

## DWSRF #196

### LOAN AGREEMENT

The State of Wyoming, acting by and through the Wyoming State Loan and Investment Board (hereinafter "Board"), on the 6th day of April, 2017, in the normal course of business, authorized a Drinking Water State Revolving Fund Loan (hereinafter the "Loan") in the amount of Two Million Fifty Thousand Dollars and No/100 (\$2,050,000.00) to the City of Gillette, Campbell County, Wyoming (hereinafter "Borrower") for the purpose of funding the Interstate Industrial Park Water Distribution System Project.

The Loan is to be secured by the Borrower with the pledge and assignment of revenues from the Borrower's Water Fund Revenues to be used for the annual loan payments which the Borrower will make to the Drinking Water State Revolving Fund (DWSRF). This assignment will be in effect for the "Loan Term" of fifteen (15) years, commencing with the year 2018, or until the Loan secured hereby has been repaid in full. A copy of said Assignment and Pledge of Revenues is attached to this Agreement and incorporated herein by this reference. The pledge and assignment by the Borrower shall not be subordinate to any other pledge or assignment of such revenues.

Now, therefore, for and in consideration of the Loan by the Board, the Borrower agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein.

For value received, the Borrower agrees to pay to the order of the Board the principal sum of Two Million Fifty Thousand Dollars and No/100 (\$2,050,000.00) together with interest thereon at the rate of two and one-half percent (2.5%) per annum for a term of fifteen (15) years. Upon completion of the project and prior to repayment of the loan, this loan shall be granted principal forgiveness up to twenty-five percent (25%) of the drawn loan funds, not to exceed Five Hundred One Thousand Eight Hundred Two Dollars and No/100 (\$501,802.00). The Borrower will be required to pay the accrued loan interest in full at the time of the principal forgiveness award. A copy of the Promissory Note setting forth specific conditions and terms is attached hereto and incorporated herein by reference and all references to this Loan Agreement herein shall be deemed to include the Note.

1. DBE Utilization Report.

The Borrower agrees to submit the DISADVANTAGED BUSINESS ENTERPRISE BIDDER GOOD FAITH EFFORT DOCUMENTATION and the DBE NOTIFICATION OF INTENT TO SUB-CONTRACT Forms to the Wyoming Water Development Office (WWDO), DWSRF Section. These forms must be submitted to the WWDO for approval prior to awarding the construction contract. These forms can be obtained by contacting the WWDO or the Department of Environmental Quality (DEQ).

2. Equal Employment Opportunity.

The Borrower must, at a minimum, include in contracts the seven equal employment clauses of the Presidential Executive Order No. 11246.

3. "Fair Share Goal".

The Borrower agrees to establish a "Fair Share Goal" percentage of not less than 3% of prime contract and subcontract awarded for this project with the Office of State Lands and Investments (OSLI), WWDO, and DEQ before the Borrower begins the process to award any contracts under this agreement.

The Borrower must, at a minimum, take the six affirmative steps to ensure to the fullest extent possible that at least the negotiated "Fair Share Goal" percentage of loan funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, and historically black colleges and universities.

The Borrower agrees to include in its bid documents a "3% Fair Share Goal" percentage and require all of its prime contractors to include in their bid documents for subcontracts a "3% Fair Share Goal" percentage.

#### 4. Davis-Bacon Wage Act.

The Borrower covenants and agrees that all laborers and mechanics employed by contractors and subcontractors on the project, funded directly by or assisted in whole or in part by this Loan, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All pertinent information related to compliance with labor standards, including prevailing wage rates, may be obtained from the Department of Labor.

Documentation must be retained for three (3) years after project completion and made available to the OSLI, WWDO, and the DEQ, upon request. The Borrower must certify to the best of the Borrower's knowledge and belief that this project complies with section 1450(e) of the Safe Drinking Water Act, all laborers and mechanics employed by contractors and subcontractors during the reporting period were paid wages at rates not less than those listed on the prevailing wage rate contained in the contract documents and that all applicable provisions of the Davis-Bacon and Related Acts have been met. Such certification shall be obtained on loan draft request forms provided by the OSLI. The Borrower must acknowledge prior to the bidding of the project the receipt of the Guidance requirements provided by the DEQ at the following website: <http://deq.state.wy.us/wqd/www/srf/index.asp> to the OSLI. At the time of bidding the Borrower must confirm that all applicable Guidance requirements are being met.

#### 5. American Iron and Steel.

The Borrower covenants and agrees that no funds from this Loan may be used for this project unless all of the iron and steel used in the project are produced in the United States, unless a waiver is provided to the recipient by the Environmental Protection Agency (EPA). The Borrower shall comply with all regulations and guidance issued by EPA, DEQ, and WWDC regarding this requirement.

#### 6. Initiating of Operations /Substantial Completion Notification.

The Borrower must notify the OSLI, WWDO, and the DEQ in writing within thirty (30) days of the date of initiation of operations or substantial completion of construction under this Project. The Borrower must start repayment of the Loan within one (1) year of initiation of operations or substantial completion, whichever date occurs first.

#### 7. Disbursement of Loan Proceeds.

The Loan proceeds shall be disbursed in minimum draws of \$1,300. Requests for disbursement shall be submitted on a form provided by the OSLI. Requests for disbursement shall only be for project costs which have been incurred and shall be subject to review by OSLI, WWDO, and DEQ. The Borrower shall make payment for loan draft request invoices within ten (10) business days of receipt of reimbursement from the OSLI. If for any reason the Borrower is unable to comply, the Borrower must notify the OSLI immediately.

#### 8. Source of Repayment Pledge.

The Borrower irrevocably pledges the source of repayment described in this Loan Agreement for the punctual payment of the principal and the interest on the Loan, and any and all other amounts due under this Loan Agreement.



9. Performance Under Loan Agreement.

The Borrower covenants and agrees (i) to maintain its drinking water system in good repair and operating condition and (ii) to cooperate with the OSLI and WWDO in its observance and performance of the respective duties, covenants, obligations and agreements of the Borrower under this Loan Agreement.

10. Completion of Project and Provisions of Moneys Therefore.

The Borrower covenants and agrees (i) to exercise its best efforts in accordance with prudent water system practice to complete the Project and to accomplish such completion on or before the estimated Project completion date set forth in the current Project schedule approved by the Project Engineer and hereby made a part hereof; and (ii) to provide from its own fiscal resources all moneys, in excess of the total amount of the Loan, required to complete the Project.

11. Disposition of Drinking Water System.

The Borrower covenants and agrees that it will not sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of its drinking water system or any other system which provides revenues for upkeep and maintenance of the drinking water system except on ninety (90) days' prior written notice to the OSLI, WWDO, and DEQ and, in any event, shall not sell, lease, abandon or otherwise dispose of the same unless the following conditions are met: (i) the Borrower, with the prior written approval of the Board, shall assign this Loan Agreement and its rights and interests hereunder in accordance with Exhibit A, Item 6 to the purchaser or lessee of the drinking water system which must be an eligible political subdivision as defined in the DWSRF Rules and Regulations, and such purchaser or lessee shall assume all duties, covenants, obligations and agreements of the Borrower under this Loan Agreement; and (ii) the Board, in its sole discretion, by appropriate action determines that such sale, lease, abandonment or other disposition will not adversely affect (A) the ability of the Borrower or its assignees to meet its duties, covenants, obligations and agreements under the Loan Agreement, (B) any agreement entered into by the Board, or any condition of any grant received by the Board from the United States of America which is related to any capitalization grant received by the Board under the Safe Drinking Water Act.

12. Records; Accounts.

The Borrower shall keep accurate records and accounts for its drinking water system (the "System Records") separate and distinct from its other records and accounts (the "General Records"). Such System Records shall be maintained in accordance with generally accepted government accounting standards and, at a minimum, the Borrower shall have annual financial statements prepared by an independent party. The OSLI may require system records to be audited annually by an independent accountant, in which case the audit may be part of the annual audit of the General Records of the Borrower. Such System Records and General Records shall be made available for inspection by the OSLI, WWDO, and DEQ at any reasonable time, and a copy of the financial statements or the independent annual audit, including all written comments and recommendations of such accountant, shall be furnished to the OSLI within 150 days of the close of the fiscal year. The Borrower agrees that if it expends an aggregate amount of Seven Hundred Fifty Thousand Dollars and No/100 (\$750,000.00) or more in federal funds during its fiscal year, it must undergo an organization-wide financial and compliance single audit. The Borrower agrees to comply with the audit requirements of the U.S. General Accounting Office Government Auditing Standards and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. If findings are made which cover any part of this Loan, the Borrower shall provide one (1) copy of the audit report to the State and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to the State's records.

13. Inspections; Information.

The Borrower shall permit the OSLI, WWDO, and DEQ, and any party designated by any of such parties, to examine, visit and inspect, at any and all reasonable times, the property, including the drinking water system if any, constituting the project, and to inspect and make copies of any accounts, books and records, including (without limitation) its System Records, General Records, and any other records regarding receipts, disbursements, contracts, investments and any other



matters relating thereto and to its financial standing, and shall supply such reports and information as the OSLI, WWDO and DEQ may reasonably require in connection therewith. The Borrower shall inform the OSLI, WWDO, and DEQ of any changes, irregularities, and/or problems. These may include but are not limited to: change orders, Davis-Bacon related issues, contract interpretation issues, withholding liens, and scheduling alterations.

14. Cost of the Project.

The Borrower certifies that the cost of the Project, as listed in the Application for Financial Assistance, is a reasonable and accurate estimation and upon direction of the OSLI, WWDO, or DEQ, as the case may be, shall supply the same with a certificate from its engineer stating that such is a reasonable and accurate estimation, taking into account investment income to be realized during the course of the Project and other money that would, absent the Loan, have been used to pay the cost of the Project. Borrower acknowledges and agrees that loan funds are provided by the U.S. Environmental Protection Agency, Safe Drinking Water Act, CFDA #66.468, through the Drinking Water State Revolving Fund Loan Program, administered by the OSLI and Board. Borrower agrees to report receipt of such funds as Federal Funds pursuant to the Federal Single Audit Act, as amended, and revised OMB Circular A-133.

15. Reimbursement for Ineligible Costs.

The Borrower shall promptly reimburse the OSLI for any portion of the Loan which is funded, but which is subsequently determined to be a cost of the drinking water system which is not eligible for funding, from cash draws under the Drinking Water State Revolving Fund. Such reimbursement shall be promptly repaid to the OSLI upon written request of the OSLI.

16. Advertising.

The Borrower agrees not to advertise the project for bids until plans and specifications, including but not limited to, engineer's cost estimate, with bid extensions and detailed cost estimates, which should include estimated costs of major components for the project have been approved by WWDO and the DEQ.

17. User Charges.

The Borrower shall establish, levy and collect rents, rates and other charges for products and services provided by its drinking water system, which rents, rates, and other charges shall be at least sufficient: (A) to meet the operation and maintenance expenses of its drinking water system, including any reserve or replacement fund established by the Borrower for the sound fiscal management and/or for maintenance of the drinking water system, (B) to comply with all covenants pertaining thereto contained in, and all other provisions of, any bond resolution, trust indenture or other security agreement, if any, relating to any bonds, notes or other evidences of indebtedness issued by the Borrower or any other contractual obligations incurred by the Borrower, (C) to pay the debt service requirements on all other bonds, notes or other subordinated evidences of indebtedness whether now outstanding or incurred in the future issued to finance improvements to the drinking water system and to make any other payments required by law which are payable from funds pledged to the payment of the Loan Agreement, (D) to generate funds sufficient to fulfill the terms of all other contracts and agreements made by the Borrower, including, without limitation, this Loan Agreement, and (E) to pay all other amounts payable from or constituting a lien or charge on the funds pledged to the payment of the Loan. The Borrower also agrees that such system of user charges will be maintained at all times that this Loan Agreement is in effect.

During the Loan Term, the Borrower will establish a system of user charges to assure each recipient of drinking water system services from the drinking water system will pay such recipient's proportionate share of the cost of operation and maintenance, including replacement of the drinking water system and the Borrower also agrees that such system of user charges will be maintained.

18. Commencement of Construction.

Within six (6) months after the execution date of this agreement, the Borrower shall expeditiously initiate the project and complete construction in accordance with the approved schedule. The Borrower shall receive OSLI, WWDO, and DEQ written approval before implementing changes which delay the project schedule. In the event an extension is not approved or the project is not under construction within six (6) months after the execution date of this agreement, OSLI will give written notice that the commencement of construction has exceeded the period allowed and the Loan will be considered closed and repayments (if any) will start within one year of the notice.

19. Project Ending Date.

The Borrower covenants and agrees that it will draw all funds on this Loan by December 1, 2019. In the event the Borrower is unable to draw all the funds by this date, the Borrower may request an extension from OSLI, at least ninety (90) days prior to this date. If the Borrower fails to draw all of its eligible Loan funds by December 1, 2019, or received an extension from OSLI, then those funds will no longer be available and the Loan will be closed. Any remaining Loan funds will revert back to the Board.

20. Interest in Project Site.

As a condition of the Loan, the Borrower hereby warrants to the satisfaction of the OSLI, WWDO, and DEQ, before advertising for bids for construction, that the Borrower has or will have a fee simple or such other estate or interest in the site of the Project, including necessary easements and right-of-ways, as the OSLI, WWDO, and DEQ finds sufficient to assure undisturbed use and possession for the purpose of construction and operation of the Project for the estimated life of the Project.

21. Archaeological Artifacts.

In the event that archaeological artifacts or historical resources are unearthed during construction excavation, the Borrower shall stop, or cause to be stopped, construction activities and will notify the superintendent of the State Historic Preservation Office, DEQ, and WWDO of such unearthing and follow all applicable state and federal laws and regulations governing such occurrences. The Borrower may wish to hire a qualified archaeologist to monitor construction activities.

22. Operation and Maintenance of Drinking Water System.

The Borrower covenants and agrees that it shall, in accordance with prudent drinking water system practice, (i) at all times operate the properties of its drinking water system and any business in connection therewith in an efficient manner, (ii) maintain its drinking water system in good repair, working order and operating condition, (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterment and improvements with respect to its drinking water system so that at all times the business carried on in connection therewith shall be properly and advantageously conducted; provided, however, this covenant shall not be construed as requiring the Borrower to expend any funds which are derived from sources other than the operation of its drinking water system and provided further that nothing herein shall be construed as preventing the Borrower from doing so.

23. Binding Effect.

This Loan Agreement shall inure to the benefit of and shall be binding upon the Board and the Borrower, their respective successors and assigns.

24. Severability.

In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.



25. Floodplain Management.

The Borrower will comply with the floodplain management standards of the National Flood Insurance program.

26. Additional Covenants and Requirements.

If necessary in connection with the Board's issuance of the Loan, additional covenants and requirements will be included on Exhibit A to, and hereby made part of, this Loan Agreement. The Borrower agrees to observe and comply with each such additional covenant and requirement, if any, included on Exhibit A on the date of the Loan Closing. The Borrower agrees to comply with all applicable Federal, State, and local laws related to this project and the Loan Agreement

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27. Sovereign Immunity.

The State of Wyoming, the Wyoming Office of State Lands and Investments, and the Wyoming State Loan and Investment Board do not waive sovereign immunity by entering into this agreement, and specifically retain immunity and all defenses available to them as sovereign pursuant to Wyo. Stat. § 1-39-104(a) and all other state law.

IN TESTIMONY WHEREOF, I, Matthew H. Mead, President of the Wyoming State Loan and Investment Board, have executed these presents and caused the official seal of the Wyoming State Loan and Investment Board of the State of Wyoming to be affixed hereto at the City of Cheyenne, State of Wyoming, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

WYOMING STATE LOAN AND INVESTMENT BOARD

BY: \_\_\_\_\_  
GOVERNOR MATTHEW H. MEAD

ATTEST:

\_\_\_\_\_  
BRIDGET HILL, DIRECTOR  
OFFICE OF STATE LANDS AND INVESTMENTS

CITY OF GILLETTE

BY: \_\_\_\_\_  
LOUISE CARTER-KING, Mayor

ATTEST:

\_\_\_\_\_  
KARLENE ABELSETH, City Clerk

Attorney General's Office Approval as to Form:

  
\_\_\_\_\_  
Megan Nicholas, Assistant Attorney General

## EXHIBIT A

### ADDITIONAL COVENANTS AND REQUIREMENTS

1. Certification from the engineer must be furnished prior to commencement of operation stating that the Project was constructed as shown in the plans submitted or a justification by the engineer and/or operating entity of any changes that were made.
2. The Borrower must comply with all applicable City and/or County regulations prior to construction.
3. The Borrower will comply with all requirements and mitigation efforts as called out or detailed in the environmental assessment documents.
4. The Borrower will immediately increase water rates as necessary to comply with the user charge covenant requirement of the Loan Agreement.
5. The Borrower, subsequent to bid opening and prior to initiating construction, shall submit to DEQ and WWDO a construction schedule with key construction dates.
6. Assignment by the City of Gillette. This Loan Agreement cannot be assigned by the Borrower for any reason, unless the following conditions shall be satisfied: (a) the Board shall have approved said assignment in writing; (b) the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Borrower's duties, covenants, agreements and obligations under the Loan Agreement; (c) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Borrower under the Loan Agreements; (d) the OSLI shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Board with, or condition of any grant received by the Board from, the United States of America which is related to any capitalization grant received by the Board under the Safe Drinking Water Act. No assignment under this paragraph shall relieve the Borrower from primary liability for any of its obligations under this Loan Agreement; and, in the event of such assignment, the Borrower shall continue to remain solely liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.



Applicant: CITY OF GILLETTE, WYOMING

Project Name: INTERSTATE INDUSTRIAL PARK L.I.D. AND STREET IMPROVEMENTS

**PROJECT TIMELINE**

Task	Date	Actual/Estimate
1. Contract documents submitted to SRF Staff for approval	05/01/2017	Estimate
a) Apply for DEQ Permit to Construct	05/01/2017	Estimate
b) All permits, easements, Right of Ways approved or finalized/signed	06/01/2017	Estimate
2. Publish call for bids approved by SRF Staff	07/01/2017	Estimate
3. Construction start date	09/01/2017	Estimate
4. Substantial completion date	05/01/2019	Estimate
5. Construction end date	06/01/2019	Estimate