the proceeds of this loan, specifically including the Electrical Substation assets including transformers, switch cabinets, J-boxes, and service meters relate to the the Southern Industrial Addition.

All monies and revenues in the City of Gillette account designated "Power Fund Rate Revenues — Special Fund," Power Fund General Ledger Account number 504-00-00-380-00-38001 located in the following bank accounts: First Interstate Bank, account number 0353351091 and WYO-Star, account number 5072-905.

The funds are available on a parity with the City's lease payments on outstanding obligations for the financing of the Wygen III power plant purchase, and the CT-II combustion turbine lease-purchase, which are year to year and subject to annual appropriation.