

**Wyoming Business Council
Business Ready Community Grant and Loan Program**

<u>No.</u>	<u>Chapter Name</u>	<u>Date Filed</u>
1	General Provisions	7/25/2016
3	Business Ready Community Loan Information	7/25/2016
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Chapter 1 GENERAL PROVISIONS

Section 1. Purpose.

(a) The purpose of the program is to promote economic development at the city, town and county levels in order to improve economic health and a stronger state economy. These rules are adopted in order to implement W.S. 9-12-602 through 9-12-603, which provide for the making of grants and loans to eligible applicants for economic or educational development infrastructure. The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of awards and a hearing process.

(b) Guiding Principles of the Business Ready Community Grant and Loan Program:

(i) Support to Wyoming's communities that are diverse in size, resources and economies.

(ii) Focus Business Ready Community funding on projects that will lead to sustainability of the program and local economic development efforts.

(iii) Support projects that will help people, families and communities thrive.

(iv) Increase the capacity of community and economic development partnerships and cooperative efforts between the private and public sectors recognizing that each has its own responsibilities.

(v) Support and encourage communities that develop innovative responses to their economic challenges through a flexible review and recommendation 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) "Board" means the Wyoming State Loan and Investment Board.

(b) "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 city, region or state by providing necessary resources and assistance.

(c) “Council” means the Wyoming Business Council Board of Directors.

(d) “Council staff” means the staff of the Wyoming Business Council assigned to administer the program.

(e) “Eligible project costs” means total project cost, less ineligible project costs. Examples of ineligible costs include appliances, equipment, furnishings and other features of the facility which are not physically attached.

(f) “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 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 be counted as cash match.

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

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

(i) “Phased projects” means a project in which parts (“phases”) are completed and fully functional before the entire project is built-out. For example, a business park that will eventually have twenty lots may be phased such that infrastructure will open up five lots at a time over four different phases. The first five lots can be occupied immediately upon completion of the infrastructure and do not require completion of the remaining three phases.

(j) “Political subdivision” is an entity, serving as an agent for the applicant that meets two of the three following criteria:

- (i) A governmental function with a local purpose;
- (ii) Officers elected by the district’s inhabitants;

(iii) Provisions for assessment of taxes for finance purposes.

(k) “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, or that meet an unmet need in the market area and result in the creation of new wealth.

(l) “Revenue generating project” means real property developed with Business Ready Community grants that can generate revenue from, lease payments or the proceeds from the sale of real property.

(i) “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 owner and can include utility costs, insurance, property taxes, pest control, repairs, property association fees and property maintenance.

(m) “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) A county, an incorporated city or town and joint powers board may apply for funding. A joint powers board may apply with the approval of all participating agencies to the joint powers agreement.

(b) The Council may enter into a contract/cooperative agreement with the Eastern Shoshone or the Northern Arapahoe Tribe 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.

Section 5. Type of Projects. A grant or loan may be used for the following types of projects:

(a) A Business Committed Project is a project in which an applicant has a business committed to start-up, expand, locate or retain jobs in the community. The applicant must demonstrate that new primary jobs will be created or retained by the

business and that the new jobs will be created at or above the county mean and/or median wages and/or improve community and economic capacity. In addition to assisting a particular business, a Business Committed Project may also fulfill the purpose of a Community Readiness Project. The maximum grant amount is \$3,000,000. Funding in excess of the maximum grant amount may be applied for as a BRC loan.

(b) A Community Readiness Project is a project which has no specific business committed to expand or locate in a community. The community wants to build infrastructure to ready itself for new business development under a specific strategy or plan of action; for example, development of a business or industrial park, a downtown development project or facilities for labor force or entrepreneurial training. The applicant must demonstrate potential exists for creation of new primary jobs. The maximum grant amount is \$3,000,000. Funding in excess of the maximum grant amount may be applied for as a BRC loan.

(c) A Community Enhancement Project is a project in which an applicant wants to improve the community's aesthetic character or quality of life in order to make itself more attractive for business development or workforce attraction and/or retention under a specific strategy or plan of action; for example, landscaping, recreational, convention facilities, community centers, senior care or child care infrastructure. Landscaping and streetscaping enhancements must be located in commercial districts, sites of business activity or high visibility areas. Recreation, convention or cultural centers must have a draw greater than the jurisdictional boundaries of the applicant. The maximum grant amount is \$500,000. Funding in excess of the maximum grant amount may be applied for as a BRC loan.

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

(i) An economic development plan assesses the community as a whole and identifies potential future economic development opportunities. This includes regional targeted industry plans. The maximum award is \$50,000.

(ii) A feasibility study is a site specific or industry specific plan to determine the feasibility of a project to meet economic development objectives. The maximum award is \$25,000.

(iii) A promotional plan addresses marketing of a community's assets. The maximum award is \$25,000.

(iv) A tourism plan addresses economic development opportunities for a defined region or community related to tourism. The maximum award is \$25,000.

Section 6. Eligible Activities.

(a) The following are eligible activities:

(i) Grant and loan funds may be used for economic or educational development infrastructure projects which may include, but are not limited to, water, sewer, streets and roads, telecommunications, airports, purchase of rights of way, purchase of land, buildings, facilities, industrial and business parks, industrial site or business district development, amenities within a business or industrial park, landscaping, recreational and convention facilities and other physical projects;

(ii) Grant and loan funds may not be used for the rehabilitation or expansion of existing infrastructure unless the Council determines the rehabilitation or expansion is necessary to meet the purpose of the program;

(iii) Grant and loan funds may be used for the expansion of infrastructure previously funded under this program for phased projects.

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

Section 7. Ownership of Infrastructure

(a) The infrastructure funded by this program shall be owned by the applicant or an agent of the applicant: community development organization, state development organization or political subdivision.

(b) Unless the project is owned by an applicant, there shall be documentation that in the event of dissolution of the owner, BRC-funded infrastructure must revert to the sponsoring applicant or a related city, town, county, joint powers board or tribe. 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 can be sold to a private entity without advertising the sale or calling for bids, provided that the grantee and/or borrower makes a determination that the sale will benefit the economic development of the community and holds a public hearing, notice of which shall include the appraised value of all real properties, at least once each week for three (3) consecutive weeks in a newspaper of general circulation in the county in which the grantee and/or borrower is located. All sales must be done in accordance with all applicable statutes.

Section 8. Revenue Generating Projects. Revenue generated by the applicant or an owner described in Section 7 must be recaptured at a negotiated rate commensurate with the public investment. A minimum of twenty-five percent (25%) of net revenue generated must be reimbursed to the BRC fund up to the original grant amount of the project. Revenue recapture requirements may be satisfied by repayment of a BRC loan or via revenue recapture payments unless otherwise prohibited by governmental rules or regulations.

(a) All funds recaptured at the local level shall be placed in a segregated economic development account.

(b) No more than fifty percent (50%) of local recapture may be used for operational expenses if matched dollar-for-dollar by local funds.

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

Section 9. Projects Involving a Private Developer. Projects involving a private developer must demonstrate the projected economic impacts are at least as great as the BRC assistance and may be demonstrated through repayment of BRC funds, direct jobs created, projected tax benefits and/or 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 readily available to the public access to the application and associated materials, exclusive of business plans or business financial information. An applicant shall actively solicit citizen input that can be submitted via writing, electronically or in person at a public hearing. A minimum of one 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 a newspaper of general circulation within the boundaries of the applicant or as approved by the Council staff. If the project facility is to be located outside the 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 should at a minimum:

(A) Identify the economic development opportunity(ies);

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

(C) Contain a comprehensive description of the proposed project;

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

(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) Each Wyoming Business Council Regional Director is available to assist applicants with the development of projects and preparation of applications. The Regional Director will use resources available such as the Department of Workforce Services and Wyoming's Community Colleges to define available workforce training programs that could be used in conjunction with educational development infrastructure and/or the labor market/workforce portion of the application. Draft applications must be provided to the Regional Director two weeks prior to submission.

(i) The applicant must schedule a consultation with a Wyoming Business Council Regional Director to discuss the project. The Wyoming Business Council Regional Director will submit preliminary comments and concerns along with the application. A copy of the draft application and draft application materials must be submitted to the Wyoming Business Council Regional Director at least two weeks before the application submission deadline;

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

(c) All grant and loan applications shall be reviewed by the office of the Attorney General for project structure, including recapture provisions, in advance of Council consideration.

(d) A complete application shall be forwarded by the Council staff with a recommendation to the Council for review. Incomplete applications will be either tabled or sent back to the applicant for resubmittal at a different time. An application that is determined by the Council staff to be incomplete shall be provided an explanation of the findings in writing within thirty (30) working days of its receipt where practical.

(e) The Council staff shall publish statewide notice of Council and Board meetings at which Business Ready Grant and Loan Program applications will be discussed.

(f) The Council shall consider each application, allow for comments from the public, the applicant and the Council staff and refer to the Board the application with a recommendation.

(g) Under extraordinary circumstances, the Council may recommend a waiver of rule requirements if the Council determines the waiver is consistent with the purpose of the Business Ready Community Grant and Loan Program.

Section 12. Application Submittal Requirements.

(a) Application Submittal Requirements. An applicant shall submit the required application form and supplemental documentation as required by Council staff.

(b) Other information as requested by Council staff.

(c) Previous Applicant. An applicant must show that satisfactory performance has been demonstrated under previous grants and/or loans awarded through this program.

Section 13. Allocation Plan and Funding Cycles

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

(b) Applications will be accepted according to an annual deadline schedule posted by the Council.

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

Business Committed	No Limit
Managed Data Center Cost Reduction	No Limit
Community Readiness	One per calendar year
Community Enhancement	One per calendar year
Planning	One per calendar year

(d) An applicant may request, with a single application, grant or loan funds up to the annual maximum amount for a multi-year project for a period not to exceed three (3) fiscal years. The applicant must demonstrate how the project meets the definition of a multi-year project.

Section 14. Application Evaluation. In addition to the Guiding Principles for the Business Ready Community Grant and Loan Program the Council may evaluate a grant and/or loan application utilizing one or more of the following criteria and measures:

(a) The extent to which the project will increase the number of primary jobs;

(b) The extent to which the project will create jobs at or above the county mean and/or median wages;

(c) The extent to which the project will create sustainable jobs or jobs with benefits such as health insurance and retirement;

(d) The extent to which the demand for those services outpaces the existing supply of services causing a detriment to the ability of the applicant to develop its workforce, community needs and economy;

(e) The extent of private investment in capital equipment and/or facilities for a new or existing business. Preference is given to projects leveraging private investment;

(f) The extent to which the project aligns with targeted industries identified by the local and regional community as well as the Council;

(g) The extent to which the total revenue for an existing business is increased;

(h) The extent to which the market share increases for an existing business as measured by units sold or some other measure that competitors in the market generally recognize as valid;

- (i) The viability and thoroughness of a business plan which includes, at a minimum, a business description, management qualifications, market investigation, balance sheet, profit and loss for the previous three (3) years or tax returns for the previous three (3) years and cash flow projections for the next three (3) years;
- (j) The extent to which the project helps an applicant attract new businesses and/or expand and retain existing business(es);
- (k) The extent to which the project helps an applicant fulfill community development goals related to economic development;
- (l) The extent to which the project helps an applicant diversify its economy;
- (m) The extent to which the project builds upon an applicant's unique assets and characteristics to develop momentum in market niches;
- (n) The extent to which the project is ready to begin construction and/or implementation. For example, projects have secured financing, permits and licensing, zoning classifications, annexation, appraisals and purchase agreements necessary to complete the project;
- (o) The extent to which the project helps the applicant grow the local workforce;
- (p) The extent to which the project helps the applicant expand entrepreneurial and/or workforce training;
- (q) The viability and thoroughness of the recapture plan for revenue generating projects that will anticipate revenue streams and prioritize economic development initiatives to be paid for with the revenue while allowing the applicant flexibility to respond to opportunities;
- (r) The extent to which the project involves the use of a Business Ready Community loan;
- (s) The extent to which the project leverages additional private investment.
- (t) The extent to which the project assists the applicant's Main Street Program efforts;
- (u) The extent to which the Community Enhancement project provides a listing of proposed community enhancement projects and site related to economic development along with preliminary cost estimates;

(v) The extent to which the planning project will create or further develop an applicant's specific economic development strategy;

(w) The extent to which the planning project will potentially lead to job creation or retention;

(x) The extent to which the planning project will address methods of funding to implement the plan;

(y) The extent to which the tourism planning project will increase overnight visitors, local sales tax revenue, local lodging tax revenue and local employment opportunities and earnings;

(z) Satisfactory performance under previous grants awarded through this program;

(aa) The extent to which the project will provide for information technology services to the state or to the applicant at a price discounted from the fair market value of the services;

(bb) The extent to which the project will provide information technology services to technology related businesses in the state, at a price discounted from the fair market value of the services;

(cc) The extent to which the project will facilitate the expansion or retention of a business developed at the University of Wyoming Business Technology Center;

(dd) In order to determine compliance with Article 16, Section 6 of the Wyoming Constitution, the Council staff will consult with the Attorney General when evaluating a request to fund a "Business Committed" project, project involving a private developer or a "Managed Data Center Cost Reduction" project. The application and the Council recommendation will be reviewed by the Attorney General using the following criteria:

(i) A public purpose must exist;

(ii) Adequate consideration must be exchanged;

(iii) Statutory authority must exist.

Section 15. Grant Match Requirements for Projects Other than Managed Data Center Cost Reduction grants.

- (a) BRC loans do not require a match.
- (b) A BRC loan can be used to satisfy match requirement.
- (c) Match is based on total eligible project costs.
- (d) Following is a breakdown:

BRC Required Match			
	Category 1 Applicant	Category 2 Applicant	Notes
Business Committed	10%	5%	Half of match must be cash
Community Readiness	10%	5%	Half of match must be cash
Community Enhancement	25%	20%	Half of match must be cash
Planning	25%	25%	Match must be all cash
All matches are calculated as a percentage of total project cost.			

(e) A grant for a “Planning” project shall require a minimum cash match of twenty-five percent (25%) of total eligible project activities. Community Development Block Grant funds cannot be used for a match.

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

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

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

(iii) In the case of a joint powers board, the project’s location will determine its categorization.

Section 16. 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, staff or qualified consultants reserve the right to review that policy prior to fund disbursements.

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

(c) 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, the Council staff shall notify grantee of this determination. Thirty (30) days following the notification, the unused portion of the grant or loan shall revert to the BRC Fund.

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

(iv) For projects with contingencies: Council staff may request a monthly update on the status of the contingencies. The grantee/borrower 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 modification to the contingencies.

(d) Project Monitoring.

(i) Reports. Within fifteen (15) calendar days of the conclusion of each calendar quarter during the term of the grant or loan contract, the applicant shall supply Council staff with a progress report. Each progress report shall set forth in narrative form the work accomplished under the grant or loan during the quarter and shall include a financial status report. At the end of the project, the applicant shall furnish Council staff with a comprehensive report of the project. The applicant shall likewise furnish the Council staff with a cumulative financial statement, reflecting the total expenditure pursuant to this grant agreement.

(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) Record retention. Grantee agrees to retain all records related to the project for five (5) years following the Council staff's date of notice to grantee of closeout of the grant.

(e) Project Evaluation.

(i) Reports. Upon project construction, the grantee/borrower shall annual reports for five years project outcomes against established measures. Council staff shall tailor reports to the specific nature of each grant or loan, in agreements between the Council and grantee.

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

(iii) At the end of the term of a BRC project, the Grantee/Borrower 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 detailed accounting of project expenditures that were paid for with BRC grant or loan funds, match contributed, recapture revenue(s) received, 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 a list of the accomplishments that resulted from the grant or loan. An authorized official of the Grantee/Borrower shall certify, under penalty of false swearing, that the information in the report is true. The Council staff reserves the right to require a BRC project audit to be conducted by the director of the department of audit or his designee. The cost of this audit shall be the responsibility of the Grantee/Borrower.

(iv) A grant/loan recipient shall keep recapture funds in a segregated account and report on such to council staff for the term of the revenue recapture agreement.



Chapter 3

BUSINESS READY COMMUNITY LOAN INFORMATION

Section 1. Definitions.

(a) “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.

Section 2. General Policy. A BRC loan may be made to fund all or a portion of any project that is an eligible activity. A BRC loan can 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 application requirements in Chapter 1, the following items are required:

(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 requirements (at the expense of the borrower). Council staff will determine the level of environmental review required;

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

(iv) If applicable, an applicant must include guarantees, letters of credit and any other proposed security;

(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 this loan will require an election;

(D) Method of repayment and revenue sources;

(E) Affirmation that Wyoming State Constitution debt provisions and all other applicable statutes will be followed.

(vi) In order for the Council to determine the ability of the applicant to repay a loan and to aid the Attorney General in evaluating the legality of the proposed indebtedness, an applicant shall provide an annual budget for the preceding and current fiscal years and 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:

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

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

(C) 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;

(D) Sales and use tax imposed within the jurisdiction of the applicant;

(E) 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.

(viii) Other applicable information as requested by the Council staff.

Section 4. Loan Amount.

(a) The maximum loan amount is \$3,000,000 per application.

Section 5. Interest Rate and Term. A Business Ready Community Loan shall be made at the following interest rates as recommended by the Council and established by the Board and reflective of market rates.

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

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

(c) Loans may have a one-time servicing fee of one-half of one percent (0.5%) not to exceed \$5,000 and will be serviced through a third-party contract.

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

(e) The term of the loan will be based upon the useful life of the asset not to exceed 30 years.

Section 6. Security Interest.

(a) A loan shall be adequately collateralized as recommended by the Council and determined by the Board. The Council may recommend and the Board may require a first position security interest in the revenue generating facility and the related user fees or assessments. Other security may be required as determined by the Council and approved by the Board. A borrower will 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 will be required to provide a complete appraisal on the collateral. Council reserves the right to review and accept the appraisal or assign the appraisal to a third party at the cost of the applicant. An appraisal may be waived in the event staff determines the project has sufficient equity coverage.

(b) Loans may be non-recourse.

Section 7. Attorney General Opinion. No loan shall be made without the written opinion of the Attorney General certifying the legality of the transaction and all loan documents. An election approving the project and borrowing for the project by the qualified electors of the borrowing entity shall be required only if the Attorney General determines such an election is otherwise required by law.

Section 8. Loan Evaluation. In addition to Application Evaluation criteria in Chapter 1, council staff shall evaluate a loan application utilizing the following criteria:

(a) 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;

(b) Whether the applicant is current on repayment obligations to the Business Ready Community account or other state loan accounts.

Section 9. Council Consideration. The Council shall consider each application, allow for comments from the public, the applicant and the Council staff and refer to

the Board a recommendation including the amount of the loan, the term of the loan and the type of security required to secure the loan.

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



Chapter 4

BUSINESS READY COMMUNITY MANAGED DATA CENTER COST REDUCTION FUNDING

Section 1. Definitions.

(a) “Managed Data Center” means a center whose primary purpose is 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 work stations, servers associated with workstations or small server rooms. For the purposes of these rules, the Council has adopted the Uptime Institute, Inc.’s four tiered classification approach to site power infrastructure. Projects must be similar and align with the characteristics of the tier classifications or another widely accepted metric for evaluating data centers.

(i) Tier IV data centers support companies with an international market presence delivering around the clock, year round services in a highly competitive market. Tier IV businesses are based on E-commerce, market transactions or financial settlement processes. The businesses tend to be large, global companies spanning multiple time zones.

(ii) Tier III data centers support internal and external clients around the clock, year round such as service centers and help desks, but can schedule short periods when limited service is acceptable.

(iii) Tier II data centers are typically internet-based companies without serious financial penalties for quality of service commitments and small businesses whose information technology requirements are mostly limited to traditional normal business hours, allowing system shutdown during “off-hours”.

(iv) Tier I data centers are small businesses where information technology primarily enhances internal business process and whose web-presence is as a passive marketing tool. For example, internet based startup companies without quality of service commitments.

Section 2. Maximum Amount and Match.

(a) The maximum grant amount is \$2,250,000. The grant amount will be determined by the business’ 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 net 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. Nor 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 years. The following table shows three (3) examples of grant amounts and the required match.

Total Grant Amount	Percent of Minimum Consideration	Minimum Required Match (Realized over 5 Years)	Minimum Percent of Required Consideration Comprised of Wages (100% of which are 150% the County Median)	Minimum Required Wages (100% of which are 150% above County Median)	Maximum Private Capital Investment in Taxable Items Allowable as Consideration
\$ 2,250,000	125%	\$ 2,812,500	50%	\$ 1,406,250	\$ 1,406,250
\$ 1,500,000	125%	\$ 1,875,000	50%	\$ 937,500	\$ 937,500
\$ 750,000	125%	\$ 937,500	50%	\$ 468,750	\$ 468,750

Section 3. Eligible Project Activities. Grants for Managed Data Center Cost Reduction projects may be used for the reduction of the costs of electrical power, broadband or both.

Section 4. Fund Disbursement, Project Monitoring and Project Evaluation. Managed Data Center Cost Reduction projects are subject to all requirements listed in Chapter 1, Section 15 and the following:

(a) Funds will only be disbursed for businesses that are in operation in the jurisdiction of the applicant. Funds may be disbursed over five years applicant realizes the match requirement. Annual grant disbursements may total no more than one-third (1/3) the total amount in addition to the unused balance available from previous grant years.

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

(c) If the Council staff determines that five (5) years has elapsed since the commencement of operations of a business participating in a “Managed Data Center Cost Reduction” project and the match requirement has not been met, then the full or

partial amount of grant disbursed to the applicant may be reimbursed to the BRC account.

Section 5. Application Evaluation. In addition to other application evaluation criteria in Chapter 1, Managed Data Center Cost Reduction requests will be evaluated on the extent to which the project will provide for the growth or recruitment of managed data centers at Tier II, Tier III and Tier IV levels or similar levels. Preference will be given to Tier III or Tier IV level or similar level managed data centers.

Section 6. Application Submittal Requirements

(a) Applicant must follow application requirements in Chapter 1.

(b) In addition to other requirements listed for a development agreement in Chapter 1, the following must 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) An understanding of the timeline for the business to become operational;

(vi) An offer by the business and an acceptance or declination 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) The signed contingency may also include a commitment by the business to offer a stated amount of information technology services to the state or a Wyoming based technology related business at a price discounted from the fair market value of the services;

(viii) (If applicable) A signed lease agreement or memorandum agreement with regards to the terms of a lease agreement;

(ix) (If applicable) Evidence that there is or will be infrastructure, architecture and services necessary for the support of a data center at a Tier II, Tier III or Tier IV level or similar level.

(c) At the applicant's expense, the Council staff may request a disinterested third party to validate a data center's Tier level, review a business plan or examine other aspects of an application. Council staff must approve the third party.

**Wyoming Business Council
Community Development Block Grant**

<u>No.</u>	<u>Chapter Name</u>	<u>Date Filed</u>
0	APPENDIX A & B	7/2/2008
1	General Policies	5/29/2012
2	Economic Development Program	5/29/2012
3	Community Development Program	5/29/2012
4	Imminent Threat Grants	5/29/2012

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Wyoming Community Development Block Grant Program

APPENDIX "A"

WYOMING LOW TO MODERATE INCOME LIMITS - 2008

County	Median Income	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
Albany	58,100	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Big Horn	50,000	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Campbell	71,800	40,200	45,950	51,700	57,450	62,050	66,650	71,250	75,850
Carbon	55,600	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Converse	60,100	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Crook	56,500	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Fremont	49,700	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Goshen	52,500	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Hot Springs	51,600	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Johnson	56,800	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Laramie	62,600	35,050	40,100	45,100	50,100	54,100	58,100	62,100	66,150
Lincoln	59,100	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Natrona	60,700	34,000	38,850	43,700	48,550	52,450	56,300	60,200	64,100
Niobrara	43,700	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Park	54,100	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Platte	53,700	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Sheridan	56,700	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Sublette	63,000	35,300	40,300	45,350	50,400	54,450	58,450	62,500	66,550
Sweetwater	71,300	39,950	45,650	51,350	57,050	61,800	66,200	70,750	75,300
Teton	83,300	43,050	49,200	55,350	61,500	66,400	71,350	76,250	81,200
Uinta	65,100	36,450	41,700	46,900	52,100	56,250	60,450	64,600	68,750
Washakie	55,600	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500
Weston	52,500	33,650	38,500	43,300	48,100	51,950	55,800	59,650	63,500

source: (HUD 2/19/2008)

APPENDIX "B"

FEDERAL REQUIREMENTS

If awarded CDBG funds Grantee acknowledges and consents to, and will comply with the following:

A. Grantee is authorized and hereby consents to accept the jurisdiction of the Federal courts for the purpose of enforcement of its responsibilities as such an official and Grantees responsibilities under the Grant Agreement.

B. The Community Development Block Grant program has been developed so as to give maximum feasible priority to activities that will benefit low and moderate income families, or aid in the prevention or elimination of slums or blight.

(The requirement for this certification will not preclude WBC from approving a pre-application where the Grantee certifies, and WBC determines, that all or part of the community development program activities are designed to meet other community development needs having a particular urgency as specifically explained in the pre-application)

C. Grantee will consent to assume the status of a responsible Federal Official under the National Environmental Policy Act of 1969, 42 U.S.C. ' 4321 *et seq.* (NEPA), insofar as the provisions of Act apply to the Wyoming Small Communities Block Grant Program.

D. Grantee will, in connection with its performance of environmental assessments under NEPA, comply with Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. ' 470); Protection and Enhancement of the Cultural Environment, Exec. Order No. 11,593, 36 Fed. Reg. 8921 (1971), and 36 C.F.R. ' 800.8 by consulting with the Wyoming State Historic Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects by the proposed activity.

E. Grantee will comply with the regulations, policies, guidelines and requirements of 24 C.F.R. ' 85, as they relate to the acceptance and use of Federal funds and will comply with all requirements imposed by WBC concerning special requirements of law, program requirements, and other administrative requirements.

F. Grantee will administer and enforce the labor standards requirements set forth in the Davis-Bacon Act, 40 U.S.C. ' 276a, Contract Work Hours and Safety Standards Act, 40 U.S.C. " 327-32, the Anti-Kickback Act of 1986, 41 U.S.C. " 51-58, and regulations issued to implement such requirements, as each may be amended from time to time.

G. Grantee will comply with the provisions of Floodplain Management, Exec. Order No. 11,988, 42 Fed. Reg. 26,951 (1977), *as amended* by Exec. Order No. 12,148, 44 Fed. Reg. 43,239 (1979), relating to evaluation of flood hazards and floodplain management; and Protection of Wetlands, Exec. Order No. 11,990, 42 Fed. Reg. 26,961 (1977), *as amended* by Exec. Order No. 12,608, 52 Fed. Reg. 34,617 (1987), relating to wetlands protection.

H. Grantee will comply with the flood insurance purchase requirement of Section

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102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. ' 4001 *et seq.*, that requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area, that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "federal financial assistance" includes this Grant.

I. Grantee will, pursuant to the Architectural Barriers Act of 1968, 42 U.S.C. ' 4151, *et seq.*, require every building or facility (other than a privately owned residential structure) designed, constructed or altered with funds provided under this part to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to and Useable by the Physically Handicapped", Number A117.1-1961, subject to the exceptions contained in 41 C.F.R. ' 101-17.703. Grantee will be responsible for conducting inspections to insure compliance with these specifications by its contractor(s).

J. Grantee will comply with:

(1) The Civil Rights Act of 1964, 42 U.S.C. 2000 *et seq.*, and the regulations issued pursuant thereto including 24 C.F.R. ' 1, that provides that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to any discrimination under any program or activity for which the Grantee receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Grantee, this assurance shall obligate and bind the Grantee, or in the case of any transfer of such property, any transferee, to comply with such laws and regulations for the period during which the property or structure is used for the purpose for which the Federal financial assistance is extended, or for other purposes involving the provision of similar services or benefits.

(2) The Civil Rights Act of 1968, 42 U.S.C. ' 3604-3606, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services.

K. Grantee will:

(1) Comply with Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894, and HUD implementing regulations at 49 C.F.R. ' 24, and 24 C.F.R. ' 570.606;

(2) Provide relocation payments and offer relocation assistance as described in Section 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to all persons displaced as a result of acquisition of real property for an activity assisted under the Wyoming CDBG Program. Such payments and assistance shall be provided in a fair and consistent and equitable manner that insures that the relocation process does not result in

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different or separate treatment of such persons on account of race, color, religion, national origin, sex, or source of income.

(3) Assure that, within a reasonable period of time prior to displacement, comparable decent, safe and sanitary replacement dwellings will be available to all displaced families and individuals and that the range of choices available to such persons will not vary on account of their race, color, religion, national origin, sex or source of income.

L. Grantee will comply with the provisions of the Hatch Act, as amended, which limits the political activity of employees.

M. Grantee will give WBC and HUD, through any authorized representatives, access to and the right to examine all records, books, papers, or documents related to the Grant.

N. Grantee will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the Project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify HUD of the receipt of any communication from the Director of EPA Office of Federal Activities indicating that the facility to be used in the Project is under consideration for listing by the EPA.

O. Grantee will comply with the provisions of 42 U.S.C. ' 4831, regarding the use and removal of lead-based paints.

P. Grantee will, with any housing rehabilitation program, implement the provisions of Section 39, Energy Conservation Standards, of the Housing and Urban Development Act, Pub. L. No. 89-117, 79 Stat. 451 (1965), as is practical and possible in the rehabilitation of any residential structures, and will adopt and implement a housing rehabilitation standard.

Q. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. ' 794 and the regulations issued pursuant thereto 24 C.F.R. ' 8), which provide that "No otherwise qualified individual with disabilities in the United States shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance..."

R. Grantee certifies that the unit of local government participating in this CDBG Agreement and/or Contract for Services is or will be following a detailed citizen participation plan that satisfies the requirements of 24 C.F.R., ' 570.486.

S. Grantee certifies that the unit of local government participating in this CDBG Agreement and/or contract for services has identified its community development and housing needs, including the needs of low and moderate income families, and the activities to be undertaken to meet these needs.

T. Grantee certifies that the unit of local government participating in this CDBG Agreement and/or contract for services will not attempt to recover any capital costs of public improvements assisted with CDBG funds including Section 108 loan guaranteed funds by assessing any amount against properties owned and occupied by persons of low and moderate

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income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if CDBG funds are used to pay the proportion of a fee or assessment that relates to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Grantee will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108, unless CDBG funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Also, in the case of properties owned and occupied by moderate-income (not low-income) families, an assessment or charge may be made against the property for public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

U. Grantee certifies that the unit of local government participating in this CDBG Agreement and/or contract for services has adopted and is enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

(2) A policy of enforcing applicable state and local laws against physically barring entrance-to or exit-from a facility or location which is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

V. Grantee will comply with, certify to, and have a written policy in accordance with the Drug-Free Workplace Act of 1988 (Public Law 100-690), including but not limited to provisions of 24 C.F.R. ' 24(F), "Drug-Free Workplace Requirements", and 48 C.F.R. ' 23.5, "Drug-Free Workplace". Compliance includes, but is not limited to, the publication of a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

W. Grantee certifies that to the best of its knowledge and belief:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the unit of local government participating in this CDBG Agreement, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will

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be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

(3) It will require that the language of paragraphs 1 and 2 of this certification will be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

X. Grantee certifies that the activities to be undertaken with CDBG funds are consistent with the Strategic Plan incorporated within the State Consolidated Plan for Housing and Community Development.

Y. Grantee will comply with Section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 C.F.R. ' 135, Economic Opportunities for Low and Very Low Income Persons, as each may be amended.



WYOMING COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

FINAL RULES AND REGULATIONS

CHAPTER 1

GENERAL POLICIES

Section 1. **Authority.**

(a) These rules and regulations describe policies for the Wyoming Community Development Block Grant Program (CDBG) that was assumed by the state of Wyoming from the Department of Housing and Urban Development beginning with the Fiscal 1982 program. 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. 9-1-216. The Wyoming Business Council will utilize these regulations to select and approve qualified community development grants, homeownership assistance, planning only grants, technical assistance, job training, downtown development, infrastructure applicants, convertible loans, section 108 loans, and float loans. Seventy percent (70%) of CDBG funds shall be used for the benefit of low to moderate income persons.

Section 2. **Eligible Applicants.**

(a) Only counties and incorporated cities and towns may apply. However, local governments may apply on behalf of other units of governments or special interest groups. The cities of Cheyenne and Casper are not eligible to apply since funds are available to them under the HUD Entitlement Program. However, Laramie and Natrona counties may apply on behalf of a project located within the municipal boundaries of Cheyenne and Casper respectively, if it can be demonstrated the benefits of the project are available on a countywide basis.

(b) All applicants must certify that each project has allowed citizen comment through the public hearing process before submission to the Wyoming Business Council. (Refer to Section 11, Citizen Participation, for further information).

(c) All applications must be accompanied by a resolution passed by the city or town council or the county commissioners and signed by the chief elected official.

(d) Joint applications from two or more eligible applicants are permissible.

(e) Economic development applications will be considered from counties and incorporated cities and towns on behalf of specific businesses. The sponsoring entity must demonstrate particular benefit accruing to that entity as a result of the grant. This benefit must pertain to one of the three national objectives listed in Chapter 1, Section 3.

Section 3. **National Objectives.**

(a) No application will be considered unless it supports at least one of three National Objectives. The application must identify which of the three needs it meets. Not all National Objectives can be applied to all project types. The Division of Investment Ready Communities should be contacted to determine how a particular project might meet a National Objective. The three National Objectives are:

- (i) Benefit to low and moderate income families;
- (ii) Aid in the prevention or elimination of slums or blight;
- (iii) Activities designed to meet community development needs having a particular urgency;

(b) Activities considered to benefit low to moderate income families are divided into four categories:

- (i) Area benefit activities;
- (ii) Limited clientele activities;
- (iii) Housing activity; and
- (iv) Job creation or retention activity;

(A) **Area Benefit Activity.**

(I) An area benefit activity is an activity that meets the identified needs of low to moderate income families residing in an area where at least fifty-one percent (51%) of the residents are low to moderate income persons. The benefits of this type of activity are available to all persons in the area regardless of income. Such an area must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(II) To document area benefit the applicant must: (1) define the service area, and (2) collect income characteristics of families and unrelated individuals in the service area. The applicant may use either HUD provided data comparing census data with low and moderate-income levels or locally provided survey data that is methodologically sound.

(B) **Limited Clientele Activities.**

(I) Limited clientele activity is an activity that benefits a specific group of people rather than all the residents in a particular area, of which at least fifty-one percent (51%) are low to moderate income persons. To qualify under this category, the activity must meet one of the following tests:

(1.) The project must exclusively benefit a clientele who are generally presumed to be principally low and moderate income persons. The following groups are presumed to meet this criterion unless there is evidence to the contrary:

- a. Abused children;
- b. Elderly persons;
- c. Battered spouse;
- d. Homeless person;
- e. Handicapped adults meeting the Bureau of Census' definition of severely disabled adults (See 24 CFR 570.483(b)(2)(ii)(A));
- f. Illiterate adults;
- g. Persons living with AIDS; and
- h. Migrant farm workers.

(2.) Require information on family size and income so that it is evident that at least fifty-one percent (51%) of the clientele are persons whose family incomes does not exceed the low and moderate income limits.

(3.) Have income eligibility requirements limit the activity exclusively to low and moderate income persons.

(4.) Be of such a nature and location that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(II) Limited clientele projects also include special projects directed to the removal of material and architectural barriers in existing buildings restrict the mobility and accessibility of elderly or handicapped persons to publicly-owned and privately-owned non-residential buildings, facilities and improvements, and the common areas of residential structures containing more than one dwelling unit.

(C) Housing Activities.

(I) A low and moderate housing activity is an activity that adds or improves permanent residential structures which will be occupied by low to moderate income households upon completion. The housing can be either owner or renter occupied units in either one family or multi-family structures. Rental units occupied by low to moderate income households must be occupied at affordable rents and the applicant must have criteria for determining affordable rents for this purpose.

(D) Job Creation and Retention Activity.

(I) A low to moderate jobs activity is one that creates or retains permanent jobs, at least fifty-one percent (51%) of which are either taken by low to moderate income persons or considered available to low to moderate income persons. This applies to economic development projects with the purpose of creating/retaining permanent jobs. It does not apply to community development projects with the purpose of providing a service to the community or limited clientele, such as a community center, child day care facility or a senior center. In counting jobs, the following applies:

(1.) Part-time jobs must be converted to full-time equivalents.

(2.) Only permanent jobs count. Temporary jobs may not be included.

(3.) Seasonal jobs may be counted only if the season is long enough for the job to be considered as the employee's principal occupation.

(4.) All permanent jobs created by the activity must be counted even if the activity has multiple sources of funding.

(5.) Jobs created indirectly by an assisted activity may not be counted.

(6.) As a general rule, jobs from different businesses may not be aggregated. However, in certain cases such as where CDBG funds are used to acquire, develop, or improve real property, (e.g., a business incubator or an industrial park) jobs may be aggregated for all of the businesses located on the property.

(7.) In any case where CDBG funds are used for public improvements (e.g., economic development infrastructure) jobs to be considered for meeting the job creation/retention requirement shall be all jobs created/retained by the business(es) originally assisted as well as any other business(es) that locate in the area within a period of one year following the completion of the funded activity. Except that, in any case where the amount of CDBG assistance provided for the public improvements in relation to the number

of jobs projected to be created/retained by the originally funded business(es) is such that the amount per job does not exceed \$10,000. Jobs created by businesses that locate in the area and benefit from the improvements need not be considered.

(II) To qualify for job retention, there must be clear and objective evidence that permanent jobs will be lost without CDBG assistance. In addition, at least fifty-one percent (51%) of the jobs at the time the CDBG assistance is provided must be held by low to moderate income persons or the job can reasonably be expected to turn over within the following two years and that it will be filled by, or steps will be taken, to ensure that it is made available to a low or moderate income person upon turnover.

(c) Activities that aid in the prevention or elimination of slums or blight. To qualify under elimination of slums and blight, an application must demonstrate that the following criteria have been met. An activity may qualify on either an area basis or a spot basis.

(i) Elimination of slums and blight on an area basis:

(A) The area must be designated by the applicant and that area must meet a definition of a slum, blighted, deteriorated or deteriorating area under state or local law. (See Wyoming SS 15-9-101 to 15-9-137).

(B) Throughout the area there is a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general state of deterioration.

(C) The project must address one or more of the conditions contributed to the deterioration of the area.

(ii) Elimination of slums or blight on a spot basis. To comply with the National Objective of slums or blight outside a designated slum or blighted area, a project must meet the following criteria:

(A) The project must be designed to eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area; and

(B) The activity must be limited to acquisition, clearance, relocation, historic preservation or rehabilitation of buildings. Under this criterion rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

(d) Activities designed to meet community development needs having a particular urgency. An activity will be considered to address this objective if the applicant certifies, and the state determines that:

(i) The activity is designed to alleviate existing conditions pose a serious

and immediate threat to the health or welfare of the community. For example, damage to a municipal sewer lagoon due to a flood.

(ii) The threat is one of recent origin or one recently became urgent. A condition will be considered to be of recent origin if it developed or became urgent within eighteen months preceding the certification by the applicant.

(iii) The applicant is unable to finance the activity on their own, and other sources of funding are not available.

(e) To qualify for National Objective #1, at least 51 percent of the persons benefiting from the project must be from low and moderate income households. However, applicants are cautioned that they must show that moderate income families are not being benefited to the exclusion of low income families. The state will use the HUD section 8 limits for each county. (See Attachment A for limits).

(f) The state must show that at least 70 percent of its total federal funds, by activity, benefit low to moderate income families. Therefore, applicants applying under the remaining National Objectives may not be funded if the statewide 70 percent minimum is not met.

Section 4. **Eligible Activities.**

(a) The eligible activities are restricted to projects meeting the criteria outlined in section 105(a) of the Housing and Community Development Act of 1974, as amended through 1992. Consistent with section 105(a), the following criteria shall be applied to determine eligible activities:

(i) The acquisition of real property (including air rights, water rights, and other interests therein) that are blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; appropriate for rehabilitation or conservation activities; appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or to be used for other public purposes;

(ii) The acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and sites or other improvements;

(iii) Code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public or private improvements or services to be provided, may be expected to arrest the decline of the area;

(iv) Clearance, demolition, removal, and rehabilitation (including rehabilitation that promotes energy efficiency) of buildings and improvements (including interim assistance, financing public or private acquisition for rehabilitation, and rehabilitation of privately owned properties and including the renovation of closed school buildings);

(v) Special projects directed to the removal of material and architectural barriers restrict the mobility and accessibility of elderly and handicapped persons;

(vi) Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this title;

(vii) Disposition (through sale, lease, donation or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

(viii) Provisions of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by the such unit, or received by such unit from the state in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to those funds that are to be made available under this title, and are to be used for such services, unless the secretary of HUD finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 percent of the amount of any assistance to a unit of general local government (or in the case of non-entitled communities not more than 15 percent statewide) under this title including program income may be used for activities under this paragraph unless such unit of general local government used more than 15 percent of the assistance received under this title for fiscal year 1982 or fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount;

(ix) Payment of the non-federal share required in connection with a federal grant in aid program undertaken as part of activities assisted under this title;

(x) Payment of the cost of completing a project funded under title I of the Housing Act of 1949;

(xi) Relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

(xii) Activities necessary (A) to develop a comprehensive community

development plan, and (B) to develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively (I) determine its needs, (II) set long-term goals and short-term objectives, (III) devise programs and activities to meet these goals and objectives, (IV) evaluate the progress of such programs in accomplishing these goals and objectives, and (V) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(xiii) Payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981; and

(xiv) Provision of assistance including loans (both interim and long term) and grants for activities are carried out by public or private nonprofit entities, including (A) acquisition of real property; (B) acquisition, construction, reconstruction, rehabilitation, or installation of (I) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and (II) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and (C) planning;

(xv) Assistance to neighborhood-based non-profit organizations, local development corporations, non-profit organizations serving the development needs of the communities of non-entitlement areas, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 101(c), and assistance to neighborhood-based non-profit organizations, or other private or public non-profit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in section 3(b)(3) of the United States Housing Act of 1937) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;

(xvi) Activities necessary to the development of energy use strategies related to recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as:

(A) An analysis of the manner in, and the extent to, energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements, budgeting, waste management, district heating and

cooling, land use planning and zoning, and traffic control, parking, and public transportation functions; and

(B) A statement of the actions the recipient will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low and moderate income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities.

(xvii) Provisions of assistance to private, for-profit entities, when the assistance is appropriate to carry out an economic development project, (that shall minimize, to the extent practicable displacement of existing businesses and jobs in neighborhoods) that:

(A) Creates or retains jobs for low and moderate income persons;

(B) Prevents or eliminates slums and blight;

(C) Meets urgent needs;

(D) Creates or retains businesses owned by community residents;

(E) Assists businesses that provide goods or services needed by, and affordable to, low and moderate income residents; or

(F) Provides technical assistance to promote any of the activities under subparagraphs (A) through (E).

(xviii) The rehabilitation or development of housing assisted under section 17 of the United States Housing Act of 1937;

(xix) Provision of assistance to facilitate substantial reconstruction of housing owned and occupied by low and moderate income persons (A) where the need for reconstruction was not determinable until after rehabilitation under this section had already commenced, or (B) where the reconstruction is part of a neighborhood rehabilitation effort and the grantee (I) determines the housing is not suitable for rehabilitation, and (II) demonstrates to the satisfaction of the secretary of the Department of Housing and Urban Development (HUD) that the cost of substantial reconstruction is significantly less than the cost of new construction and less than the fair market value of the property after substantial reconstruction;

(xx) Provision of technical assistance to public or nonprofit entities to increase the capacity such entities to carry out eligible neighborhood revitalization or economic development activities, assistance shall not be considered a planning cost as defined in paragraph

(xii) or administrative cost as defined in paragraph (xiii);

(xxi) Housing services, such as housing counseling, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities authorized under this section, or under title II of the Cranston-Gonzalez National Affordable Housing Act, except that, activities under this paragraph shall be subject to any limitation on administrative expenses imposed by any law;

(xxii) Provision of assistance by recipients under this title to institutions of higher education having a demonstrated capacity to carry out eligible activities under this subsection for carrying out such activities;

(xxiii) Provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by;

(A) Providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of micro enterprises;

(B) Providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in micro enterprise activities) to owners of micro-enterprises and persons developing micro-enterprises; and

(C) Providing general support (such as peer support programs and counseling) to owners of micro-enterprises and persons developing micro-enterprises;

(xxiv) Activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low and moderate income neighborhoods; and

(xxv) Provision of direct assistance to facilitate and expand home ownership among persons of low and moderate income (except that such assistance shall not be considered a public service for purposes of paragraph (viii) by using such assistance to:

(A) Subsidize interest rates and mortgage principal amounts for low and moderate income home buyers;

(B) Finance the acquisition by low to moderate income homebuyers

of housing that is occupied by the homebuyers;

(C) Acquire guarantees for mortgage financing obtained by low and moderate income homebuyers from private lenders (except that amounts received under this title may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this title may not directly provide such guarantees);

(D) Provide up to 50 percent of any down payment required from low or moderate income homebuyers; or

(E) Pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low or moderate income home buyer.

Section 5. **Ineligible Activities.**

(a) The following activities have been determined to be ineligible for economic development assistance because they have been determined to provide insufficient public benefit:

(i) General promotion of the community as a whole, as opposed to the promotion of specific areas and programs;

(ii) Assistance to professional sports teams;

(iii) Assistance to privately owned recreational facilities that serve a predominately higher income clientele, where the recreational benefits to low and moderate income persons;

(iv) Acquisition of land for which the specific proposed use has not yet been identified;

(v) Assistance to a for-profit business while that business or any other business owned by the same person (s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance.

Section 6. **Eligible Costs.**

(a) Administrative costs incurred in carrying out the program must not exceed 15 percent of the total program or project cost (20 percent for housing rehabilitation). Eligible administrative costs are defined as follows: Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities financed in whole or in part with funds from this program. General management, supervision and coordination, reasonable costs of overall program management, coordination, monitoring and evaluation, and similar costs associated with carrying out the overall project. Such costs include but are not limited to: salaries, wages, and related costs of the applicant's staff and the staff of

local public agencies engaged in general management, coordination, monitoring and evaluation, travel costs incurred for official business in carrying out the project, administrative services performed under third-party contracts or agreements, including such services as general legal services and accounting services; and other costs for goods and services as rental and maintenance of office space, insurance, utilities, office supplies and rental of office equipment.

Section 7. Ineligible Costs.

(a) No costs may be paid with this program's funds that were incurred prior to the Wyoming Business Council and the city, town or county signing the grant agreement, including but not limited to: preparing the application, travel, per diem and other expenses related to delivering or preparing the application; architectural engineering or planning costs to prepare specifications, plans, maps, etc.; site work such as soil surveys, surveying, etc.; attending or holding public hearings or workshops.

Section 8. Funding Cycles and Application Approval.

(a) Requests for funds will be accepted semi-annually and scheduled for final review and award by the Wyoming Business Council.

(b) A final draft application must be provided to the regional director no later than two (2) weeks prior to the application deadline set by the Wyoming Business Council.

(c) All applications must be postmarked no later than the date the Wyoming Business Council sets for receiving applications.

(d) One copy should be provided to the Regional Director. The original, one copy and one digital copy should be sent to:

Wyoming Business Council
Investment Ready Communities Division
214 West 15th Street
Cheyenne, WY 82002

Section 9. Applicant's Contribution.

(a) The sponsoring public entity is responsible for all administrative duties and must provide an individual who will be responsible for seeing all contract agreements are met. If an application has been sponsored on behalf of a non-profit or a for-profit entity, a sub-agreement or development agreement delineating roles and responsibilities must be provided as an attachment to the grant agreement and then finalized upon grant award as an attachment to the overriding grant agreement between the local government sponsor and any sub-recipients.

Section 10. Data Requirements.

(a) Data used to support an application must be from either federal or state sources to

insure consistency among all applicants. The source of the data must be cited in the application. However, applicants may use data derived at the city or county level if they can satisfy staff of the Wyoming Business Council, that the data is accurate and will not give the applicant an unfair advantage over other applicants. The methodology used, sample size, data sources, etc., must be submitted to Wyoming Business Council with the application if other than federal or state information is used.

Section 11. **Citizen Participation.**

(a) Applicants are required to solicit citizen input through a properly publicized public hearing before submission of an application. For the purposes of this program seven (7) days is the minimum period for notification of a hearing date and notice should be advertised in a legal newspaper with common, local distribution or posted for a minimum of ten (10) calendar days in conspicuous public places if there is no local newspaper available. The hearing must inform citizens of the date, time and location of the meeting, type of grant application that will be submitted, amount of the request, name and brief description of the project for which grant funds are being requested, type and amount of matching funds that will be contributed and the CDBG National Objective that will be met. The intent of this process is to obtain citizen input, not to inform the public what the elected officials have already decided. Citizens must also be provided an opportunity to comment if they are unable to attend the hearing and reasonable accommodations must be provided for those with disabilities. Minutes of the public hearing must be part of the application. For additional information on the citizen participation requirements please reference 2010 Citizen Participation Plan as amended (2012).

A grant may be awarded only if the applicant certifies that it has:

(i) Provided for and encouraged citizen participation, with particular emphasis on participation by persons of low and moderate income who are residents of slum and blight areas and of areas in which CDBG funds are proposed to be used;

(ii) Provided citizens with reasonable and timely access to local meetings, information, and records relating to the local governments proposed and actual use of funds;

(iii) Provided for technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals with the level and type of assistance to be determined by the grantee;

(iv) Provided for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance, these hearings shall be held after adequate notice at times and locations convenient to potential or actual beneficiaries, and with accommodation for the handicapped;

(v) Provided for a timely written answer to written complaints and

grievances, within 15 working days where practicable; and

(vi) Identified how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate. Identified how the needs of handicapped/disabled individuals will be met in the case of public hearings.

Section 12. **Housing and Community Development Plan.**

(a) The Housing and Urban Renewal Recovery Act requires that grantees will identify their short and long term goals for housing needs and community development, including low-moderate income needs, and the activities to address those needs, before any funds can be disbursed. Any reasonable plan will be accepted until the state has specific guidelines from HUD. In addition to the above items, the plan must also contain:

- (i) A plan to minimize displacement of citizens with CDBG funds;
- (ii) A plan to assist displaced persons should there be any;
- (iii) A plan to affirm fair housing;
- (iv) Data supporting housing needs and goals.

(b) The plan should be simple and reasonable, taking into account the limited resources and personnel available to the cities, towns and counties. However, it should be a useful document.

Section 13. **Audit.**

(a) An annual audit is required for review by the Wyoming Business Council and a proportionate share of the cost of the audit may be paid for out of CDBG funds. All audits must follow the “single audit concept” of OMB Circular A-133.

Section 14. **Federal Requirements.**

(a) Applicants must be aware of all applicable federal requirements before they apply for funding. Attached are regulations may involve your project and with which you will be required to comply. See attachment B.

Section 15. **Program Income.**

(a) All income derived from the program may be re-used by the grantee upon receiving approval of the use of the funds from the Wyoming Business Council before disbursements. The Wyoming Business Council shall require each grantee to disburse its program income prior to requesting additional funds from the Wyoming Business Council to

finance the same type of project from which the program income was derived.

Section 16. State Historic Preservation Office (SHPO).

(a) Section 106 of the National Historic Preservation Act requires that cultural resources must be considered when federally funded projects are undertaken. This does not apply to Planning and Technical Assistance grant applications.

(b) This provision does not require the applicant to receive SHPO clearance prior to submitting an application, but rather is intended to inform the applicant of the SHPO procedures that will be required if a grant award is made.

Section 17. Capital Recovery Costs.

(a) For public improvement projects, the grantee cannot recover any capital cost by assessing any amount against property owned and occupied by low and moderate income persons, including fees or assessments charged as a condition of obtaining access to such public improvements. This applies to water and sewer tap fees and local improvement district assessments. However, the costs are recoverable if:

- (i) The CDBG funds received are used to pay the proportion of such fee or assessment that relates to the capital costs of the public improvements that are financed from revenue sources other than under this title;
- (ii) For purposes of assessing any amount against properties owned and occupied by persons of low and moderate income who are not persons of very low income, the grantee certifies to the state that it lacks sufficient CDBG funds to comply with the requirements of subparagraph (i).

Section 18. Lump Sum Drawdown.

(a) Lump sum drawdowns cannot be made to any grantee until: (i) applicant has a signed contract with recipient; (ii) applicant has an executed loan agreement including, (if applicable) any sub-agreements or development agreements; and (iii) funds are actually required by the recipient to meet disbursement needs.

Section 19. Timely Progress.

(a) Grant agreements must be reviewed and signed by the Attorney General's Office, the Wyoming Business Council and the grantee.

(b) HUD requires the state to obligate all funds within 15 months of receipt and to have all funds expended within 18 months of receipt. Therefore, timely progress of the project and a good faith effort of the grantee will be required in all contracts.

Section 20. Project Completions.

(a) If the circumstances arise that a project as applied for cannot be completed with available CDBG funds, the grantee will be required to complete the project with its own funds or reimburse the CDBG program.

Section 21. Minority, Woman Owned, Disadvantaged Business Enterprise and Section 3.

(a) The subgrantee must keep a file on its outreach efforts to minority, woman owned, and disadvantaged business entities, both in trying to attract such businesses as bidders and the number of low income persons hired on the project. This is not a requirement to hire a minimum number, but an effort to see they have the opportunity to participate.

Section 22. Procurement of Professional Services.

(a) Federal procurement regulations (24 CFR Part 85) must be followed. If your local requirements are more stringent, please adhere to those.

(b) There is no 5 % preference for Wyoming contractors as this is Federal funding.

(c) If the CDBG grant is on behalf of a for-profit business, the standard procurement regulations do not apply if the for-profit directly pays for the services. The bidding process for contractors should be encouraged but is not required.

Section 23. Recapture Provisions.

(a) Funds that are returned to the Wyoming Business Council from contract terminations or that are not expended by a project shall be awarded to new projects that are funded to complete the same type of activity that the original grant was funded to complete. Example: If a community development project does not expend the entire award, the remaining balance will be allocated to a new community development project when the awards for those grants take place. Recaptured economic development funds would be awarded to new economic development grants.

Section 24. Unobligated funds.

(a) All unobligated funding from previous program year allotments will be allocated to the Community Development Program's allocation.

(b) The Wyoming Business Council may take action to allocate a portion of the unobligated economic development project funds as described in the Program Budget, of the Wyoming Consolidated Plan, to community development as described in Chapter 4. The amount to be reallocated will be at the discretion of the Wyoming Business Council, based on anticipated demand for Economic Development funds.

Section 25. Complaint Procedures.

(a) Citizens have the right to offer their views at any point during the development and implementation of a Community Development Block Grant (CDBG) project. Any comments, suggestions, criticisms or complaints made by a citizen must be taken seriously and responded to promptly. Written complaints and grievances should be responded to within fifteen (15) working days of their receipt where practicable. Telephoned or oral complaints should also have a prompt response documented.

(b) When a citizen wishes to voice an opinion concerning a project, they should first voice their comments to the local government. If the local government is prompt with an adequate response the process usually ends at this point. A slow or inadequate response may result in the complaint being filed with the Wyoming Business Council, the governor, the U.S. Department of Housing and Urban Development, or a member of Wyoming's congressional delegation.

(c) The normal procedure, if a complaint is filed with any of the above referenced entities, is for the staff of the Wyoming Business Council to refer the complaint back to the local officials for a response. The Wyoming Business Council will not dictate the form or manner of the response to local officials, but will be available to advise the community regarding applicable federal and state requirements that may be at question. In all cases the final resolution of the complaint is the authority and responsibility of the local grant recipient. When the grant recipient has reached a decision as to whether or how the complaint is to be resolved, the Wyoming Business Council will communicate the local government's decision to the agency or office originally referred it to them for action.

(d) Records of all citizen comments, whether in the form of letters or written notes summarizing telephoned or oral comments, should be placed in the citizen participation file for the project, along with the community's letter of reply or notes indicating how the grant recipient responded to the comment. Federal regulations require that the project completion report prepared by the grantee for project closeout include a summary of each citizen comment regarding the project, along with an assessment of the comment and a description of any action taken in response to the comment.

Section 26. Reallocation of Additional HUD Funds.

(a) In the event HUD allocates additional funds to the program, those funds will be split among the grant categories proportionate to the current distribution.

Section 27. Program Income Returned to the Wyoming Business Council.

(a) All income derived from the program may be re-used for any eligible activity allowed by the State of Wyoming CDBG program.

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CHAPTER 2

ECONOMIC DEVELOPMENT PROGRAM

Section 1. **Goals.**

(a) Goal 1. To provide for the creation and retention of jobs that are available to low and moderate income people, and aid in the diversification of the Wyoming economy.

(b) Goal 2. To encourage the leveraging of public and private economic development dollars through the incentive of money available through the CDBG program.

Section 2. **Benefit to Low and Moderate Income Individuals.**

(a) In order for CDBG funds to be used for any economic development projects wishing to be funded under the national objective of benefit to low and moderate income persons, it must be documented that no fewer than 51 percent of the jobs to be created will be given to individuals from low to moderate income households. Appendix A includes the household income for each county that qualifies a person as low to moderate income. It should be noted that the amounts shown under household size reflect the amount of income from all income-earning members of the household at the time employment begins. For example: If a company in Albany county employs a persons from a household of two individuals, it cannot be assumed that as long as they pay the individual less than \$38,500 per year the benefit to low/moderate income individuals has been met. If the other individual inhabiting the household is employed and earning \$20,000/year and the person they wish to hire is also employed and earning over \$18,500 per year, there has not been any benefit to low/moderate income individuals if the individual is hired. If the person the company wishes to hire is unemployed, the total household income is then considered to be \$20,000 and they may hire the individual, pay him or whatever they wish and conclude that the benefit to low to moderate income individuals requirement has been met. It is imperative therefore, that the company carefully screen and document each potential employee to be benefitted by CDBG assistance.

Section 3. **Downtown Development.**

(a) Funds have been set aside to assist local governments fund projects located in their downtown area. Assistance in the area can be any eligible activity,

however, it is anticipated projects will generally include assistance for public facilities, rehabilitation of commercial buildings, historic preservation, and land acquisition and clearance.

(b) Generally, downtown projects will be fundable under the National Objective of elimination of slums and blight and job creation and retention for low to moderate income persons. However, some projects may qualify under another National Objective.

(c) Requirements that must be addressed in the application:

- (i) Description of the project including expert and concise cost estimates;
- (ii) Detailed project budget;
- (iii) Information adequate to demonstrate compliance with a national objective;
- (iv) Project timeline;
- (v) Completeness of the project, including other sources of funding;
- (vi) Adequate information to evaluate the project against the numerical rating system;
- (vii) Evidence that the SHPO was contacted and consulted and a brief narrative of the results of the consultation. (See Chapter 1, Section 13);
- (viii) An assessment of probable operation and maintenance costs of the facility or site improvement(s) to be constructed using CDBG funds, and an explanation of how those costs will be funded;
- (ix) A narrative explanation of how the project will either directly or indirectly provide for the creation and retention of jobs that are available to low to moderate income persons and aid in the diversification of the Wyoming economy;
- (x) Signed Certification of Applicant and supporting documentation for the citizen participation process including a copy of the public notice, resolution, and

a signed copy of the meeting minutes;

(xi) A draft development agreement and three years of financial statements, tax returns, current business plan, and evidence of good standing with the Secretary of State's office if the project involves a sub-recipient;

(xii) Site map and photographs of the project site;

(xiii) If the project involves acquisition it is imperative that the applicant contact the WBC and should not execute ANY agreements prior to doing so.

(d) In determining the process for selection of projects, the Wyoming Business Council staff will evaluate each application for completeness based upon the requirements listed previously. The application will be rated according to the numerical system below (100 points possible).

(e) Downtown development numerical rating:

(i) Job creation – Up to 20 points. Emphasis is placed upon projects that create/retain jobs.

(ii) Economic Development Benefit– Up to 30 points. Emphasis will be placed upon how the project will positively impact local, regional and state economic development efforts.

(iii) Integrated Effort – Up to 50 points. .

(A) Partners-Up to 20 points. Are there partners in the project? Please describe them and their contribution.

(B) Percentage of CDBG funds-Up to 10 points. What percentage is CDBG of the total project?

(I) 0-25%-10 points.

(II) 26-50%-5 points.

(III) 51-100%-0 points.

(iv) Community Readiness-Up to 10 points. Is there community

readiness potential in this project?

- (f) A maximum of \$500,000 per grant will be allowed.

Section 4. Economic Development Infrastructure Grants.

(a) Funds have been set aside for economic development infrastructure grants. Such grants will allow communities to purchase and/or improve sites for the benefit of a specific identified business project.

(b) The primary intent of this program is to provide funds to local governments to pay for services that the entity normally provides to a business at a certain cost. Normally, this involves sewer and water lines, fire protection, power lines, roads, public access, etc. Funding to purchase buildings and/or land is eligible, but only if the local government intends to maintain ownership of the property. The government entity could lease the property to the business for a nominal amount, or could negotiate a lease/purchase agreement with the company. The program does not intend, however, for local government to purchase land and/or a building to give to a business entity.

- (c) Requirements that must be addressed in the application:

- (i) A detailed description of the proposed use of the funds, a map of the site, explanation of ownership, and an expert and concise cost estimates must be provided;

- (ii) The business(es) to be benefited must submit a business plan , three years financial statements and tax returns to the Wyoming Business Council. The grant may be denied if the business is not determined to be viable;

- (iii) In the event that no new jobs are planned to be created, documentation must be provided that demonstrates at least 51 percent of the current employees are from low/moderate income households. If the application is based on job retention, it must be documented that the existing jobs will be lost if the grant is not approved and the infrastructure not completed;

- (iv) If the business is new, there must be a signed commitment by the business that their relocation or expansion will occur and a list by job titles and annual income of all new jobs to be created;

(v) The business must certify that at least 51 percent of all new jobs created will be made available to low to moderate income individuals;

(vi) A statement of proposed impact upon the community;

(vii) Documentation by the community that no other funding source exists;

(viii) Certification by the local government and the business that in the event the business does not locate on the improved site, all grant funds will be returned to the state;

(ix) Evidence that the SHPO was contacted and consulted and a brief narrative of the results of the consultation (See Chapter 1, Section 13);

(x) An assessment of probable operation and maintenance costs of the facility or site improvement(s) to be constructed using CDBG funds, and an explanation of how those costs will be funded;

(xi) A narrative explanation of how the project will either directly or indirectly provide for the creation and retention of jobs that are, available to low to moderate income persons and aid in the diversification of the Wyoming economy;

(xii) A detailed project budget;

(xiii) Signed Certification of Applicant and supporting documentation for the citizen participation process including a copy of the public notice, resolution and a copy of the official meeting minutes;

(xiv) A draft development agreement and evidence of the business' good standing with the Secretary of State's Office;

(xv) Site map and photographs of the project site;

(xvi) If the project involves acquisition it is imperative that the applicant contact the WBC and should not execute any agreements prior to doing so;

(xvii) In determining the selection of projects, each application will be reviewed for completeness based upon the requirements listed previously. Each

application will be using the numerical system that follows:

(A) Cost per job – Up to 20 points. If the CDBG total cost of the project is \$5,000 or less per retained or newly created job, a total of 20 points will be awarded. \$10,001 to \$15,000 per job will receive 15 points. An expenditure/job ratio of \$15,001 to \$25,000 will be 10 points; and \$25,001 to \$35,000 will be 20 points. If the total cost of the project exceeds \$35,000 per job, then zero 5 points will be awarded.

(B) Potential economic benefit/job creation- Up to 20 points. - it is important to demonstrate the overall economic boost that would accrue to a community if the grant is awarded. Emphasis will be placed on documentation of jobs retained (if applicable), job creation, and the positive impact to local, regional and state economic development efforts.

(C) Integrated Effort - Up to 50 points.

(I) Partners-Up to 20 points. Are there partners in the project? Please describe them and their contribution. Up to 20 points.

(II) CDBG Percentage-Up to 10 points. What percentage is CDBG of the total project?

(1.) 0-25%- 10 points

(2.) 26-50%- 5 points

(3.) 51-100-0 points

(III) Operations and Maintenance-Up to 10 points. How will operations and maintenance expenses be addressed?

(IV) Community Readiness-Up to 10 points. Is there community readiness potential in this project?

(d) A maximum of \$500,000 per grant will be allowed.

Section 5. **Planning Only Grants.**

(a) Funds have been set aside for planning only grants. Planning grants will be available to local governments and non-profit entities to perform feasibility studies

related to increased economic development and community development. However, non-profit start-ups in the very early stages of development may be referred to other programs. . There are three types of planning grants available:

(i) Community Development and Economic Development plans, \$50,000 maximum award with a cash match of 25% of the total project cost . Preference will be given to communities with current plans seven years old or older;

(ii) Housing plans, assessments or development codes which will benefit low and moderate income people, \$20,000 maximum award with a 25% of the total project cost;

(iii) Feasibility studies and site specific development studies that may create job opportunities or otherwise benefit low and moderate income people , \$15,000 maximum award with a cash match of 25% of the total project cost.

(b) Each APPLICATION must also address the following requirements:

(i) Description of the project;

(ii) Impact on the community;

(iii) Project timeline;

(iv) Number of potential jobs to be created or retained;

(v) Detailed budget ;

(vi) Desired results;

(vii) Principals involved;

(viii) Which National Objective could be met and the potential for compliance with that National Objective;

(ix) Existing non-profits must furnish three years of financial statements and their current business plan;

(x) New non-profits must furnish three years of pro-forma financial information and their business plan;

(xi) Consulting work must be obtained from a qualified, disinterested third party;

(xii) Applicant must demonstrate methodology for funding implementation of the project;

(xiii) A narrative explanation of how the project will positively impact local, regional and State economic development efforts.

(c) Ineligible activities for planning grants.

(i) Payment of costs associated with the implementation of:

(A) Marketing studies/strategies;

(B) Feasibility studies;

(C) Targeted industry studies;

(D) Economic development plans.

(ii) Payment of reproduction costs of any promotional materials.

(iii) Payment of salary costs of local government or non-profit organization employees.

(iv) Payment of travel costs for anyone other than consultants.

(d) Grant numerical rating system. In determining the process for selection of the projects, the Wyoming Business Council staff will evaluate each application for completeness based upon the requirements listed previously. Each application will be rated to determine the amount of points to be awarded by using the numerical system that follows (100 points possible)-Please note that housing applications will be scored differently.

(i) Comprehensive Community and Economic Development and Planning only feasibility study application grant numerical rating system.

(A) Job creation – Up to 20 points. Emphasis is placed upon the projected number and type of jobs created/retained should the results of the study prove positive.

(B) Integrated Effort –Up to 50 points.

(I) Partners-Up to 20 points. Are there partners in the project? Please describe them and their contribution.

(II) Percentage of CDBG funds-Up to 10 points. What percentage of CDBG of the total project?

(1.)0-25% -10 points

(2.)26-50% - 5 points

(3.)51-75% - 0 points

(III) Operation and Maintenance-Up to 10 points. How will operations and maintenance expenses be addressed?

(IV) Community Readiness-Up to 10 points. Is there community readiness potential in this project?

(C) Potential economic benefit – Up to 20 points. It is important to demonstrate the overall economic boost that would accrue to a community or region if the results of the study were implemented. Considerations include: Will jobs be retained and if so, is proper documentation of such provided? Will new jobs be created? How many and what type? What is the current economic condition of the community or surrounding area (i.e. unemployment rate)? What will the overall positive impact be to the local, regional and State economic development efforts?

(ii) Housing application numerical rating system:

(A) Housing-Up to 20 points. Considerations include the basis for the housing study to be conducted, how additional units will contribute to the economy of the community.

(B) Integrated efforts-Up to 50 points.

(I) Partners-Up to 20 points. Are there partners in the project? Please describe them and their contribution.

(II) CDBG Percentage-Up to 10 points. What

percentage is CDBG of the total project funding?

(1.)0-25% - 10 points.

(2.)26-50% - 5 points.

(3.)51-75% - 0 points.

(III) Operations and Maintenance- Up to 10 points. How will maintenance and operational expenses be addressed?

(IV) Community Readiness-Up to 10 points. Is there community readiness potential in this project?

(C) Potential Economic Benefit- Up to 30 points. It is important to demonstrate to overall economic boost that would accrue to a community or region if the results of the study were implemented. Considerations include: Would the addition of housing have an effect on jobs being retained or created? What is the current economic condition of the community or surrounding area (i.e. unemployment rate)? What will the overall positive impact be to the local, regional and State economic development efforts?

(D) Additional review criteria for all planning grants:

(I) It is important that applicants and (if applicable) sub-applicants have a clear view of how study findings will be implemented and financed. Therefore, when reviewing and approving proposals the Wyoming Business Council will give favorable consideration to projects that: (1) involve municipalities and organizations that have a track record of success, as well as the personnel and resources in place for project implementation, and (2) have funds available and dedicated for implementation of study recommendations.

(II) The Wyoming Business Council may not approve a proposal if the applicant cannot demonstrate how the project would either directly or indirectly create or retain jobs in the community.

Section 6. **Technical Assistance Grants.**

(a) Funds have been set aside for technical assistance grants. Technical assistance grants will be available to for-profit or non-profit enterprises. A maximum of \$7,500 per technical assistance grant will be allowed.

(b) To be eligible for consideration, each technical assistance grant application must demonstrate a 25 percent (25%) cash match obligated to eligible project costs. The 25 percent (25%) cash match for technical assistance grants must originate from the benefiting business private investor, or the non-profit organization. The 25 percent match will be applied to the total project costs.

(c) Each APPLICATION must also address the following requirements:

- (i) Description of the project;
- (ii) Impact on the community;
- (iii) Project timeline;
- (iv) Number of potential jobs to be created or retained;
- (v) Detailed budget for amount requested;
- (vi) Desired results;
- (vii) Principals involved;
- (viii) National Objective involved (see Chapter 1, Section 3);
- (ix) Existing businesses or non-profits must furnish three years of financial statements and their current business plan;
- (x) For new businesses, the principals must furnish current financial information on themselves and three years of pro-forma financial statements for the project;
- (xi) Consulting work must be obtained from a qualified, disinterested third party. **APPLICANTS FOR TECHNICAL ASSISTANCE GRANTS ARE ENCOURAGED TO NAME THEIR CONSULTANT AT THE TIME OF APPLICATION;**
- (xii) **APPLICANT MUST DEMONSTRATE METHODOLOGY FOR FUNDING IMPLEMENTATION OF THE PROJECT;**

(xiii) A narrative explanation of how the project will either directly or indirectly provide for the creation and retention of jobs that are available to low and moderate income persons and aid in the diversification of the Wyoming economy or a narrative explanation of how the technical assistance will increase the capacity of the non-profit organization and how that benefits low to moderate incomes persons.

(d) Eligible activities for technical assistance. The purpose of technical assistance grants is to assist for-profit businesses to conduct project planning and research and to assist non-profit entities with capacity building. Only project development costs are allowed, costs associated with project implementation are not eligible. It is not the intent of the Technical Assistance grant program to infuse capital to pay for the costs of selling or manufacturing a new product, but rather to help pay the costs associated with research and development of new products and markets and capacity building.

(i) Payment of costs associated with the development of:

(A) Business plans;

(B) Marketing studies/strategies consultation;

(C) Feasibility studies;

(D) Prototype development and testing;

(E) Packaging design consultation;

(F) Marketing, sales and cash flow management consultation.

(ii) Technical assistance grants must demonstrate the potential for compliance with a national objective.

(e) Ineligible activities for technical assistance Grants.

(i) Payment of costs associated with the implementation of:

(A) Business plans;

(B) Marketing strategies;

(C) Feasibility studies.

(ii) Payment of the salary costs of business principals or their employees.

(iii) Payment of travel costs for anyone other than consultants.

(iv) Payment of patent and copyright fees.

(f) Technical assistance numerical rating. In determining the process for selection of the projects, the Wyoming Business Council staff will evaluate each application for completeness based upon the requirements listed previously. Each application will be rated using the numerical system that follows (60 points possible).

(i) Proposed action -Up to 20 points. Emphasis is placed upon the probability of the project's implementation. If businesses or non-profits can demonstrate the commitment of funds from programs whose purpose is to bring new products into the marketplace or demonstrate that increased capacity will increase a programs' beneficiaries, a maximum of 20 points will be awarded. Businesses or non-profits that are either already in operation or (in the case of a manufacturing business) have secured necessary production financing will also receive a maximum of 20 points. Businesses requiring assistance to retain existing jobs will also be eligible for 20 points. If the applicant is a private individual or group intending to start a new business or organization, the sum of 10 points shall be awarded. Existing business entities that desire expansion, but are only in the process of formulating a concept, will receive 5 points.

(ii) Job creation – Up to 20 points. Emphasis is placed upon the projected number of jobs created/retained should the results of the study prove positive. Applicants are cautioned to be conservative in estimating job creation since the rationale for the projections will be closely reviewed and actual jobs created or retained will require verification.

(iii) Potential economic benefit – Up to 20 points. It is important to demonstrate the overall economic boost that would accrue to a community or region if the results of the study were implemented. Special emphasis will be given to those projects located in areas that are severely economically distressed.

(A) Additional review criteria:

(I) It is important that applicants have a clear view of how study findings will be implemented and financed. Therefore, when reviewing and approving proposals the Wyoming Business Council will give favorable consideration to projects that: (1) involve companies that have a track record of success, as well as the personnel and resources in place for project implementation, and (2) have funds available and dedicated for implementation of study recommendations;

(II) The Wyoming Business Council may not approve a proposal if the applicant cannot demonstrate how the project would either directly or indirectly create or retain jobs in the community.

Section 7. Job Training Grants.

(a) Funds have been set aside for job training grants. Job training grants will be available to for-profit and non-profit entities that can demonstrate the need for specially trained employees in their workplace. To be considered for such a grant, it is necessary to have a resolution of endorsement passed by the sponsoring entity and certification of public participation through the public hearing process. Applicants are urged to contact the University of Wyoming or their local community college when preparing the training curriculum to determine ways to utilize resources available at these institutions.

(b) To be eligible for consideration, each grant application must contain the following:

- (i) A detailed budget;
- (ii) Explanation of why specialized training of employees is required;
- (iii) Documentation that qualified workers do not exist in the community;
- (iv) An explanation of why CDBG funds are necessary;
- (v) Complete description of the proposed training curriculum complete with the name(s) of the individuals that will conduct the training. Resumes or qualifications statements must be included;
- (vi) A list of each job classification/position that will require utilization of CDBG training funds that includes;

- (A) Brief job description,
- (B) Educational/job experience requirements,
- (C) Salary range.

(vii) A plan of action by the business for solicitation and validation of low to moderate income workers;

(viii) A narrative explanation of how the project will either directly or indirectly provide for the creation and retention of permanent primary jobs that are above the current average wage, and aid in the diversification of the Wyoming economy.

(c) Eligible expenditures of job training funds:

(i) Instructor salaries. This does not include the salary of the owners or other company personnel;

(ii) Training materials and supplies;

(iii) Tuition costs;

(iv) Travel associated with training;

(v) Training system design;

(vi) Leasing of training equipment.

(d) Ineligible Expenditures of Job Training Funds:

(i) Purchase of training equipment;

(ii) Payment of employee salaries that are receiving training.

(e) The Wyoming Business Council staff will evaluate each application for completeness based upon the requirements listed previously. In order for a project to be considered by the Wyoming Business Council, the application must be rated according to the numerical system found in subsection (f) of this section. (100 points possible).

(f) Job training grant numerical rating system.

(i) Businesses proposing to train for "primary" jobs will receive 25 points. Businesses proposing to train for "secondary" jobs shall receive 10 points. "Primary jobs" are positions that provide goods and services that are primarily exported from the state, that gain market share from imports to the state, or that meet an unmet need in the area and result in the creation of new wealth. Primary jobs are derived from businesses that bring new income into an area, stimulate other local businesses, or assist a community to diversify and stabilize its economy. "Secondary jobs" are those that provide goods and services primarily in their local areas. The jobs created are in response to other business activity in the area, and would be lost if the local population decreased. The jobs do not create new income, but redistribute income in the local area.

(ii) Integrated effort Up to 50 points.

(A) Partners-Up to 20 points. Are there partners in the projects? Please describe them and their contribution.

(B) CDBG percentage- Up to 10 points. What percentage is CDBG of the total project funding?

(I) 0-25% - 10 points.

(II) 26-50% - 5 points.

(III) 51-100% -0 points.

(C) Operations and Maintenance- Up to 10 points. How will maintenance and operational expenses be addressed?

(D) Community Readiness- Up to 10 points. Is there community readiness potential in this project?

(iii) Potential economic benefit –Up to 30 points. What will the overall positive impact be to the local, regional and State economic development efforts? Special emphasis will be given to those projects located in areas that are severely economically distressed.

- (g) A maximum of \$ 100,000 per job training grant will be allowed.

Section 8. Transfer of Funds.

(a) Should the funding demands from local governments exceed the available funds allocated to each of the economic development funding categories, the Wyoming Business Council may reallocate funds without amending the rules. This rule only applies to reallocating funds between downtown development, infrastructure grants, planning only grants, technical assistance grants and job training grants.

Section 9. Float and Section 108 Loan Guarantees.

(a) The Wyoming Business Council will accept economic development loan applications from qualified applicants under the CDBG float activity and the HUD administered section 108 loan guarantee program. A business must apply through an incorporated local government for assistance under the float program and the section 108 program.

(b) Float loans involve the use of CDBG funds for an economic development loan that will generate program income in time to carry out other activities listed in these rules. Use of this procedure is based on the premise that the later activities do not require funds immediately and that the recipient's (state) letter of credit will therefore contain a balance (the "float") that can be used on a temporary basis. Float loans shall be due on demand.

(c) The Section 108 Loan Guarantee program represents an activity where the Wyoming Business Council will accept applications directly from incorporated local governments on behalf of an eligible project. If approved, the Wyoming Business Council will then pledge future CDBG allocations as a guarantee to the loan, and submit the application to HUD for approval. As repayment is made by the borrower to HUD, the Wyoming Business Council's pledge amount will be decreased accordingly. The Wyoming Business Council may pledge up to an amount not to exceed five times the amount of the most recent CDBG grant received by the Wyoming Business Council. If a borrower defaults on a loan, the Wyoming Business Council will forfeit a portion of its future CDBG allocations. The term of a section 108 loan guarantee shall not exceed twenty (20) years.

(d) The minimum amount to be requested for a float or section 108 loan guarantees will be \$350,000 and the maximum will be \$1,500,000. These limits can be modified only in writing by the Chief Executive of the Wyoming Business Council. Interest rates for both will be based on the amount the company is able to pay and the

public benefit to be derived.

(e) Applicants for float loans must be able to secure an unconditional and irrevocable letter of credit, drawn against a sound and acceptable financial institution payable to the Wyoming Business Council before CDBG funds will be disbursed. The purpose of the letter of credit is for the Wyoming Business Council to draw against in the event paybacks are delayed or the borrower has defaulted.

(f) Activities that are eligible for payment from either program are:

(i) Acquisition of real property;

(ii) Building construction;

(iii) Site improvements;

(iv) Acquisition or rehabilitation of machinery and equipment necessary for the operation of the project;

(v) Acquisition, rehabilitation and leasehold improvements of an existing facility;

(vi) Payment of professional fees -- surveying, appraising, engineering, architectural, legal, accounting and closing costs. All fees must be determined to be legal and reasonable;

(vii) Working capital needs of the project.

(g) Minimum threshold requirements for applications requesting either a float loan or a section 108 loan guarantee are:

(i) At least 51 percent of the jobs created or retained must be available to low and moderate income persons. Applicants should propose methods to ensure preferential recruitment, hiring and training of Wyoming workers, particularly those of low and moderate income (see Attachment A). Applicants must take into consideration equal opportunity and non-discrimination laws to ensure that women and minorities are not excluded from participation, denied the benefit of or subjected to discrimination under any program or activity funded in whole or in part with CDBG funds. Successful

applicants will be required to comply with equal opportunity and non-discrimination laws and regulations; Or,

(ii) The elimination of slum and blight conditions is specified in Title I of the Housing and Community Development Act of 1974, as amended through 1992;

(iii) The use of CDBG funds for economic development loans must be determined to be appropriate to the project. Applicants must clearly demonstrate the need for the CDBG assistance by documenting that a financial gap exists in funding the proposed project. It could also be considered appropriate to invest CDBG funds into a project that can obtain total private sector funding, but the returns to the for-profit are inadequate to motivate an "economic person" to proceed with the project. In either case, it is incumbent upon the applicant to indicate that the project cannot be developed in the absence of federal loan funds;

(iv) Business plan. Applicants must submit a business plan along with their standard application form. The business plan must reflect;

- (A) A description of the business,
- (B) Qualifications of management,
- (C) A market investigation; and other documentation of financial feasibility as appropriate,
- (D) Three-year financial statements including balance sheets, income statements,
- (E) Cash flow projections for at least three years,
- (F) Cost quotes for all project costs.

(v) A list of each job classification/position that will be created by the project that includes;

- (A) A brief job description,
- (B) Educational/job experience requirements,

(C) Salary range,

(D) Hours worked per week/months worked per year.

(vi) Evidence that the SHPO was contacted and consulted and a brief narrative of the results of the consultation (See Chapter 1, Section 13).

(h) Potential applicants are requested to contact this office previous to application submission for additional information requirements.

(i) An administrative fee not greater than one percent (1%) of the loan principal may be charged each successful applicant to assist in defraying the local government's expenses of analyzing the loan applications.

Section 10. **Convertible Loan Program**

(a) A business must apply through a city, town or county for assistance under the convertible loan program. The WBC will grant funds to the local government who will in turn loan the funds to a for-profit business. A portion of the loan may be converted to a grant, if during a designated period of time, as determined by the WBC, the business creates new jobs. The terms, interest rate, and amount of the loan to be converted to a grant shall be determined by the WBC. Generally the amount converted will be \$500 per each new job created.

(b) No funds are allocated to this program category, but rather funds may be redirected to the convertible loan category upon council approval, from any CDBG economic development category. Maximum amount per each application shall be \$150,000. Minimum amount per each application shall be \$10,000.

(c) Activities eligible for funding from the convertible loan program:

(i) Acquisition of real property;

(ii) Building construction;

(iii) Site improvements;

(iv) Acquisition or rehabilitation of machinery and equipment necessary for the operation of the project;

(v) Acquisition, rehabilitation and leasehold improvements of an existing facility;

(vi) Payment of professional fees -- surveying, appraising, engineering, architectural, legal, accounting and closing costs. All fees must be determined to be legal and reasonable;

(vii) Working capital needs of the project.

(d) Compliance with national objective: At least 51 percent of the jobs created must be available to low and moderate income persons. Applicants should propose methods to ensure preferential recruitment, hiring and training of Wyoming workers, particularly those of low and moderate income.

(e) Any application submitted must contain the following information:

(i) Business plan. Applicants must submit a business plan that contains;

(A) A description of the business,

(B) Qualifications of management,

(C) A market investigation; and other documentation of financial feasibility as appropriate,

(D) Three-year financial statements including balance sheets, income statements,

(E) Three-year financial statements including balance sheets, income statements,

(F) Cost quotes for all project costs.

(ii) A list of each job classification/position that will be created by the project that includes;

(A) A brief job description,

- (B) Educational/job experiences requirements,
- (C) Salary range,
- (D) Hours worked per week/months worked per year,
- (E) Time frame in which the jobs will be created,

(f) Guidelines for evaluation projects:

(i) Project costs and financial guidelines; these guidelines are to insure;

- (A) That project costs are reasonable,
- (B) That all sources of project financing are committed,
- (C) That to the extent practicable, CDBG funds are not substituted for non-federal financial support,
- (D) That the project is financially feasible,
- (E) That to the extent practicable, the return on the owner=s equity investment will not be unreasonably high, and
- (F) That to the extent practicable, CDBG funds are distributed on a pro rata basis with other funds provided to the project.

(ii) Public benefit: The grantee is responsible for making sure that a minimum level of public benefit is obtained from the expenditure of CDBG funds under this program. The amount of CDBG assistance cannot exceed \$50,000 per full time equivalent job created.

(g) Management capacity: Applicants must demonstrate capacity to plan, administer, and service the proposed project, manage the budget, maintain adequate financial records, maintain required project records, submit reports, and meet the proposed timetable for completion. Management capacity is important for the success of a program.

(h) Use of program income: All income derived from the program--principle and interest payments--may be retained by the local government, and re-used for any eligible activity allowed by the state of Wyoming CDBG program.

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CHAPTER 3

COMMUNITY DEVELOPMENT PROGRAM

Section 1. **Goals.**

(a) Goal 1. To expand housing opportunities for low/moderate income households.

(i) Objective 1. Provide appropriate housing for special population groups such as the frail, elderly and handicapped/disabled, that supports an appropriate level of independent living.

(ii) Objective 2. Provide support for the development of emergency shelters, transitional housing and permanent housing for the homeless.

(b) Goal 2. Improve the condition of low and moderate income groups, especially vulnerable to adverse economic or social conditions.

(i) Objective 1. Provide centers for employment, education, etc., and centers for the elderly.

(ii) Objective 2. Provide operational funds for public services that directly impacts upon economic, housing, and/or social conditions of low/moderate income residents for programs not currently funded by local government.

(c) Goal 3 To improve community infrastructure by eliminating health, safety, and welfare problems.

(d) Goal 4. To allow each local government to determine their own serious problem and to be competitive with all other applicants.

(i) Objective 1. Allow any application eligible under Chapter 1, Section 4. It should be emphasized that the applicants in this category bear the burden of demonstrating to the Wyoming Business Council the seriousness of their selected activity.

Section 2. **Eligible Activities.**

(a) Any project listed in Chapter 1, Section 4, is eligible for funding under this portion of the program.

Section 3. Low Priority Activities.

(a) The following activities are considered very low priority under this program, and are not likely to be funded:

- (i) Planning not directly part of a CDBG project;
- (ii) Grants for profit making organizations.

Section 4. Type and Size of Grants.

(a) The maximum grant size for community development public infrastructure and public facilities grant will be \$500,000. The maximum award for public accessibility grants will be \$300,000. The maximum award for Homeownership Assistance will be \$40,000.

Section 5. Previous Grantees.

(a) Previous grantees must demonstrate that satisfactory performance has been accomplished under previous grants. The Wyoming Business Council will primarily use the HUD Performance Reports or Wyoming Business Council monitoring results in their review.

Section 6. Project Categories.

(a) The community development program has four project categories that applicants may apply under. There are:

(i) Removal of architectural barriers that restrict the mobility and accessibility of elderly and handicapped persons to existing publicly-owned buildings, facilities and improvements. Preference will be given to building, facilities and improvements that are directly accessed and used by the public;

(ii) Construction, rehabilitation, reconstruction, or installation of public infrastructure such as water and sewer lines and systems, streets, curbs, gutters, and sidewalks. This does not include centers for the elderly, handicapped or developmentally disabled. These projects are to be submitted under the other eligible activities category;

(iii) Homeownership Assistance which may be used to subsidized interest rates and mortgage principle amounts, finance the acquisition of owner-occupied

primary residences, provide down-payment assistance or pay reasonable closing costs normally associated with the purchase of a home for low and moderate income homebuyers;

(iv) Section 108 loans where the use of funds is justified through the benefit of persons of low to moderate income through some community development purpose versus job creation. See Chapter 2, Section 9;

(v) All other eligible activities as described in Chapter 1, Section 4. Eligible Activities.

(b) Projects will be ranked against one another within each project category. The amount of funds allocated to each project category will be determined based on the dollar amount requested in each category compared to the total dollar amount requested by all grant proposals, with the resulting percentage applied to the funds allocated to the community development portion of the program. For example, if the dollar amount requested under all other eligible activities category represents twenty-five percent (25%) of all funds requested under the community development portion of the program, then twenty-five percent (25%) of all community development funds will be allocated to that project category. Only eligible projects will be considered when making this determination. At the time of final approval, the Wyoming Business Council may reallocate funds to another project category in order to fully fund a proposal.

Section 7. Ranking Criteria—(used only in ranking Community Development Projects).

(a) The Wyoming Business Council is required to spend at least 70 percent of its funds for low-moderate income projects. Only projects that can show that at least 51 percent of the individuals benefiting from the project belong to low-moderate households, can be considered as low-moderate income projects. Conversely, none of the funds in a project that has 50 percent or less direct beneficiaries from low to moderate income households would count toward the state total. The only exception is direct benefit projects such as homeownership assistance that count only the actual amount given to low-moderate households.

(b) In an effort to maximize the primary objectives of the program, all applications will be judged against one another, within project category, regardless of which of the objectives in Chapter 1, Section 3 are chosen. Additionally, applications will be ranked together regardless of type of jurisdiction (city, town or county) or size.

(c) The staff of the Wyoming Business Council will be responsible for the ranking process and subsequent recommendations to the Wyoming Business Council. The Wyoming Business Council will make the final funding determination.

(d) The three components that will be scored and ranked include:

- | | | |
|-------|------------------------|------------------|
| (i) | Seriousness of problem | 100 points |
| (ii) | Urgency of problem | 50 points |
| (iii) | Integrated effort | <u>50</u> points |
| | | 200 total |

(e) Seriousness: Up to 100 points based on description of the need, how the needs were identified, what alternative solutions were explored and an explanation of who the beneficiaries are.

(i) Description of the Need- Up to 30 points. Applicants will be asked to document their needs (inclusive of quantitative and qualitative) and to describe how well proposed activities address those needs.

(ii) Documentation of the Need-Up to 20 points. How was the need identified? For example, was a survey conducted or is it based on an existing wait list?

(iii) Alternative Solutions-Up to 20 points. What alternative solutions were explored?

(iv) Beneficiaries-Up to 30 points. Who are the beneficiaries? How was this determined? What is the long term benefit to the overall community?

(f) Urgency-Up to 50 points. This is based on the applicant's ability to verify the immediate need to remedy their problem including concurrence from appropriate sources.

(i) Level of Urgency-Up to 20 points. Describe the level of deterioration or issues with code compliance:

(A) Life threatening justification-Up to 20 points.

(B) Non-Emergency concern-Up to 10 points.

(C) No existing threat- 0 points.

(ii) Efforts-Up to 20 points. What efforts have been made previously to address the situation and how is it currently being managed?

(iii) Negative impacts-Up to 10 points. What are the negative impacts if this situation is not addressed?

(g) Integrated Efforts – Up to 50 points.

(i) Partners-Up to 20 points. Are there partners in the project? Please describe them and their contribution.

(ii) CDBG percentage- Up to 10 points. What percentage is CDBG of the total project funding?

(A) 0-25% -10 points.

(B) 26-50% - 5 points.

(C) 51-100% - 0 points.

(iii) Operations and Maintenance – Up to 10 points. How will maintenance and operational expenses be addressed?

(iv) Community Readiness-Up to 10 points. Is there community readiness potential in this project?

Section 8. Minimum Submission Requirements of all Community Development Applications.

(a) All applications must contain the following:

(i) A cover sheet containing the project title, type applicant information, sub-applicant information (if applicable), grant administration, contact information and project costs;

- (ii) A narrative describing;
 - (A) The problem to be solved,
 - (B) The National Objective being supported (See Chapter 1, Section 3),
 - (C) A description of the proposed project designed to solve the problem, including previous efforts to solve the problem,
 - (D) The extent to which the proposal constitutes a completed project,
 - (E) The project location, including a suitable map and photographs of the project,
 - (F) Project timeline, and
 - (G) A statement indicating how the project is consistent with local long range community and economic development plans.
- (iii) A detailed budget, including detailed cost estimates prepared by someone with adequate skill to prepare such and the source of all funding;
- (iv) Certification of Applicant form attesting to knowledge of the rules, proper citizen involvement and appropriate use of funds;
- (v) Evidence that the SHPO was contacted and consulted and a brief narrative of the results of the consultation (See Chapter 1, Section 13);
- (vi) Narrative describing the applicant's grant management experience or how they expect to provide for the management and administration of the grant;
- (vii) An assessment of probable operation and maintenance costs of the facility or site improvement(s) to be constructed using CDBG funds, and an explanation of how those costs will be funded;
- (viii) A narrative explanation of how the project will either directly or indirectly provide for the creation and retention of jobs that are available to low and moderate income persons and aid in the diversification of the Wyoming economy;

(ix) If the application is being sponsored on behalf of a non-profit entity, that entity must submit financial statements covering the most recent three year period and a copy of their current business plan;

(x) For Homeownership Assistance, evidence of training or certification as a site specific environmental review officer may be required as well as homebuyer education training certification which is required;

(xi) If the project involves acquisition it is imperative that the applicant contact the WBC and should not execute any agreements prior to doing so.

Section 9. Lien Requirement.

(a) A lien in favor of the Grantee (city/town/county) will be placed by the Grantee on any building in an amount equal to the CDBG investment in the building. The lien shall be for a period of five (5) years after the administrative closeout of the grant. No CDBG funds shall be disbursed until a copy of the lien has been properly filed and recorded and a copy of that lien received by the WBC. In the event that a project is considered a public service (as determined by the WBC staff) the requirement to place a lien may be waived.

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CHAPTER 4

IMMINENT THREAT GRANTS

Section 1. **Imminent Threat Grants.**

(a) Upon approval and an emergency declaration by the governor, funds may be allocated from any program category at any time to fund eligible activities that will alleviate an imminent threat to public health or safety that requires immediate resolution and that is of recent origin. A condition will be considered of recent origin if it developed or became urgent within 18 months preceding the application by the community. The imminent threat must be a catastrophic or emergency situation that creates an impending or immediate threat, danger or peril to human health and safety. Situations that result from neglect or lack of maintenance or have gradually become urgent are not considered imminent threats. The grant amount shall not exceed \$250,000. Imminent threat grants are funded under National Objective # 3, "Activities designed to meet community development needs having a particular urgency" (See Chapter 1, Section 3) and therefore must meet the criteria of that objective.

(b) Any application submitted under this chapter must contain the following:

(i) A cover sheet containing the name of the applicant, contact person, project title, proposed funding level, other sources of funds, and expected start-up and completion dates;

(ii) Documentation concerning the nature and degree of seriousness of the condition requiring assistance;

(iii) Evidence that the CDBG activity is designed to address the imminent threat;

(iv) Information on the timing of the development of the serious condition;

(v) Evidence confirming that the grantee is unable to finance the project on its own, and that other financial resources to alleviate the problem are not available;

(vi) The project location, including a suitable map;

(vii) A detailed budget, including a cost estimate of the activity to be funded with CDBG funds, and the source of all other funding;

(viii) Certification of public participation through the public hearing process (See Chapter 1, Sections 2 and 8);

(ix) An assessment of probable operation and maintenance costs of the facility or site improvement(s) to be constructed using CDBG funds, and an explanation of how those costs will be funded.

(c) The Wyoming Business Council staff shall review the application and make a recommendation to the Wyoming Business Council that shall review the proposal and make a recommendation to the governor. The governor shall make the final decision whether to approve or deny the application.

**Wyoming Business Council
Community Facilities Grant and Loan Program**

<u>No.</u>	<u>Chapter Name</u>	<u>Date Filed</u>
1	General Provisions	2/19/2013
2	Community Facilities Grants	2/19/2013
3	Community Facilities Loans	2/19/2013



Chapter 1 GENERAL PROVISIONS

Section 1. **Purpose.**

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

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

Section 3. **Definitions.**

(a) “Board” means the Wyoming State Loan and Investment Board.

(b) “Community Development Organization” means a group of private citizens organized as a business entity authorized to do business in this state for the purpose of providing financing for new, existing, or expanding businesses and other economic or community development purposes throughout its community or county and which may take equity positions and shall take security positions in its borrower’s business and appropriate personal guarantees from the owners thereof.

(c) “Council” means the Wyoming Business Council Board of Directors.

(d) “Council staff” means the staff of the Wyoming Business Council assigned to administer the program.

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

(f) “Ineligible project costs” are fixtures, appliances, equipment or other features of the facility which are not physically attached.

(g) “Local Enhancement to a School Building and Facility” means a structure and/or associated infrastructure which are in excess of and go beyond state school building adequacy standards.

(h) “Match” means cash and/or in-kind contributions. Contributions must have value and must be applicable to the period to which the matching requirement applies and must be necessary for the project facility. Examples of in-kind contributions include: labor, materials, professional services, and real estate. In-kind contributions must be verifiable from the records of applicant. These records must show 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. Loaned equipment will be valued at the fair rental rate of the equipment at the time of donation. The value of donated facilities, buildings or land will be established using a valuation method set by an independent appraiser or a market analysis prepared by a licensed realtor.

(i) “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.

(j) “Revenue generating project” means real property developed with Business Ready Community funds owned either by applicant or created partnership with a private party which generates revenue from user fees, assessments paid by the beneficiaries of the facility, lease payments, or the proceeds from the sale of real property.

(k) “Special Assistance Loan Fund” is a special assistance loan fund that allows applicants to borrow funds in excess to the maximum award and/or borrow all or a portion of the required match.

Section 4. **Eligible Applicants.**

(a) A county, an incorporated city or town, and joint powers board or other local governmental entity may apply. A joint powers board may apply with the written approval of all participating agencies to the joint powers agreement.

(b) A county, an incorporated city, town, joint powers board or other local governmental entity may contract with a Community Development

Organization or a State Development Organization to use grant and loan funds from an approved application.

(c) The Council may enter into a contract/cooperative agreement with the Eastern Shoshone or the Northern Arapahoe Tribe in order to promote the purpose of this program.

Section 5. **Previous Applicant.** An applicant must show satisfactory performance has been demonstrated under previous grants or loans awarded through this program.

Section 6. **Project Type.** A grant may be used for the following types of projects.

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

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

Section 7. **Eligible Project Uses.** Grant or loan funds may be used for economic development and enhancement of quality of life community facilities projects which provide:

(a) Space for community gatherings and functions;

(b) Appropriate recreational, year round swimming and athletic facilities for community members, particularly youth.

(c) Other functions or uses determined by the Council to be consistent with the purposes of the State of Wyoming Community Facilities Program.

Section 8. **Ownership of Facility.** The project facility funded by this program shall be owned by the applicant or eligible Community Development Organization or State Development Organization as defined in Section 3 of this Chapter for a minimum of four (4) years. The applicant may lease, sell, transfer or otherwise dispose of the facility as provided by statute. No ownership interest to the project or facility under a project shall remain with the school district upon expenditure of any funds under this program for any project.

Section 9. **School District Agreement.** In the event the project facility involves a school district, i.e. local enhancement to a building or facility, or other

school district involvement, and agreement between the applicant and the school district shall be developed that delineates the responsibilities of each party.

Section 10. Required Public Hearing Procedures and Resolution of Support.

(a) An applicant is required to inform and educate the public to the greatest extent possible about the proposed economic development project utilizing a variety of techniques and media. The applicant must make readily available to the public access to the application and associated materials, exclusive of business plans or business financial information. An applicant shall actively solicit citizen input which can be submitted via writing, electronic communication, or in person 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. The public hearing must be held a minimum of fourteen (14) days prior to the deadline for submission of an application under this program. If the project facility is to be located outside the boundaries of the applicant, the applicant shall hold an additional public hearing near the location of the proposed project facility.

(i) To inform the public and gather information to satisfy the requirements of Section 14 (c) and (d), the public notice shall at a minimum:

(A) Contain a concise description of the proposed project facility.

(B) Ensure that comments are actively solicited and time will be set-aside to take testimony from citizens who may feel that the proposed use of the project facility might compete with an existing business or governmental organization pursuant to Section 14 (c) and (d) of this Chapter.

(C) Be published in a newspaper of general circulation within the boundaries of the applicant or as approved by the Council staff.

(b) A description of the applicant's public engagement process, written comments received by the applicant, evidence of the public hearing notification, minutes from public hearing, and a copy of the signed resolution, passed after the public hearing is held and public comments are considered, supporting the submittal of the application from the governing body of the applicant or all participating agencies if the applicant is a joint powers board, along with minutes of public hearing and proof of publication.

Section 11. Funding Cycles. A grant and/or loan request for will be accepted once a fiscal year on a date to be determined by the Council staff. A

request will be scheduled for review by the Council. An applicant may submit one new loan request per calendar year.

Section 12. Application Procedures.

(a) The Wyoming Business Council Regional Director is available to assist applicants with the development of projects and preparation of applications.

(b) An application shall be reviewed by the Council staff to determine eligibility and completeness. An application that is determined by the Council staff to be incomplete shall be provided and explanation of the findings in writing within fifteen (15) working days of its receipt where practical.

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

(d) An application that is complete shall be forwarded by the Council staff with a recommendation to the Council for review.

(e) The Council staff shall publish statewide notice of Council and Board meetings at which Business Ready Grant and Loan Program applications will be discussed.

(f) The Council shall prioritize proposed grants and loans it recommends to the Board. The score is not intended to be the only basis for a final recommendation by the Council or award decision by the Board. The final recommendation and award decision on grant and loan proposals shall be at the discretion of the Council and Board respectively. As a method to assist the Board prioritizing grant and loan proposals, Council staff will use the following scoring system:

(i) Financial Preparedness: (Total 20 points)

(A) Clear understanding of equipment costs, operational costs, and maintenance costs (10 points).

(B) Clear identification of sources of ongoing funding for equipment, operations and maintenance (10 points). No project scoring less than five (5) in this category would receive funding.

(ii) Additional Considerations: Council staff will also assess grant and loan loans in the following areas and report results to the Board;

(A) Historic or cultural significance of the project facility and the extent to which the project facility will preserve or enhance that significance.

(B) Extent to which the project facility is intended primarily for youth.

(C) Extent to which the project facility fulfills community quality of life goals as identified in a community or economic development plan, community assessment, or other documentation of community vision goals.

(D) Extent to which the project fulfills economic development goals as identified in economic development plans, or other documentation of economic development strategy.

(E) Extent to which the applicant will utilize a variety of funding sources to finance the project facility. This may include but is not limited to, sources such as historic tax credits, private donations, and federal funding.

(F) Extent to which the applicant demonstrates how the project will increase economic development opportunities.

(iii) Community Facility Business Plan: see Chapter 2, Section 1 (g). The Community Facility Business Plan should reflect a level of detail appropriate for the type and use(s) of proposed facility. Plans will be assessed on:

(A) The extent to which the applicant has partnered with other agencies, non-profit organizations, community development organizations in developing the Community Facility Business Plan and how those partnerships support the long-term viability of the facility.

(B) Experience of the applicant or partners in managing other community facilities or similar programs.

(C) Demonstration in marketing plan for the facility of knowledge of market area, people to be served, and marketing campaigns.

Section 13. **Council Consideration.** The Council shall consider each application, allow for comments from the public, the applicant, the Council staff, and

refer the application to the Board with a recommendation. Under extraordinary circumstances, the Council may recommend a waiver of rule requirements if the Council determines the waiver is consistent with the purpose of the Community Facilities Program.

Section 14. **Demonstration of Need.** To qualify for a grant or loan, an applicant shall demonstrate:

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

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

(c) The project facility is not otherwise provided in the community or that such a facility exists except that the financing of that facility has not been paid in full; see Chapter 1, Section 10.

(d) The project facility will not compete with existing governmental organizations or businesses; see Chapter 1, Section 10.

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

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

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

Section 15. **Grant Match Requirements.**

(a) A grant and/or loan in an amount up to \$500,000 shall require a minimum match of fifteen percent (15%) of eligible project activity costs.

(b) A grant and/or loan in an amount of over \$500,000 shall require a minimum match of twenty-five percent (25%) of eligible project activity costs.

(c) Applicants can use the Special Assistance Loan Fund to complete minimum match requirements. Terms and specifications related to Special Assistance Loan Funds are addressed in Chapter 3 of the Community Facilities Grant and Loan Program Rules.

Section 16. **Fund Disbursement and Project Monitoring.**

(a) Fund Disbursement. Funds shall be disbursed to the grantee only as needed to discharge obligations incurred in accordance with the Board approved eligible project costs. Request for disbursement shall be made on a form supplied by the Council staff and supported by adequate proof that such an obligation has been incurred for the project purpose and is due and owing.

(b) Fund reversion.

(i) If the Council staff determines that the project has not been completed within the timeline established in the grant agreement between the grantee and Wyoming Business Council, Council staff shall notify the grantee 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, the Council staff shall notify grantee of this determination. Thirty (30) days following the notification, the unused portion of the grant or loan shall revert to uncommitted status.

(iii) Projects that have not been started within one year: Council staff will notify grantee of a pending expiration prior to the one year anniversary unless contingency for delay start was noted during the award. The grantee can submit a written request to continue the project. Council staff may request new and/or updated information and documentation. Council staff may recommend and the Council may grant an extension of time in which to start the project.

(iv) Projects with contingencies: Grantee is required to provide timely updates on the status of the contingencies. If the contingency timeline lapses without conditions met, then the award will expire. The grantee has the option to submit a new application or can 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 modification to the contingencies.

(v) Procurement Standards. All grantees must follow the state procurement regulations that exist in statute for cities and towns. If a non-

municipal grantee has produced a procurement policy, then Council staff or qualified consultants reserves the right to review that policy prior to fund disbursement.

(c) Project Monitoring.

(i) Reporting. Within fifteen (15) calendar days at the conclusion of each calendar quarter during the term of the grant or loan contract construction services period of the grant agreement or cooperative agreement, the grantee shall supply Council staff with a progress report. Each progress report shall set forth in narrative form the work accomplished under the grant or loan during the quarter and shall include a financial status report. At the end of the project, the grantee shall furnish Council staff with a final infrastructure report of the project. The grantee shall likewise furnish the Council staff with a cumulative financial statement, reflecting the total expenditure pursuant to this grant agreement. Council staff may at any point during the grant period request the grantee to provide updated financial information from the Community Facility Business Plan.

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

(iii) Record retention. Grantee agrees to retain all records related to the project for four (4) years following the Council staff's date of notice to grantee of closeout of the grant.

(d) Project Evaluation.

(i) Evaluation Reports. After the conclusion of the construction services period and through the remaining period of the grant, grantee shall submit periodic narratives evaluating program outcomes against established measures. Council staff shall stipulate the frequency and content of the report, tailored to the specific nature to each grant or loan, in agreements between the Council and grantee.

(ii) Evaluation results. The Council shall use the evaluation report information to measure program outcomes, to promote learning from experience and to improve program performance. Council staff may make evaluation results available to grantees and other practitioners as appropriate.

(iii) Written comprehensive report. At the expiration of the grant agreement, the grantee shall furnish Council staff with a comprehensive report of the project. The grantee shall furnish Council staff with any updates to the cumulative financial statement, reflecting any additional expenditures if any, pursuant to this grant agreement.



Chapter 2

COMMUNITY FACILITIES GRANTS

Section 1. **Application Submittal Requirements.** An applicant shall submit one (1) copy of the draft application and draft application materials to the Wyoming Business Council Regional Director at least two weeks in advance of the application deadline. An applicant shall submit three (3) copies and one digital copy of its completed application to the Council staff. The application shall include:

(a) An application cover page in a form provided by the Council staff.

(b) A copy of the certificate of incorporation for the organization, if the project will be carried out by contract with a Community Development Organization or State Development Organization.

(c) A full description of the proposed project.

(d) A clear budget statement of the source of all funds needed to complete the project. An explanation of the level of commitment of other funds to complete the project. The budget must be supported by an engineer's or architect's estimate of project costs. Grants will be made only to applicants who demonstrate that upon receipt of the grant all project costs will be funded.

(e) An inspection report prepared by an engineer or architect documenting the structural condition of the facility or building to be renovated. The report shall also include information indicating the condition and age of the facility or building components to include but not be limited to:

(i) Plumbing.

(ii) Mechanical.

(iii) Roof.

(iv) Environmental hazards, i.e. asbestos, lead based paint.

(f) A detailed map of the site showing the location of the facility or building to be funded.

(g) The applicant shall provide the following information that will be used to determine the long term viability of the community facility. The grant may not be approved if the project facility is determined to not be viable.

(i) A Community Facility Business Plan for the operation of the project facility to include at a minimum the following:

(A) Executive Summary, a one page summary of the entire business plan.

(B) Financial projects for four (4) years that clearly identify funding sufficient to cover the projected operation and maintenance costs.

(C) Performance measures of desired outcomes, in the form of baselines or other evaluation criteria, which will address how well the project meets local community economic development or enhancement of quality of life goals.

(D) Ownership, identify all owners of the project facility.

(ii) A Community Facility Business Plan should contain, as appropriate, the following:

(A) Description of the equipment necessary to operate and maintain the project facility.

(B) Description of the personnel necessary to operate and maintain the project facility. Include the management experience of the personnel and partners.

(C) A project facility marketing plan.

(h) A copy of the certificate of organization filed with the Secretary of State, and a copy of an executed joint powers agreement approved by the Attorney General, if the applicant is a joint powers board.

(i) A copy of a signed resolution supporting the submittal of the application from the governing body of the applicant or all participating agencies if the applicant is a joint powers board.

(j) Information outlining the capacity of the applicant to properly manage the grant and the project. This should include previous grant management experience and the name and qualifications of the individual who will manage the grant.

(k) Information required to document need. To satisfy the requirements of Chapter 1, Section 14, the following documentation shall be submitted with the application:

(i) Written certification by the applicant committing to adequately maintain the project facility for which the grant is requested for at least four (4) years. The certification shall clearly identify funding sources to cover all maintenance and operational costs.

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

(iii) Copy of the agreement between the applicant and the school district as required in Chapter 1, Section 9.

(iv) Written certification by the applicant that the project facility is not otherwise provided in the community or that such facility exists except that the financing of that facility has not been paid in full. Written certification that the project facility will not compete with existing governmental organizations or businesses. See Chapter 1, Section 10 for related public notice and hearing requirements.

(v) An applicant must demonstrate the project facility relates to and is mentioned in a community economic development plan or a need exists to enhance the quality of life in the community. This is demonstrated by having some or all of the following in place:

(A) A current Comprehensive Economic Development Strategy (CEDS), Community Assessment, Certified Tourism Community planning, Main Street planning, or other economic development plan covering the area.

(B) A capital facilities plan with a priority listing of proposed community facility projects and sites related to economic development and quality of life goals.

(C) Other appropriate plans or studies which support the project facility and indicate its chances of achieving success in fulfilling economic development and quality of life goals.

(vi) A written certification that all project facility costs identified in the application budget will be funded at the time of receipt of the grant.

(l) A contingency contract for purchase or transfer of the project facility upon notification of a grant award or evidence the project facility is already owned by the applicant.

Section 2. **Grant Amount.** A maximum of \$1,000,000 per project. Applicants can request an additional \$1,000,000 from the Special Assistance Loan Fund.



Chapter 3

COMMUNITY FACILITIES LOANS

Section 1. **General Policy.** A loan may be made to fund a portion of any project facility which is an eligible activity. In no event shall a loan be made to pay off or refinance an existing loan.

(a) A general Community Facilities Loan may be made to fund all of the funding request or fund in conjunction with a Community Facilities grant request.

(b) A Special Assistance Loan may be used to loan additional funding in excess to the maximum award amount and/or the full or partial funding of the required match.

Section 2. **Application Submittal Requirements.**

An applicant shall submit one (1) copy of the draft application and draft application materials to the Wyoming Business Council Regional Director at least two weeks in advance of the application deadline. An applicant shall submit three (3) copies and one digital copy of its completed application to the Council staff. The application shall include:

(a) An application provided by the Council staff.

(b) A copy of the certificate of organization filed with the Secretary of State and a copy of an executed joint powers agreement approved by the Attorney General, if the applicant is a joint powers board.

(c) A full description of the proposed project.

(d) A clear budget statement of the source and use of all funds needed to complete the project facility. An explanation of the level of commitment of other funds to complete the project facility. The budget must be supported by an engineer's or architect's estimate of project costs. Loans will be made only to applicants that demonstrate that upon receipt of the loan all project costs will be funded.

(e) An inspection report prepared by an engineer or architect documenting the structural condition of the facility or building to be renovated. The report shall also include information indicating the condition and age of the facility or building components to include but not be limited to:

(i) Plumbing.

- (ii) Mechanical.
- (iii) Roof.
- (iv) Environmental hazards, i.e. asbestos, lead based paint.

(f) A detailed map of the site showing the location of the infrastructure to be funded.

(g) A copy of the certificate of incorporation of the organization, if the project will be carried out by contract with a Community Development Organization or State Development Organization.

(i) A Community Facility Business Plan for the operation of the project facility to include at a minimum the following:

(A) Executive Summary, a one page summary of the entire business plan.

(B) Financial projects that clearly identify funding sufficient to cover the projected operation and maintenance costs.

(C) Performance measures of desired outcomes, in the form of baselines or other evaluation criteria, which will address how well the project meets local community economic development or enhancement of quality of life goals.

(D) Ownership, identify all owners of the project facility.

(ii) A Community Facility Business Plan should contain, as appropriate, the following:

(A) Description of the equipment necessary to operate and maintain the project facility.

(B) Description of the personnel necessary to operate and maintain the project facility. Include the management experience of the personnel and partners.

(C) A project facility marketing plan.

(h) The source of repayment of the loan.

(i) Proposed security for the loan.

(j) In order for the Council to determine the ability of the applicant to repay a loan and to aid the Attorney General in evaluating the legality of the proposed indebtedness, an applicant shall provide an annual budget for the preceding and current fiscal years and 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;

(v) A summary of the applicant’s total investments and cash balances for the two (2) preceding fiscal years.

(k) A copy of the certificate of organization filed with the Secretary of State, and a copy of an executed joint powers agreement approved by the Attorney General, if the applicant is a joint powers board.

(l) A copy of a signed resolution supporting the submittal of the application from the governing body of the applicant or all participating agencies if the applicant is a joint powers board.

(m) Information outlining the capacity of the applicant to properly manage the loan and the project. This should include previous loan and grant management experience and the name and qualifications of the individual who will manage the loan.

(n) Information required to document need. To satisfy the requirements of Chapter 1, Section 14, the following documentation shall be submitted with the application:

(i) Written certification by the applicant committing to adequately maintain the project facility for which the loan is requested for at least

four (4) years. The certification shall clearly identify funding sources to cover all maintenance and operational costs.

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

(iii) Copy of the agreement between the applicant and the school district as required in Chapter 1, Section 9.

(iv) Written certification by the applicant that the project facility is not otherwise provided in the community or that such facility exists except that the financing of that facility has not been paid in full. Written certification that the project facility will not compete with existing governmental organizations or businesses. See Chapter 1, Section 10 for related public notice and hearing requirements.

(v) An applicant must demonstrate the project facility relates to and is mentioned in a community economic development plan or a need exists to enhance the quality of life in the community. This is demonstrated by having some or all of the following in place:

(A) A current Comprehensive Economic Development Strategy (CEDS), or other economic development plan covering the area.

(B) A capital facilities plan with a priority listing of proposed community facility projects and sites related to economic development and quality of life goals.

(C) Other appropriate plans or studies which support the project facility and indicate its chances of achieving success in fulfilling economic development and quality of life goals.

(vi) A written certification that all project facility costs identified in the application budget will be funded at the time of receipt of the grant.

(o) A contingency contract for purchase or transfer of the project facility upon notification of a loan award, or evidence the project facility is already owned by the applicant.

(p) Other applicable information as requested by the Council staff.

Section 3. **Loan Amount.**

(a) The maximum for a general Community Facilities Loan shall be \$1,000,000 per application.

(b) The maximum for a Special Assistance Loan shall be \$1,500,000 per application.

Section 4. **Interest Rate and Term.**

(a) A general Community Facilities Loan and a Special Assistance Loan shall be made at a no or low interest rate as recommended by the Council and established by the Board.

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.

(b) If a lien is required on the facilities, the applicant shall:

(i) Maintain adequate insurance on the facility;

(ii) Pay all applicable taxes and assessments when due;

(iii) Maintain the facility in good condition.

Section 6. **Attorney General Opinion.** No loan shall be made without the written opinion of the Attorney General certifying the legality of the transaction and all loan documents. An election approving the project and borrowing for the project by the qualified electors of the borrowing entity shall be required only if the Attorney General determines such an election is otherwise required by law.

Section 7. **Evaluation.**

(a) **Criteria.** The Council staff shall evaluate an application and will formulate a recommendation to the Council utilizing the following criteria:

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

(ii) Whether the applicant is current on all its repayment obligations to the Community Facilities Program account or other state loan accounts.

(b) Interagency Consultation. The Council staff shall request that pertinent state agencies assist in the review of the applications and provide comments to the Council staff for Council and Board consideration.

Section 8. **Council Recommendation.** The Council shall consider each application and refer to the Board with 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. **Disbursement of Loan Proceeds.** At closing, the loan proceeds shall be deposited in an interest bearing escrow account to be disbursed solely for the approved loan purposes. Interest earned shall be credited to the borrower. Borrower shall submit all requests for payment along with supporting documentation on a form provided by the Council staff. The Council staff shall approve or disapprove pay requests in whole or part within five (5) working days and notify the escrow bank of the amount to be disbursed to the borrower.

Wyoming Business Council
Economic Planning & Partnership Challenge Loan Program

<u>No.</u>	<u>Chapter Name</u>	<u>Date Filed</u>
1	Wyoming Partnership Challenge Loan Program	7/14/2015
2	Economic Disaster Loans	7/14/2015
3	Loan Guarantee Program	10/15/2013
4	Wyoming Mainstreet Loan Participation	7/14/2015
5	Natural Gas Fueling Infrastructure Loans	7/14/2015



STATE OF WYOMING

WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 1– WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Section 1. Purpose.

a. These rules are adopted in order to implement W.S. 9-12-301 through 9-12-307, which provide for the making of loans to eligible community development organizations, state development organizations, and businesses. The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of loans, and a hearing process;

b. Language in this chapter applies to all chapters 1-5 unless otherwise specified.

Section 2. Authority.

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

Section 3. Definitions

a. “Board of Directors” means the Board of Directors of the Council;

b. “Borrower” means the community development organization or a state development organization, which applies for, commits to, and is responsible for repayment of funds provided under this program;

c. “Business” means any existing enterprise which employs people within the state, provides services within the state, uses resources within the state or otherwise adds economic value to goods, services or resources within the state, and includes farm and ranch operations;

d. “Cash or cash equivalent” means liquid assets including savings, checking and money market accounts, CDs, stocks, bonds or cash value life insurance or other similar assets. Equity in real estate holdings and other fixed assets is not to be considered liquid assets;

e. “Community development organization” means a group of private citizens organized as a business entity authorized to do business in this state for the purpose of providing financing for new, existing, or expanding businesses and other economic or community development purposes in Wyoming, and which may take equity positions and shall take security positions in its borrowers’ businesses and appropriate personal guarantees from the owners thereof;

- f. "Council" means the Wyoming Business Council;
- g. "Economic development account" means the economic development enterprise account within the revolving investment fund created under article XVI, section 12 of the Wyoming constitution. The account shall consist of funds from payments as provided in W.S. 9-12-306 and other funds as provided by law;
- h. "Guarantee loan participation" means a provision of financing by the Council in which the Council participates with a bank that has secured a federal guaranteed loan to guarantee repayment of a loan made to a business. The maximum participation by the Council shall be fifty percent (50%) of the loan or two million dollars (\$2,000,000), whichever is less;
- i. "Servicing agent" means the qualified entity contracted by the Council to service the loans in the portfolio and to provide administrative services for the program;
- j. "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;
- k. "Third-party loan(s)" means loans made by a community development organization or a state development organization to a business, where such loans are funded partially by the Challenge Loan Program;
- l. "Bridge financing" means a provision of financing for that portion of the total project cost which is calculated by subtracting from the total project cost the sum of ownership debt and equity. The Council shall not consider a proposal in which the bridge financing component exceeds thirty-five percent (35%) of the total project cost or one million dollars (1,000,000) whichever is less; and the business does not contribute less than fifteen percent (15%) of the total project cost. The financing is intended to be a participation with a commercial lender with the lender and state sharing a proportionate first lien position on all collateral. In the event of a default the lender will restructure, or proceed with the appropriate legal remedy with proceeds received to be shared proportionately with the state;
- m. "Commercial Lender" means commercial institutions that loan money, including banks, credit unions, mutual savings banks, savings and loan associations, stock savings banks, or trust companies;
- n. "Economic Disaster Area" means as defined in W.S. 9-12-301 (a)(v);
- o. "Economic Disaster Loan(s)" means loans made to eligible businesses, up to a maximum of five hundred thousand dollars (\$500,000.00), where such loans are funded by the Challenge Loan Program;

p. “Lost revenues” shall only include actual losses incurred and shall not include any future losses;

q. “Loan guarantee” means a provision of financing by the Council in which the Council guarantees a portion of a bank loan made to a business;

r. “Wyoming main street loan participation” means a provision of financing by the council in which the council participates with a Commercial Lender that has made a loan to a business for building improvements to maintain the structure’s historical character. The maximum participation by the Council shall be seventy-five (75%) of the loan or one hundred thousand dollars (\$100,000), whichever is less;

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

t. “Natural gas fueling infrastructure loan” means a loan issued by the Council for the costs of the engineering, design, real property, equipment and labor necessary to install a functioning natural gas filling station to fuel motor vehicles, which operate on natural gas as a transportation fuel.

Section 4. Eligible Applicants.

a. Any community development organization, state development organization, business requesting “bridge financing” as defined under section 3(m), or a business requesting a “guarantee loan participation” as defined under section 3(h) may submit an application to the Council for review and recommendation to the Board of Directors, as defined by legislation. Only complete applications shall be submitted to the Council.

Section 5. Application Process.

a. All applications for loans shall be submitted on the required forms. Applications will be accepted at any time and scheduled for final review and recommendation by the Board of Directors on a first-come, first-served basis.

b. One (1) copy of the application shall be submitted to the Council offices at:

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

c. Every application for a community development or state development organization shall include, unless waived by the Council:

(i) three (3) years of financial statements (of the community development organization or state development organization and business receiving the third party loan), plus current financial statements;

(ii) pro-forma financial projections (income statement, balance sheet, and cash-flow statement) of the community development organization or state development organization, and the recipient of the third-party loan(s) for two (2) years;

(iii) certificate of incorporation of the community development organization or state development organization;

(iv) by-laws of the community development organization or state development organization;

(v) resolution to borrow by the community development organization or state development organization;

(vi) in the case of a community development organization, demonstrate the use of funds will stimulate economic development in the community or county, or in the case of a state development organization, demonstrate the use of funds will stimulate economic or community development throughout the state of Wyoming, and that such funds for financing the Business(es) are not available from the private-sector or in the case of a business(es) a letter of recommendation from the city, county or economic development organization where they are located;

(vii) business plan of the community development organization, state development organization or the ultimate recipient of the third-party loan(s);

(viii) in the case of a community development organization, a resolution of support from the legislative body of its municipality or county, or in the case of a state development organization, a resolution of support from the Council;

(ix) certification by the community development organization or state development organization that all statutory requirements will be met;

(x) certification that the community development organization or state development organization will contribute an amount of cash or cash equivalent at least equal to the amount of the loan it receives, plus documented evidence of the cash or cash equivalent reserves which will be pledged for such matching;

(xi) proposed collateral for the loan shall be at a loan to value of no more than 85%;

(xii) proposed collateral and collateral value;

(xiii) proposed use of loan funds (majority of funds cannot be used to refinance existing debt);

(xiv) proposed personal guarantees; and

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

d. Applications for “bridge financing” and “guarantee loan participations” shall include, unless waived by the Council:

(i) complete copy of the originating lender’s analysis, recommendation and approval;

(ii) three (3) years of financial and tax statements (or in the case of a new business the most recent statements available since start-up), plus detailed and complete current financial statements of the Business and owner(s);

(iii) pro-forma cash flow statement projections, if required by the commercial lender, of the Business for a minimum of two (2) years;

(iv) proposed collateral and collateral value;

(v) proposed use of loan funds (majority of funds cannot be used to refinance existing debt);

(vi) proposed personal guarantees;

(vii) in the case of a “guaranteed loan participation” as defined in section 3(h), certification that the loan will be guaranteed by a federal program;

(viii) certification by the lender and business that all statutory requirements will be met; and

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

(x) certification that the business will report jobs, wages, and capital expenses at the request of the council.

Section 6. Review and Recommendation.

a. Completed applications shall be reviewed by Council staff to determine eligibility, completeness, and credit-worthiness.

b. Applications that are determined by Council staff to be incomplete shall be provided an explanation of the findings in writing within fifteen (15) working days of their receipt where practical.

c. Council staff will formulate a recommendation for complete applications to the Board of Directors utilizing the criteria in W.S. 9-12-303 and 9-12-304;

(i) to include:

A. if the total loan amount to a single community development organization does not exceed five hundred thousand dollars (\$500,000.00) or three million five hundred thousand dollars (\$3,500,000.00) to a state development organization;

B. if the total loan amount to a business applying for “bridge financing” does not exceed 35% of the total project costs or one million dollars (\$1,000,000) whichever is less or a loan to a business qualifying for a “guarantee loan participation” shall not exceed 50% of the loan or two million dollars (\$2,000,000), whichever is less;

C. if there are sufficient funds in the economic development enterprise account to fully fund it and all other outstanding commitments and loans;

D. if funds provided by the state are adequately collateralized. The adequacy of the collateral shall be determined by Council staff at no more than 85% loan to value;

E. if the application for the loan or loan commitment is submitted on or after September 1, 1996;

(ii) and will also take into consideration the following additional criteria:

A. if all appropriate legal documents are executed;

B. if the community development organization or state development organization contributes an amount of cash or cash equivalent at least equal to the loan it receives to a program of investment in its local economic development;

C. if the community development organization or state development organization has consolidated the loan it receives and its required contribution and makes Third-party loans to Businesses and investments in support of Wyoming business;

D. if the Board of Directors has taken into consideration that the Third-party loan does not cause unfair competition with existing businesses in the area;

E. if the Board of Directors has taken into consideration that the Third-party loan does not cause unfair competition with existing lenders in the area;

F. if the Board of Directors has taken into consideration the likelihood that the Borrower will be able to make sound underwriting decisions in its provision of the Third-party loans, and the Borrower’s ability to ultimately repay the Challenge Loan; and

G. if the Council’s portion of the loan is less than the Commercial Lender’s.

d. Applicants shall be notified of the time and place of the Board of Directors meeting at which time their application will be evaluated.

e. At the meeting, the Board of Directors shall consider each application, allowing for comments from the applicant and Council staff. The Board of Directors will then approve or deny each application subject to the terms and conditions considered necessary by the Board of Directors. In the event the application is denied the Board of Directors will disclose to the applicant the reason for denial in writing and any remedial steps for the application to be reconsidered.

Section 7. Terms, Conditions, and Repayment.

a. In making loans, the Council shall:

(i) establish an up-front fee and/or a per annum administrative fee of at least one percent (1%) each of the total loan amount; this fee may be reduced or waived upon approval of the Board of Directors for “guarantee loan participations”;

(ii) establish a commitment fee of 0.25% per annum of the amount of the unused commitment; to be assessed at the first anniversary of the loan date;

(iii) establish a commitment period for disbursement of loan proceeds not to exceed two years;

(iv) set an interest rate (minimum 3% per annum) after considering:

A. the dollar-for-dollar match;

B. the proposed source(s) and use(s) of the funds, and specifically, the percentage of owner’s equity;

C. other interest rates associated with total project financing;

D. projected cash flows and business plan of the Borrower as well as the Business;

E. credit risk of the community development organization or state development organization and the underlying Third-party loans;

F. current and projected market interest rates; and

G. collateral and security package.

(v) establish the terms of repayment not to exceed ten (10) years, with an additional ten (10) year renewal upon approval by the Board of Directors of the Council;

(vi) establish an amortization not to exceed twenty (25) years;

(vii) establish that whenever a draw-down of funds is requested by the Borrower, provide to the Council for each Third-Party loan under consideration by the Borrower, a written loan application made by the Borrower and approved by its board, which is a

detailed due-diligence analysis on the creditworthiness of the proposed Third-party loan. Such loan application shall at a minimum address and analyze the proposed financings: sources and uses of funds, commercial viability of the business/project, risks and mitigants, rationale for lending (i.e. why the Business can not obtain funding from the private sector and why the public sector should assume the risk), economic development impact, the collateral package, terms of the security agreement, and terms and conditions of the Third-party loan, etc;

(viii) establish that whenever a draw-down of funds is requested by the Borrower, provide to the Council for each Third-party loan under consideration by the Borrower, unless waived by the Council, the Business' business plan, three (3) years of historical financial statements and current year-to date financial statements; three (3) years of tax statements; and pro-forma financial projections (income statement, balance sheet, and cash-flow statement);

(ix) establish other terms and conditions determined to be necessary by the Board of Directors, such as, that all Third-party loans shall be reviewed by and are subject to the approval of the Council and the terms of the loan documents, prior to the release of funds to the Borrower, as well as other customary and prudent terms and conditions;

(x) require written permission from the Borrower agreeing to allow the Wyoming Department of Audit and an auditor designated by the Board of Directors to examine its books and records, upon request;

(xi) reserve the right to terminate the agreement to ensure funds loaned or committed are invested by the community development organization or state development organization in local economic development within twenty-four (24) months; and

(xii) require all statutory requirements regarding the loan be met.

Section 8. Servicing Agents.

a. The Council may undertake to act either directly or indirectly as the loan-servicing agent, or to contract for that service.

b. The Servicing agent may be responsible for loan packaging, closing, documentation, loan portfolio management, collection and reporting, and other duties as required under the loan servicing agreement.

c. It will remain the responsibility of the Council to monitor the performance of the portfolio through frequent meetings with the Servicing agent.

Section 9. Board of Directors Meeting.

a. The Board of Directors shall meet at the call of the chairman, the secretary or upon request of the majority of its members in accordance with W.S. 16-4-401 through 16-4-407, Public Meetings, and in accordance with W.S. 9-12-103 (d).

b. The Board of Directors shall conduct application reviews at a public meeting with a quorum of the Board of Directors. Board members may be physically present or participate through tele- or video-conference. Loans shall be approved by a majority, affirmative vote of the members of the Board of Directors voting on the matter. The Board of Directors reserves the right to go into Executive Session should it determine matters to be discussed are proprietary or confidential in nature.

c. The Board of Directors shall reserve the right to vote on requests for changes in loan commitments, internal policy matters, or other similar internal business affairs of the Board of Directors, by tele- or video-conference. Minutes will be kept of the tele- or video-conference discussion and the vote duly recorded and made a part of the minutes.

d. The Board of Directors reserves the right to declare a moratorium upon the acceptance of applications.

Section 10. Reporting and Audit.

a. The Council shall submit to the State Banking Commissioner a portfolio report of all loans as of December 31 no later than January 15. The State Banking Commissioner shall schedule an audit of the loan portfolio report on or before April 1 with a completed audit report presented to the Council on or before May 1.

b. On or before July 15 of each year, the Council shall submit a written report to the Joint Minerals, Business and Economic Development Interim Committee reviewing rules adopted by the Council during the reporting period, presenting a portfolio of loans made under the programs and presenting a risk analysis of the portfolio of loans prepared by the State Banking Commissioner.



STATE OF WYOMING

WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 2– ECONOMIC DISASTER LOANS

Section 1. Purpose.

a. These rules are adopted in order to implement W.S. 9-12-301 through 9-12-307, in order to permit loans to business affected by economic disaster, specifically, W.S. 9-12-301 (a) (i) (v), 9-12-302 (a), 9-12-304 (a) (intro). (b) (i) and (c). The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of loans, and a hearing process.

Section 2. Eligible Applicants.

a. Any business or group of businesses may apply to the Council for designation of an area of the state as an area in which an economic disaster as defined in W.S. 9-12-301 (a) (v) has occurred, through the submission of an application to the Council, as defined by legislation. Only complete applications shall be submitted to the Council.

b. Any business which has been directly impacted in the form of lost revenues, by an economic disaster, as determined by the Council to have occurred in Wyoming, may apply for an Economic Disaster Loan, through the submission of an application to the Council or its Servicing agent, as defined by legislation. Only complete applications shall be submitted to the Council.

Section 3. Application Process for Designation Of An Economic Disaster Area.

a. All applications for declaration of an Economic Disaster Area shall be submitted on the required forms. Complete applications will be accepted at any time and scheduled for final review and approval or denial by the Board of Directors on a first-come, first-served basis.

b. One (1) copy of the application shall be submitted to the Council offices at:

Wyoming Business Council
214 West 15th Street
Cheyenne, Wyoming 82002

c. Every application shall include:

- (i) a detailed description of the economic disaster event which has occurred, which has resulted in lost revenues to directly affected Businesses;
- (ii) documentation which substantiates the lost revenues, the geographic area in which the economic disaster has occurred, and that the event was not within the control of the affected businesses; and
- (iii) certification that all statutory requirements will be met.

Section 4. Application Process For An Economic Disaster Loan.

a. All applications for Economic Disaster Loans shall be submitted on the required forms. Complete applications will be accepted at any time and scheduled for final review and approval or denial by the Board of Directors on a first-come, first-served basis.

b. One (1) copy of the application shall be submitted to the Council offices at:

Wyoming Business Council
214 West 15th Street
Cheyenne, Wyoming 82002

c. Every application shall include, unless waived by the Council the following at a minimum:

(i) three (3) years of financial and tax statements, plus detailed and complete current financial statements of the Business and the owner(s);

(ii) pro-forma cash-flow statement projections of the Business for a minimum of one (1) year;

(iii) a statement that such funds for the Economic disaster loan are not available from the private-sector at a like term and interest rate;

(iv) a detailed repayment plan of the Borrower;

(v) certification that all statutory requirements will be met; and

(vi) proposed collateral and personal guarantees for the loan.

Section 5. Review and Recommendation.

a. Completed requests for declaration of an Economic Disaster Area shall be reviewed by Council staff to determine eligibility and completeness. The Council may require whatever documentation is necessary to verify the extent of the economic impact, and may use good faith estimates of lost revenues to Businesses in determining whether an event qualifies as an economic disaster.

b. Completed Economic Disaster Loan application shall be reviewed by Council staff to determine eligibility, completeness, and credit-worthiness. Incomplete applications will not be forwarded to the Board of Directors.

c. Applications that are determined by Council staff to be incomplete shall be returned to the applicant with an explanation of the findings in writing within fifteen (15) working days of their receipt where practical.

d. Council staff will formulate a recommendation for complete applications to the Board of Directors. The Board of Directors will take into account the statutory requirements and the criteria in W.S. 9-12-303 and 9-12-304,

(i) to include:

A. if the total loan amount to a single eligible Business does not exceed five hundred thousand dollars (\$500,000.00);

B. if there are sufficient funds in the economic development enterprise account to fully fund it and all other outstanding commitments and loans;

C. if funds provided by the state are adequately collateralized. The adequacy of the collateral shall be determined by the Board of Directors;

D. if the application for the loan or loan commitment is submitted on or after September 1, 1996;

(ii) and will also take into consideration the following additional criteria:

A. if all appropriate legal documents are executed;

B. if the Board of Directors has taken into consideration that the loan does not cause unfair competition with existing Businesses in the area;

C. if the Board of Directors has taken into consideration that the loan does not cause unfair competition with existing lenders in the area; and

D. if the Board of Directors has taken into consideration the likelihood that the Borrower has the ability to ultimately repay the loan per the terms and conditions of the loan agreement.

e. Applicants shall be notified of the time and place of the Board of Directors meeting at which time their application will be evaluated.

f. At the meeting, the Board of Directors shall consider each application, allowing for comments from the applicant. The Board of Directors will then approve or deny each application subject to the terms and conditions considered necessary by the Board of

Directors. In the event the application is denied, the Board of Directors will disclose to the applicant the reasons and any remedial steps, if any, for the application to be reconsidered.

Section 6. Terms, Conditions, and Repayment.

a. In making loans, the Board of Directors shall:

(i) establish for recovery of filing fees and other administrative fees at cost, which are required for the perfection of security interests;

(ii) set an interest rate (minimum 3% per annum) after considering:

A. the availability, likelihood of receipt, and the pledging of potential federal grants and/or loans, and insurance and legal proceeding proceeds, if any, for the immediate repayment of the Economic Disaster Loan, to the extent proceeds are available;

B. the extent of the Borrower's financial assets which could be used to meet its financial needs.

C. the extent of the verified uninsured economic disaster loss and the financial needs of the potential Borrower;

D. the proposed use of funds;

E. other interest rates associated with Borrowers existing indebtedness;

F. projected cash flows and repayment plan of the Borrower;

G. credit risk of the Borrower;

H. current and projected market interest rates;

I. collateral and security package;

J. personal guarantee(s) with a blanket lien;

K. whether the event was beyond the control of the Business or the result of poor management decisions and planning; and

L. the availability of a non-judicial foreclosure agreement with the Borrower's existing lenders.

(iii) establish the terms of repayment, not to exceed ten (10) years;

(iv) establish other terms and conditions determined to be necessary by the Board of Directors, as well as other customary and prudent terms and conditions, negative and affirmative covenants, cross-default, conditions precedent, security agreements, etc.;

(v) require written permission from the Borrower agreeing to allow the Department of Audit and an auditor designated by the Board of Directors to examine its books and records, upon request; and

(vi) require all statutory requirements regarding the loan be met.



STATE OF WYOMING
WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM
Rules and Regulations

CHAPTER 3 – LOAN GUARANTEE PROGRAM

Section 1. Purpose.

a. These rules are adopted in order to implement W.S. 9-12-301 through 9-12-307, which provide for the issuance of loan guarantees, specifically, W.S. 9-12-301 (a) (i) (vii), 9-12-302 (a), 9-12-304 (a) (intro) (b), (b)(i) (f) and (f)(i) . The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of loan guarantees, and a hearing process.

Section 2. Eligible Applicants.

a. Any business requesting a loan guarantee as defined in section 3(g) may submit an application to the Council for review and recommendation to the Board of Directors, as defined by legislation. Only complete applications shall be submitted to the Council.

Section 3. Application Process.

a. All applications for a Loan Guarantee shall be submitted on the required forms. Complete applications will be accepted at any time and scheduled for final review and approval or denial by the Board of Directors on a first-come, first-served basis.

b. One (1) copy of the application shall be submitted to the Council offices at:

Wyoming Business Council
214 West 15th Street
Cheyenne, Wyoming 82002

c. Every application shall include, unless waived by the Council, the following at a minimum:

(i) complete copy of the originating Commercial Lender’s analysis, recommendation and approval;

(ii) three (3) years of financial and tax statements (or in the case of a new business the most recent statements available since start-up), plus detailed and complete current financial statements of the Business and owner(s);

(iii) pro-forma cash flow statement projections of the Business for a minimum of three

(3) years;

(iv) proposed collateral and collateral value;

(v) proposed use of loan funds (majority of funds cannot be used to refinance existing debt);

(vi) proposed personal guarantees;

(vii) certification by the originating lender that this "Loan Guarantee" is a greater benefit to the business than a traditional "Federal Guaranteed Loan" or the "Loan Guarantee Participation" as outlined in Chapter 1 of these rules;

(viii) certification by the lender and business that all statutory requirements will be met;

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

Section 4. Review and Recommendation.

a. Completed applications shall be reviewed by Council staff to determine eligibility, completeness, and credit-worthiness.

b. Applications that are determined by Council staff to be incomplete shall be provided an explanation of the findings in writing within fifteen (15) working days of their receipt where practical.

c. Council staff will formulate a recommendation for complete applications to the Board of Directors utilizing the criteria in W.S. 9-12-303 and 9-12-304.

(i) to include:

A. if the total guarantee shall not exceed one hundred thousand dollars (\$100,000.00) per loan guaranteed or eighty percent (80%) of any net loan loss by the bank, whichever is less;

B. if there are sufficient funds in the economic development enterprise account to fully fund it and all other outstanding commitments and loans;

C. if the loan guarantee provided by the state is adequately collateralized by the originating bank and further secured by the personal guarantee of the owners of the business. The adequacy of the collateral and personal guarantees shall be determined by the Council staff;

D. if there is no more than one (1) guarantee issued and outstanding per business at any time;

(ii) and will also take into consideration the following additional criteria:

A. if all appropriate legal documents are executed;

B. if the Board of Directors has taken into consideration that the loan guarantee does not cause unfair competition with existing businesses in the area;

C. if the Board of Directors has taken into consideration that the loan guarantee does not cause unfair competition with existing lenders in the area; and

D. Applicants shall be notified of the time and place of the Board of Directors meeting at which time their application will be evaluated.

E. At the meeting, the Board of Directors shall consider each application, allowing for comments from the applicant and Council staff. The Board of Directors will then approve or deny each application subject to the terms and conditions considered necessary by the Board of Directors. In the event the application is denied the Board of Directors will disclose to the applicant the reason for denial in writing and any remedial steps for the application to be reconsidered.

Section 5. Terms and Conditions.

a. In issuing guarantees, the Council shall:

(i) establish an up-front fee of at least one percent (1%) of the total loan amount;

(ii) establish that the maximum amount of each guarantee shall not exceed one hundred thousand dollars (\$100,000.00) per loan guaranteed or eighty percent (80%) of any net loan loss by the bank, whichever is less;

(iii) establish the terms of the guarantee shall not to exceed ten (10) years;

(iv) establish that whenever a guarantee is requested by the Business, provide to the Council for each loan guarantee under consideration, a written loan application made by the Business and approved by the originating bank, which is a detailed due-diligence analysis on the creditworthiness of the proposed loan. Such loan application shall at a minimum address and analyze the proposed financings: sources and uses of funds, commercial viability of the business/project, risks and mitigants, rationale for lending (i.e. why the Business can not obtain a traditional Federal Guarantee and/or why the State of Wyoming Guarantee provides a greater benefit to the Business), economic development impact, the collateral package, terms of the security agreement, and terms and conditions of the guarantee, etc;

(v) establish that whenever a guarantee is requested by the Business, provide to the Council for each Guarantee under consideration by the Business, the Business' business plan, three (3) years of historical financial statements and current year-to date financial statements; three (3) years of tax statements (or in the case of a new business the most

recent statements since start-up); and pro-forma financial projections (income statement, balance sheet, and cash-flow statement), for;

(vi) establish other terms and conditions determined to be necessary by the Board of Directors, such as, that all loan guarantees shall be reviewed by and are subject to the approval of the Board of Directors and the terms of the loan documents, prior to the release of funds to the Borrower, as well as other customary and prudent terms and conditions;

(vii) require written permission from the Business agreeing to allow the Department of Audit and an auditor designated by the Board of Directors to examine its books and records, upon request;

(viii) require all statutory requirements regarding the guarantee be met;

(ix) establish that in the event of default by a Business, on a loan made by a bank, guaranteed by the provisions of these rules the following shall be met before payment may be requested under provisions of the guarantee;

A. written notification shall be given to the Council, by the originating bank, that a guaranteed loan is in default and that the bank intends to begin liquidation;

B. complete liquidation of all collateral securing the loan;

C. complete recovery against any personal guarantees;

D. a summary of liquidation and general ledger of the note documenting net loan loss may be submitted to the Council requesting payment under the guarantee;

E. calculation of net loan loss is principal less recovery from liquidation of collateral, personal guarantees and accrued interest not to exceed sixty (60) days, recovery of attorney fees and other legal costs are not allowed to be included in the net loan loss;

F. notwithstanding the maximum guaranteed payment of one hundred thousand dollars (\$100,000.00) or eighty percent (80%) of any net loan loss, whichever is less, shall be approved by the Board of Directors.



STATE OF WYOMING

WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 4 – WYOMING MAIN STREET LOAN PARTICIPATION

Section 1. Purpose.

a. These rules are adopted in order to implement W.S. 9-12-301 through 9-12-307, which provide for the making of loans to eligible community development organizations, state development organizations, and businesses. The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of loans, and a hearing process.

Section 2. Eligible Applicants.

a. Any commercial lender requesting “Wyoming main street loan participation” as defined under section 3(h) may submit an application to the Council for review and recommendation to the Board of Directors, as defined by legislation. Only complete applications shall be submitted to the Council.

Section 3. Application Process.

a. All applications for loans shall be submitted on the required forms. Applications will be accepted at any time and scheduled for final review and recommendation by the Board of Directors on a first-come, first-served basis.

b. One (1) copy of the application shall be submitted to the Council offices at:

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

c. Applications for “Wyoming main street loan participation” shall include, unless waived by the Council:

(i) complete copy of the originating lender’s analysis, recommendation and approval;

(ii) three (3) years of financial and tax statements (or in the case of a new business the most recent statements available since start-up), plus detailed and complete current financial statements of the Business and owner(s);

(iii) pro-forma cash flow statement projections, if required by the commercial lender, of the Business for a minimum of two (2) years;

(iv) proposed collateral and collateral value;

(v) proposed use of loan funds (majority of funds cannot be used to refinance existing debt);

(vi) proposed personal guarantees;

(vii) architect/engineer design of renovation or a statement of intended use of funds to begin design process;

(viii) certification by the lender and business that all statutory requirements will be met; and

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

Section 4. Review and Recommendation.

a. Completed applications shall be reviewed by Council staff to determine eligibility, completeness, and credit-worthiness.

b. Applications that are determined by Council staff to be incomplete shall be provided an explanation of the findings in writing within fifteen (15) working days of their receipt where practical.

c. Council staff will formulate a recommendation for complete applications to the Board of Directors utilizing the criteria in W.S. 9-12-303 and 9-12-304;

(i) to include:

A. if the total loan amount to a commercial lender applying for “Wyoming main street loan participation” does not exceed 75% of the total loan amount or one hundred thousand dollars (\$100,000.00) whichever is less;

B. if there are sufficient funds in the economic development enterprise account to fully fund it and all other outstanding commitments and loans; and

C. if funds provided by the state are adequately collateralized. The adequacy of the collateral shall be determined by the Council staff at no more than 85% loan to value;

(ii) and will also take into consideration the following additional criteria:

A. if all appropriate legal documents are executed;

B. if the Board of Directors has taken into consideration that the Third-party loan does not cause unfair competition with existing businesses in the area;

C. if the Board of Directors has taken into consideration that the Third-party loan does not cause unfair competition with existing lenders in the area; and

D. Applicants shall be notified of the time and place of the Board of Directors meeting at which time their application will be evaluated.

E. At the meeting, the Board of Directors shall consider each application, allowing for comments from the applicant and Council staff. The Board of Directors will then approve or deny each application subject to the terms and conditions considered necessary by the Board of Directors. In the event the application is denied the Board of Directors will disclose to the applicant the reason for denial in writing and any remedial steps for the application to be reconsidered.

Section 5. Terms, Conditions, and Repayment.

a. In making loans, the Council shall:

(i) establish an up-front fee and/or a per annum administrative fee of at least one percent (1%) each of the total loan amount;

(ii) establish a commitment fee of 0.25% per annum of the amount of the unused commitment; to be assessed at the first anniversary of the loan date;

(iii) establish a commitment period for disbursement of loan proceeds not to exceed two years;

(iv) set an interest rate (minimum 3% per annum) after considering:

A. the dollar-for-dollar match;

B. the proposed source(s) and use(s) of the funds, and specifically, the percentage of owner's equity;

C. other interest rates associated with total project financing;

D. projected cash flows and business plan of the Borrower as well as the Business;

E. credit risk of the community development organization or state development organization and the underlying Third-party loans;

F. current and projected market interest rates; and

G. collateral and security package.

(v) establish the terms of repayment not to exceed twenty (20) years;

(vi) require written permission from the Borrower agreeing to allow the Wyoming Department of Audit and an auditor designated by the Board of Directors to examine its books and records, upon request;

(vii) reserve the right to terminate the agreement to ensure funds loaned or committed are invested within twenty-four (24) months: and;

(viii) require all statutory requirements regarding the loan be met.



STATE OF WYOMING

WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 5– NATURAL GAS FUELING INFRASTRUCTURE LOANS

Section 1. Purpose.

a. These rules are adopted in order to implement W.S. 9-12-301 through 9-12-307, in order to permit loans to any business that may apply to the council for a natural gas fueling infrastructure loan as defined in W.S. 9-12-301 (a)(x). The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of loans, and a hearing process.

Section 2. Eligible Applicants.

a. Any business may apply to the council for a natural gas fueling infrastructure loan as defined in W.W. 9-12-301 (a)(x).

Section 3. Application Process For A Natural Gas Fueling Infrastructure Loan.

a. All applications for natural gas fueling infrastructure loans shall be submitted on the required forms. Complete applications will be accepted at any time and scheduled for final review and approval or denial by the Board of Directors on a first-come, first-served basis.

b. One (1) copy of the application shall be submitted to the Council offices at:

Wyoming Business Council
214 West 15th Street
Cheyenne, Wyoming 82002

c. Every application shall include, unless waived by the Council the following at a minimum:

(i) three (3) years of financial and tax statements (or in the case of a new business the most recent statements available since start-up), plus detailed and complete current financial statements of the business and owner(s);

(ii) pro-forma cash-flow statement projections of the Business for a minimum of five (5) years;

(iii) proposed collateral value;

(iv) proposed personal and corporate guarantees of the business;

(v) proposed use of loan funds (funds must be used for the costs of the engineering, design, real property, equipment and labor necessary to install a functioning natural gas fueling station;

(vi) certification that all statutory requirements will be met;

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

Section 4. Review and Recommendation.

a. Completed applications shall be reviewed by Council staff to determine eligibility, completeness, and credit-worthiness.

b. Applications that are determined by Council staff to be incomplete shall be provided an explanation of the findings in writing within (15) working days of their receipt where practical;

c. Applications that are determined by Council staff to be incomplete shall be returned to the applicant with an explanation of the findings in writing within fifteen (15) working days of their receipt where practical;

d. Council staff will formulate a recommendation for complete applications to the Board of Directors. The Board of Directors will take into account the statutory requirements and the criteria in W.S. 9-12-303 and 9-12-304;

(i) to include:

A. if the amount to a business for a “natural gas fueling infrastructure loan” does not exceed 75% of the total costs of land building and equipment or one million dollars (\$1,000,000), whichever is less;

B. if the total amount of all “natural gas fueling infrastructure loans” issued do not exceed five million dollars (\$5,000,000);

C. if there are sufficient funds in the economic development enterprise account to fully fund it and all other outstanding commitments and loans;

D. if funds provided by the state are adequately collateralized. The adequacy of the collateral shall be determined by the Council;

(ii) and will also take into consideration the following additional criteria:

A. if all appropriate legal documents are executed;

B. if the Board of Directors has taken into consideration that the loan does not cause unfair competition with existing Businesses in the area;

C if the Board of Directors has taken into consideration that the loan does not cause unfair competition with existing lenders in the area; and

D. if the Board of Directors has taken into consideration the likelihood that the Borrower has the ability to ultimately repay the loan per the terms and conditions of the loan agreement.

e. In evaluating applications for natural gas fueling infrastructure loan(s), the council shall consider whether:

(i) the geographic area in which the proposed natural gas fueling infrastructure will be located is currently served by existing natural gas fueling infrastructure; and

(ii) the location of the proposed natural gas fueling infrastructure has a significant number of government or private fleet vehicles with the potential to convert to natural gas.

f. Applicants shall be notified of the time and place of the Board of Directors meeting at which time their application will be evaluated.

g. At the meeting, the Board of Directors shall consider each application, allowing for comments from the applicant. The Board of Directors will then approve or deny each application subject to the terms and conditions considered necessary by the Board of Directors. In the event the application is denied, the Board of Directors will disclose to the applicant the reasons and any remedial steps, if any, for the application to be reconsidered.

Section 5. Terms, Conditions, and Repayment.

a. In making loans, the Board of Directors shall:

(i) establish a loan administration fee of at least one percent (1%) of the total loan amount;

(ii) establish for recovery of filing fees and other administrative fees at cost, which are required for the perfection of security interests, at cost;

(iii) set an interest rate at a minimum 3% per annum after considering:

A. the extent of the Borrower's financial assets which could be used to meet its financial needs;

B. the proposed source(s) and use(s) of the funds, and specifically, the percentage of owner's equity;

- C. other interest rates associated with Borrower's existing indebtedness;
- D. projected cash flows and repayment plan of the Borrower;
- E. credit risk of the Borrower;
- F. current and projected market interest rates;
- G. collateral and security package;
- H. personal and business guarantee(s)

(iv) establish terms of repayment not to exceed ten (10) years, with an additional ten (10) year renewal upon approval by the Board of Directors of the Council;

(v) establish an amortization not to exceed twenty (20) years.

(vi) establish the terms of repayment for a "natural gas fueling infrastructure loan" of no interest or principal payments shall be due for the first two (2) years of the term loan. All deferred interest during the first two (2) years of the loan term shall accrue to the principal balance;

(vii) establish other terms and conditions determined to be necessary by the Board of Directors, as well as other customary and prudent terms and conditions, negative and affirmative covenants, cross-default, conditions precedent, security agreements, etc.;

(viii) require written permission from the Borrower agreeing to allow the Department of Audit and an auditor designated by the Board of Directors to examine its books and records, upon request; and

(ix) require all statutory requirements regarding the loan be met.

**Wyoming Business Council
Main Street Program, Wyoming**

No.

1

Chapter Name

Wyoming Main Street Program

Date Filed

3/20/2008

Chapter 1

Wyoming Main Street Program

Section 1. Authority. Pursuant to authority vested in the Wyoming Business Council by virtue of W.S. 9-12-1104 (c), the following rules are hereby promulgated and adopted.

Section 2. Definitions.

(a) As used in these rules:

(i) “Board” means the Wyoming Main Street Advisory Board;

(ii) “Borrower” means a business within a business area which has been granted a loan from the revolving loan fund;

(iii) “Business” means any existing enterprise which employs people within the state, provides services within the state, uses resources within the state or otherwise adds economic value to goods, services or resources within the state, and includes farm and ranch operations;

(iv) “Business area” means a commercial area existing at the time a municipality requests services under the Wyoming Main Street Program;

(v) “Cash or cash equivalent” means liquid assets including savings, checking and money market accounts, CDs, stocks, bonds, cash value life insurance, or other similar assets. Equity in real estate holdings or fixed assets is not considered a liquid asset;

(vi) “Council” means the Wyoming Business Council Board of Directors;

(vii) “Council staff” means the staff of the Wyoming Business Council;

(viii) “CEO” means the Chief Executive Officer of the Wyoming Business Council;

(ix) “Economic development account” means the economic development enterprise account within the revolving investment fund created under Article XVI, Section 12 of the Wyoming Constitution. The account shall consist of funds from payments as provided in W.S. 9-12-1104 and other funds as provided by law;

Effective: 03/20/2008

(x) “Municipality” means a city, town, county or district;

(xi) “Panel” means a small group of individuals selected by the board to provide expertise and advice;

(xii) “Program” means the Wyoming Main Street Program.

(xiii) “Servicing agent” means the qualified entity contracted by the Board to service the loans in the portfolio and to provide administrative services for the program;

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

Section 3. Purpose of rules. These rules establish the application process and criteria used to determine the participants in the program. These rules also establish the application process and criteria used to select recipients of revolving loan funds.

Section 4. Wyoming Main Street community application process.

(a) An application shall be submitted to the Council staff on the prescribed form.

(b) The Council staff will distribute copies of the applications to the board and panel for review. The Board and Panel will prioritize the applications using the following criteria:

(i) Support and funding demonstrating a widespread collaborative effort between public and private sectors shall be awarded between 0 and 100 points;

(ii) Historic building data and evidence of past and current historic preservation activities shall be awarded between 0 and 60 points;

(iii) Potential for economic growth using realistic and justifiable goals to achieve the Main Street Four-Point Approach shall be awarded between 0 and 100 points;

(iv) Current community demographics including patterns of development, ownership, and use which indicate that the raw material for a downtown revitalization effort is in place shall be awarded between 0 and 40 points;

Effective: 03/20/2008

(v) Previous history of downtown revitalization activities with the support and involvement of different groups in the community shall be awarded between 0 and 60 points;

(vi) Readiness of individuals in the public and private sectors who demonstrate an understanding of and enthusiasm for the Main Street Approach shall be awarded between 0 and 40 points.

Section 5. Wyoming Main Street community selection. Applicants will be selected by the CEO of the Wyoming Business Council with the recommendation of the Wyoming Main Street Advisory Board according to total points awarded.

Section 6. Revolving loan fund.

(a) Eligible Applicants. Any business within the business area as defined under section 2(a)(iv) may submit an application to the Board for review and recommendation to the Council. Only complete applications shall be submitted to the Council.

(b) Application Process.

(i) All applications for loans shall be submitted on the required forms. Applications will be accepted at any time and scheduled for final review and recommendation by the Board on a first-come, first-served basis.

(ii) Three (3) copies of the application must be submitted to the Board offices at:

Wyoming Business Council
Wyoming Main Street Program
214 W. 15th St.
Cheyenne, WY 82002

(iii) Every application must include:

(A) three (3) years of financial statements of the applicant, plus current financial statements;

(B) projected cash flow and business plan;

(C) certificate of incorporation or other documentation of legal status of the applicant;

Effective: 03/20/2008

(D) by-laws or other operating agreements of the applicant;

(E) resolution authorizing borrowing by the applicant;

(F) architecture/engineer design of renovation or a statement of intended use of funds to begin design process;

(G) certification that the property owner has met with an approved architect or other representative of the Board for an inspection of the property;

(H) certification that all statutory requirements will be met;

(I) proposed collateral for the loan, value of collateral, lien position, and disclosure of prior liens; and

(J) proposed collateral for the loan shall be at a loan to value of no more than 85%.

(c) Review and Recommendation.

(i) Completed applications shall be reviewed by Council staff to determine eligibility, completeness, and credit-worthiness. Incomplete applications will be returned to the applicant.

(ii) Incomplete applications will be returned with a written explanation of the findings within fifteen (15) working days.

(iii) Complete applications shall be forwarded to the Board for review and evaluation. The Board will formulate a recommendation to the Council. The Board will include the following in its review and evaluation:

(A) the maximum loan is one hundred thousand dollars (\$100,000);

(B) are there sufficient uncommitted funds in the Wyoming Main Street account to fully fund the request;

(C) will funds provided by the state be adequately collateralized. The adequacy of the collateral shall be determined by the Council.

Effective: 03/20/2008

(iv) Applicants shall be notified of the time and place of the Board meeting at which their application will be evaluated.

(v) At the meeting, the Board shall consider each application and allow for comments from the applicant and the Board. The Board will review each application and recommend the Council approve or disapprove. In the event the application is denied, the Council staff will advise the applicant in writing the reasons for denial and any remedial steps necessary for the application to be reconsidered.

(d) Terms, Conditions, and Repayment.

(i) In making loans, the Council shall:

(A) establish an up-front fee and/or a per annum administrative fee of at least one percent (1%) each of the total loan amount;

(B) establish a commitment period for disbursement of loan proceeds not to exceed two years;

(C) set an interest rate (minimum 4% per annum) after considering:

(I) the applicant's projected cash flows and business plan; and

(II) the applicant's collateral and security package.

(D) establish the terms of repayment to be not more than fifteen (15) years;

(E) establish that this loan will be permanent financing and give a letter of commitment to that effect. Borrower will need to obtain separate construction finances. This permanent loan will be advanced to pay off construction loans upon certification that all construction is complete and the contractor and all laborers and materials have been paid;

(F) require all statutory requirements regarding the loan be met.

(e) Servicing Agents.

Effective: 03/20/2008

(i) The Council staff may act directly as the loan-servicing agent, or contract for that service.

(ii) The Servicing agent may be responsible for loan packaging, closing, documentation, loan portfolio management, collection and reporting, and other duties as required under the loan servicing agreement.

(iii) It will remain the responsibility of the Council staff to monitor the performance of the portfolio through frequent meetings with the Servicing agent.

(f) Board Meetings.

(i) The Board shall meet at the call of the chairman, the secretary or upon request of the majority of its members in accordance with W.S. 16-4-407 and W.S. 9-12-1102 (f).

(ii) The Board shall conduct application reviews at a public meeting with a quorum of the Board in attendance. Board members may be physically present or participate through tele- or video-conference. Loan recommendations shall be approved by affirmative vote of a majority of the members of the Board voting on the matter. The Board reserves the right to go into Executive Session should it determine matters to be discussed are proprietary or confidential in nature.

(iii) The Board reserves the right to meet and determine requests for changes in loan commitments, internal policy matters, or other similar internal business affairs, by tele- or video-conference. Minutes will be kept of the tele- or video-conference meetings and the vote duly recorded and made a part of the minutes. Proper notice of such meetings will be provided.

(iv) The Board reserves the right to declare a moratorium upon the acceptance of applications.

**Wyoming Business Council
Science, Technology & Energy Financial Aid Program**

<u>No.</u>	<u>Chapter Name</u>	<u>Date Filed</u>
1	Wyoming Seed Capital Loan Program	12/13/2002

WYOMING SEED CAPITAL LOAN PROGRAM

Rules and Regulations

CHAPTER 1 – WYOMING SEED CAPITAL LOAN PROGRAM

Section 1. Purpose.

a. These rules are adopted in order to implement W.S. 9-12-201 through W.S.9-12-202, Science, Technology and Energy Financial Aid, the provisions of which provide for the extension of financial aid to qualifying businesses and entrepreneurs. These rules provide for a method of application, qualifying criteria, review, establishment of financial aid terms, conditions and a hearing process for approval or denial.

Section 2. Authority.

a. Authority for the promulgation of these rules is granted in W.S. 9-12-104 (a) (iv).

Section 3. Definitions.

- a. “Board of Directors” means the Board of Directors of the Council;
- b. “Cash or cash equivalent” means liquid assets including savings, checking and money market accounts, certificates of deposit, stocks, bonds, cash value of life insurance or other similar assets.;
- c. “Council” means the Wyoming Business Council, the body corporate created by the Wyoming Economic Development Act (W.S. 9-12-101 through 9-12-401).;
- d. “Enterprise” means any proposed or existing business that employs people within the state, provides services within the state, uses resources within the state or otherwise adds economic value to goods, services or resources within the state.;
- e. “Loan Advisory Committee” means the Loan Advisory Committee of the Board of Directors of the Council.

Section 4. Eligible Applicants.

- a. Any business located within the State of Wyoming that is starting or expanding their enterprise or any business that is relocating to the State of Wyoming may submit a complete business plan to the Council for review and recommendation according to the application process.

Section 5. Application Process.

- a. All requests for seed capital loans shall be submitted on the required application form. Applications will be accepted at any time and scheduled for review by the Loan Advisory Committee.
- b. Three (3) copies of the application must be submitted to the Council offices at:

Wyoming Business Council
214 West 15th Street
Cheyenne, WY 82002
- c. Each application must include:
 - (i) Fully completed and signed application form; and
 - (ii) A business plan with sufficient detail so the request may be properly analyzed including, at a minimum, a detailed source and use of funds, collateral offered to secure the loan, cash flow projection, summary of the enterprise, product description, resume of owners, historical financial information for existing businesses or pro-forma projections for start up businesses; and
 - (iii) Certification that the required cash match has been met and is in place according to the terms and conditions of section 6 of these rules.

Section 6. Terms, Conditions, and Repayment.

- a. In making seed capital loans, the Council shall:
 - (i) Require a nonrefundable application fee of \$1,000.00 (one thousand and 00/100 dollars) to be submitted with each application; and
 - (ii) Submit all complete applications to review professionals for recommendation of funding.
 - (iii) Limit the maximum seed loan to any one business to \$50,000 (fifty thousand and 00/100 dollars);
 - (iv) Reserve the right to require guarantees by the applicant;
 - (v) Reserve the right to terminate the loan if the enterprise ceases to operate or move out of state;
 - (vi) Require all statutory requirements regarding the loan be met.
- b. In applying for seed capital loans, the applicant shall:

- (i) Demonstrate a cash match of 3-1 to be invested in the business on or before the loan is closed (at least 2-1 cash needs to be invested prior to the application, this may be in the form of owners capital, friends and family, SBIR or other grants). Loan funds will not qualify as match, the additional match must be in the form of cash capital at closing;
- (ii) Provide sufficient and adequate tangible assets to secure the loan;
- (iii) Agree to repay the seed capital loan anytime within five years on a schedule as follows, if paid in:
 - year 1, then 120% of the loan
 - year 2, then 140% of the loan
 - year 3, then 160% of the loan
 - year 4, then 180% of the loan
 - year 5, then 200% (2 times the loan amount);
- (iv) Provide written permission agreeing to allow the Department of Audit and/or an auditor designated by the Board of Directors to examine its books and records, upon request.

Section 7. Review and Recommendation.

- a. Completed applications will be reviewed by Council staff to determine eligibility and completeness of the application.
- b. Applications that are complete shall be forwarded to a professional selected by the Council who will review the plan and make recommendations for funding.
- c. Applications that are complete and receive recommendation for funding shall be forwarded to the Loan Advisory Committee for their review and evaluation. The Loan Advisory Committee will formulate a recommendation to the Board of Directors who will make the final decision on approval or denial utilizing criteria in W.S. 9-12-202 and these rules, including:
 - (i) Compliance with Section 6 (Terms, Conditions and Repayment) of the rules; and
 - (ii) Compliance with Section 5 (Application Process); and
 - (iii) Determine that there are sufficient funds in the Wyoming Seed Capital Loan account to fully fund the request and all other outstanding commitments; and
 - (iv) Execution of all legal documents.

Section 8. Servicing Agent.

- a. The Council shall reserve the right to act either directly or indirectly as the loan-servicing agent, or to contract for that service.
- b. The servicing agent may be responsible for loan packaging, closing, documentation, loan portfolio management, collection, reporting and other duties as required under the loan servicing agreement.
- c. It will be the responsibility of the Council to monitor the performance of the portfolio through frequent meetings with the servicing agent.

Section 9. Board of Directors Meeting.

- a. The Board of Directors shall meet at the call of the chairman, the secretary or upon request of the majority of its members in accordance with W.S. 16-4-401 through 16-4-407, Public Meetings, and in accordance with W.S. 9-12-103 (d).
- b. The Board of Directors shall conduct application reviews at a public meeting with a quorum of the Board of Directors. Board members may be physically present or participate through tele- or videoconference. Loans shall be approved by a majority, affirmative vote of the members of the Board of Directors voting on the matter. The Board of Directors reserves the right to go into Executive Session should it determine matters to be discussed are proprietary or confidential in nature.
- c. The Board of Directors shall reserve the right to vote on requests for changes in loan commitments, internal policy matters, or other similar internal business affairs of the Board of Directors, by tele- or videoconference. Minutes will be kept of the tele- or videoconference discussion and the vote duly recorded and made part of the minutes.
- d. The Board of Directors reserves the right to declare a moratorium upon the acceptance of applications.

Wyoming Business Council
Small Business Investment Credit Program, Wyoming

<u>No.</u>	<u>Chapter Name</u>	<u>Date Filed</u>
1	Wyoming Small Business Investment Credit Program	11/19/2010
2	Wyoming SBIC Fee Schedule	1/16/2015



STATE OF WYOMING

WYOMING SMALL BUSINESS INVESTMENT CREDIT PROGRAM

Rules and Regulations

CHAPTER 1 – WYOMING SMALL BUSINESS INVESTMENT CREDIT PROGRAM

Section 1. Purpose. The rules are adopted in order to implement W.S. 9-12-1301 through 9-12-1312, which provide for the requirements for certification as a small business investment company, providing requirements for participating investors, providing for determination of qualified investments, providing for requirements for continuance of certification, providing a credit against certain taxes for certain investments, providing reporting requirements and providing for certification of compliance.

Section 2. Authority. Authority for the promulgation of these rules is granted in W.S. 9-12-104(a)(iv).

Section 3. Definitions.

- (a) “The article” means W.S. 9-12-1301 through 9-12-1312;
- (b) “Fiscal year” means the twelve (12) month period that a company uses when reporting to the Internal Revenue Service;
- (c) “Follow-on capital” means any additional investments of capital made in a qualified business that has received a qualified investment;
- (d) “Headquartered” means an organization’s principal office is located in Wyoming and at least sixty percent (60%) of the organization’s employees are employed in Wyoming or 60% of the business payroll is paid to individuals living in Wyoming;
- (e) “Liquid assets” means an investment that can be converted to cash in less than 20 days;
- (f) “Person” means a natural person or entity, including a corporation, general or limited partnership, trust or limited liability company;
- (g) “Principal office” means the main administrative functions of the organization and the original books and records are maintained in the Wyoming office;

(h) “Qualified debt instrument” means a debt instrument issued by a Wyoming small business investment company which:

(i) Is issued at par value or a premium;

(ii) Has an original maturity date of at least four (4) years from the date of issuance and a repayment schedule which is not faster than a level principal amortization over four (4) years. A repayment schedule is not faster than a level principal amortization over four (4) years if the repayment schedule for the debt instrument issued by a Wyoming small business investment company has a scheduled outstanding principal balance greater than a hypothetical note with the same price and yield as the Wyoming small business investment company’s debt instrument that provided for principal to be amortized over equal, consecutive daily payments, where payments are first allocated to accrued interest and then to principal. However, a participating investor may receive payments at any time for future earned interest, provided the amount received does not exceed the present value of that future interest payment, discounted by a factor that is not less than the stated interest rate of the debt instrument;

(iii) Satisfies the rating criteria to qualify as “NAIC 1” as determined by the securities valuation office of the national association of insurance commissioners; and

(iii) Has no interest, distribution or payment features that are related to the profitability of the Wyoming small business investment company or the performance of the Wyoming small business investment company’s investment portfolio.

(j) “Qualified distribution” means any distribution or payment made by a Wyoming small business investment company in connection with:

(i) The costs and expenses of forming, syndicating and organizing the Wyoming small business investment company, including any fee paid for professional services, and the costs of financing and insuring the obligations of the Wyoming small business investment company provided that the distribution or payment is not made directly or indirectly to a participating investor, including:

(A) That at the time the Wyoming small business investment company closes its investment from its participating investors and after deducting the aggregate of the costs of organizing, forming, syndicating, insuring and defeasing the obligations, the Wyoming small business investment company must have cash or other liquid assets available for qualified investments, in an amount equal to at least fifty percent (50%) of the amount of designated capital initially received from its participating investors.

(ii) An annual management fee not to exceed three percent (3%) of designated capital on an annual basis to offset the costs and expenses of managing and operating a Wyoming small business investment company;

(iii) Reasonable and necessary fees in accordance with industry custom for ongoing professional services, including, but not limited to, legal and accounting services related to the operation of a Wyoming small business investment company;

(iv) An increase or projected increase in federal or state taxes, including penalties and related interest, of the equity owners of a Wyoming small business investment company resulting from the earnings or other tax liability of a Wyoming small business investment company to the extent that the increase is related to the ownership, management or operation of a Wyoming small business investment company; and

(v) Payments of principal and interest to holders of qualified debt instruments issued by a Wyoming small business investment company.

(k) “Qualified Investment” means the investment of money by a Wyoming small business investment company in a qualified business for the purchase of any debt, debt participation, equity or hybrid security of any nature and description, including a debt instrument or security which has the characteristics of debt but provides for conversion into equity or equity participation instruments such as options or warrants, but shall not include any purchase of a guaranteed portion of a federally guaranteed loan; provided that the investment must not have a final stated maturity or be subject to mandatory redemption or repurchase prior to two (2) years from the date of initial investment and, provided further, that not more than fifty percent (50%) is used to refinance existing non-Wyoming small business investment company debt. Notwithstanding the foregoing, a qualified investment shall not include an investment that results, or could result, in a Wyoming small business investment company owning fifty percent (50%) or more of the voting or non-voting stock of a qualified business as evidenced by a proforma capitalization table presented to the Wyoming small business investment company, unless;

(i) Such ownership is the result of:

(A) The Wyoming small business investment company’s exercise of its rights and remedies following a default in the obligations of the qualified business;

(B) The Wyoming small business investment company’s exercise of preemptive rights granted to it in connection with its initial investment in a qualified business, provided such rights are exercised in connection with an investment in such qualified business by a party other than the Wyoming small business investment company or an affiliate of the Wyoming small business investment company;

(C) The operation of any anti-dilution rights granted to a Wyoming small business investment company in connection with its initial investment in a qualified business; or

(D) Such investment is approved by the Council prior to its being made.

(l) “Remaining uninvested designated capital” means the difference between designated capital and the cumulative amount of all qualified investments in qualified businesses.

Section 4. Application and certification as a Wyoming small business investment company.

(a) The Council shall provide a form for applying for certification as a Wyoming small business investment company. The form shall include a complete list of required documentation from an applicant, as outlined in the article, along with the following additional required documentation:

(i) The applicant shall submit a nonrefundable application fee as set forth by rule in the fee schedule.

(ii) The applicant shall submit with the application copies of all organizational documents including articles of incorporation or organization, bylaws or operating agreements and a commitment that if certified, the Wyoming small business investment company will establish in Wyoming its headquarters within 60 days of certification.

(iii) The applicant shall submit biographical, personal, financial, investment and historical data for each manager, principal, and the entity itself that provides the following, as applicable:

(A) Prior venture capital firms with which the manager or principal was employed that specifically includes details on:

(I) the valuation of portfolio investments, including the manager or principal’s ability to structure and execute timely and effective exits from portfolio investments;

(II) historical investment performance of prior firms managed by the same managers or principals;

(III) the investment philosophy of the firm;

(IV) the history and strategy of the firm and its managers or principals for obtaining investors and making investments;

(V) disclosure of any fines, penalties, or other sanctions or actions by any state federal, or other regulatory entity, including the Securities and Exchange Commission against the firm or its managers or principals, relating to violations of any type; and

(VI) a five-year business plan, which shall include the applicant's investment strategy and investment criteria. If the Council determines that an applicant's investment strategy or investment criteria would not effectively further economic development in Wyoming the applicant's certification may be denied.

(b) Any other documents deemed necessary by the Council to determine the quality of the firm's management, reputation, code of ethics, investment strategy and practices and to ensure that the applicant is acquainted with requirements of this article.

(c) Any false, inaccurate or misleading information provided in the application may be grounds for rejection of the application and denial of further consideration, as well as decertification, if the information, discovered at a subsequent date, would have resulted in the denial of the certification. If an applicant discovers that any information provided to the Council is inaccurate or because business conditions have changed, they shall notify the Council within ten (10) business days and submit updated information within an additional ten (10) business days. The applicant shall also notify the Council as soon as possible or within ten (10) business days when the applicant is unable to continue as a viable going concern and when the applicant is subject to litigation that may affect its viability as a going concern.

(d) The date of receipt of an application is the postmark date of the date of the independent delivery. Incomplete applications shall be treated as not received. All submissions to the Council may be either by hand delivery or via overnight common carrier. The delivery address shall be noted on the application.

(e) After an application and supporting documents are received, the Council shall consult with the Wyoming state banking commissioner if an applicant is a commercial bank or bank holding company so that the principals' experience as an officer and business qualifications can be determined as described in the article.

(f) Council staff shall determine if an applicant is eligible and if the application is complete. If an application is determined to be incomplete, staff shall notify the applicant within 10 business days, where practical, of deficiencies and a deadline for submitting additional information.

(g) The Council reserves the right to contract with an independent party to review, investigate and certify that the applications received meet the requirements of

statute. The cost for such review shall be paid for by the applicant according to a fee schedule adopted by the Council sufficient to cover actual direct and indirect costs of the review.

(h) Once applications are complete, they shall be forwarded to the board of directors of the council for their review and evaluation.

(j) The board of directors of the Council shall review applications and approve the issuance of a certification as a Wyoming small business investment company or provide the grounds for the refusal.

(k) Any offering material used by a Wyoming small business investment company shall include the following statement: BY AUTHORIZING THE FORMATION OF A WYOMING SMALL BUSINESS INVESTMENT COMPANY, THE STATE OF WYOMING DOES NOT ENDORSE THE QUALITY OF MANAGEMENT OR THE POTENTIAL FOR EARNINGS OF THE COMPANY AND IS NOT LIABLE FOR DAMAGES OR LOSSES TO A PARTICIPATING INVESTOR IN THE COMPANY. USE OF THE WORD "QUALIFIED" IN AN OFFERING DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF THE INVESTMENT BY THE WYOMING BUSINESS COUNCIL. IF APPLICABLE PROVISIONS OF LAW ARE VIOLATED, THE STATE OF WYOMING MAY REQUIRE FORFEITURE OF UNUSED PREMIUM TAX CREDITS AND REPAYMENTS OF USED PREMIUM TAX CREDITS.

Section 5. Aggregate limitations on investment tax credits; Allocation.

(a) The aggregate amount of investment tax credits to be allocated to all participating investors of Wyoming small business investment companies under this article shall not exceed thirty million dollars (\$30,000,000.00).

(b) Tax credits shall be allocated to participating investors as specified in the article.

(c) As specified in the article, the Council may impose a civil penalty upon a participating investor which does not invest the full amount of designated capital required to fund the credits allocated to it by the Council in accordance with the credit allocation claim filed on its behalf. The Council shall provide notice to the participating investor that a civil penalty is being imposed. Any hearing requested shall be administered according to rules promulgated by the Wyoming Office of Administrative Hearings. The cost of the hearing shall be paid by the participating investor that requested the hearing. The Office of Administrative Hearings will determine if the penalty is adequate to cover the direct and indirect cost to the state as a result of the investor's failure to invest the full amount of designated capital. The Office of Administrative Hearings shall make a recommendation to the Council board of directors who will issue a final decision on the civil penalty.

(d) A participating investor may sell or transfer its premium tax credits one hundred eighty (180) days or more from the date on which the participating investor invested designated capital, provided that the participating investor who is transferring or selling the credits notifies the Insurance Commissioner of the sale or transfer and includes with that notification a copy of the transfer documents. In no instance shall a participating investor transfer or sell premium tax credits that have already been applied to its or another participating investor's premium tax liability.

(e) Any transfer or sale of credits shall not affect the time schedule for claiming a credit. Notification of the transfer or sale of credits shall be filed with the Insurance Commissioner within fifteen (15) days of the effective date of the sale or transfer.

Section 6. Request for determination of qualified investment and requirements for continuance of certification.

(a) Before making a proposed qualified investment in a specific business, a Wyoming small business investment company shall request from the Council a written determination that the proposed investment is a qualified investment in a qualified business. The Council shall notify a Wyoming small business investment company within ten (10) business days from the receipt of a request of its determination and an explanation thereof. If the Council does not notify the Wyoming small business investment company of its determination within ten (10) business days, the proposed investment is deemed to be a qualified investment in a qualified business.

(b) The Council shall provide a form for Wyoming small business investment companies to request a determination whether a proposed investment is a qualified investment in a qualified business. The Wyoming small business investment company shall provide all information it has gathered on the business including its plan of operation and plans for future expansion.

(c) The date of receipt of an application is the postmark date of the date of the independent delivery. Incomplete applications shall be treated as not received. All submissions to the Council may be either by hand delivery or via overnight common carrier. The delivery address shall be noted on the application.

(d) A request shall not be considered until all requested information is provided. If the requested documentation is incomplete, Council staff shall notify the Wyoming small business investment company of what is missing and provide a deadline to submit additional information so that a determination can be made.

(e) A Wyoming small business investment company shall pay a nonrefundable annual certification fee, set by rule, to the Council not later than April 1 of

each year, except that an annual certification fee is not required if the payment date is within six (6) months of the date a Wyoming small business investment company is first certified by the Council.

(f) If a Wyoming small business investment company fails to pay its annual certification fee on or before April 30 of each year, the company must pay, in addition to the annual certification fee, a late fee of five thousand dollars (\$5,000.00) to continue its certification.

(g) If a Wyoming small business investment company fails to pay its annual certification fee and late fee as stated in paragraph (f) of this subsection within 60 days after April 1, the Wyoming small business investment company shall be subject to decertification.

(h) On the 6th anniversary of a Wyoming small business investment company's allocation date, the Council shall determine if at least seventy percent (70%) of its designated capital has been invested in qualified investments. If the seventy percent (70%) threshold has not been met, the Council shall notify the Wyoming small business investment company that they are not permitted to receive management fees. Any fees paid after the notice shall reduce the amount considered as a qualified investment in qualified businesses.

(j) On the 8th anniversary of a Wyoming small business investment company's allocation date, the Council shall determine if at least one hundred percent (100%) of its designated capital has been invested in qualified investments. If the one hundred percent (100%) threshold has not been met, the Council shall notify the Wyoming small business investment company that they are not permitted to receive management fees. Any fees paid after the notice shall reduce the amount considered as a qualified investment in qualified businesses.

(k) Any investment returns or profits received by the Wyoming small business investment company from a qualified investment in a qualified business may be invested in another qualified investment in a qualified business and counted towards any requirement in this section with respect to investments of designated capital.

(l) Any amounts received by a Wyoming small business investment company from a qualified business as commitment fees, closing fees, license fees, royalties or similar charges shall be considered as reductions in the Wyoming small business investment company's qualified investments in qualified businesses in the computation of the percentage requirements of this article.

(m) If a qualified business that receives a qualified investment from a Wyoming small business investment company moves its principal office outside Wyoming or fails to relocate its principal office to Wyoming before the 90th day after a Wyoming small business investment company makes an investment in it, the investment

is not considered a qualified investment for the purposes of the percentage requirements in this article.

(n) Any transfer, sale, acquisition, purchase, assignment or merger of a Wyoming small business investment company ownership interest shall be pre-approved by the Council. In no event shall an owner or any affiliate, having an ownership interest of ten percent (10%) or greater, of a Wyoming small business investment company, acquire an ownership interest of ten percent (10%) or greater in another Wyoming small business investment company without the written approval of the Council. The Council may request any information deemed necessary to evaluate changes in Wyoming small business investment company ownership.

Section 7. Wyoming small business investment company reporting requirements.

(a) In addition to the reporting requirements specified in the article, each Wyoming small business investment company shall report to the Council the following:

(i) The North American Industry Classification System (NAICS) code for each qualified business that receives a qualified investment.

(ii) A complete copy of the most recent tax return filed with the Internal Revenue Service for each qualified business that receives a qualified investment as soon as practicable after receiving it from the qualified business.

Section 8. Decertification; certification of compliance.

(a) The Council shall conduct an annual review of each Wyoming small business investment company to determine if each Wyoming small business investment company is abiding by the requirements of statute and to ensure that no investment has been made in violation of this article. The fee for annual reviews shall be set by the board of directors of the Council and shall cover the actual direct and indirect costs of the review or certification.

(b) The Council shall notify a Wyoming small business investment company as soon as practicable if any material violation of statute has occurred that will cause decertification of the Wyoming small business investment company. The Council shall give up to 15 business days for a Wyoming small business investment company to cure any material violation that will lead to decertification.

(c) The Council shall provide written notice to the Insurance Commissioner and participating investor within ten (10) business days of any decertification proceedings and the amount of credits that will be disallowed due to the decertification.



STATE OF WYOMING

WYOMING SMALL BUSINESS INVESTMENT CREDIT PROGRAM

Rules and Regulations

**CHAPTER 2 – WYOMING SMALL BUSINESS INVESTMENT CREDIT PROGRAM
FEE SCHEDULE**

Section 1. Purpose. These rules are adopted in order to implement W.S. 9-12-1301 through 9-12-1312, specifically setting the application fees and annual certification fees for Wyoming small business investment companies.

Section 2. Authority. Authority for the promulgation of these rules is granted in W.S. 9-12-104(a)(iv).

Section 3. Fee Schedule.

(a) The application fee to become a Wyoming small business investment company shall be equal to the annual certification fee for a Wyoming small business investment company. The annual certification fees collected from Wyoming small business investment companies shall be adequate to cover direct and indirect costs of program administration. Annual certification fees may vary over time depending on the number of Wyoming small business investment companies that are operating in Wyoming.

(b) The annual certification fee shall be set at thirty thousand dollars (\$30,000).

(c) On or before April 1 of each year, individual certified Small Business Investment Companies shall submit to the council a pro-rata share of the annual certification fee in a percentage equal to the amount of their designated capital divided by the aggregate amount of investment tax credits of thirty million dollars (\$30,000,000). In the event there is only one Small Business Investment Company, that company shall submit 100% of the annual certification fee.

**Wyoming Business Council
Workforce Housing Infrastructure Loan Program**

<u>No.</u>	<u>Chapter Name</u>	<u>Date Filed</u>
1	General Provisions	3/10/2008
2	Workforce Housing Infrastructure Loans	3/10/2008

State of Wyoming
Wyoming Housing Infrastructure Loan Program
Rules

Chapter 1
GENERAL PROVISIONS

Section 1. Purpose.

(a) The purpose of the program is to promote and continue economic development at the city, town and county level by providing adequate housing necessary to create additional economic health and a stronger state economy in order to promote the economic welfare of the state and its residents. These rules are adopted in order to implement W.S. 9-12-901 through 9-12-905, which provide for the making of loans to eligible applicants for workforce housing infrastructure. The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of awards and a hearing process.

(b) **Guiding Principles of the Wyoming Housing Infrastructure Program:**

(i) Support to Wyoming's communities which are diverse in size, resources, and economies.

(ii) Support projects which will help people, families and communities thrive.

(iii) Support and encourage communities to develop innovative responses to their housing challenges through a flexible housing program.

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. 9-12-902.

Section 3. Definitions.

(a) "Affordability" means that monthly mortgage payments including taxes and insurance do not exceed 30 percent of the homeowner's monthly gross income.

(b) "Applicant" means the eligible applicant per Chapter 1, Section 4.

(c) "Area median income" means the median family income in Wyoming adjusted by county as published by the U.S. Department of Housing and Urban Development annually.

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

(e) “Community Development Organization” means as defined by W.S. 9-12-301 (a)(ii).

(f) “Contractor” means a Wyoming state agency, authority or instrumentality under contract with the Council as necessary or convenient to facilitate the Council’s duties under this program.

(g) “Community Land Trust” means land held in trust as a public investment for the long-term benefit of a community to provide secure, affordable access to land and workforce housing for community residents.

(h) “Council” means the Wyoming Business Council Board of Directors.

(i) “Council Staff” means the staff of the Wyoming Business Council assigned to administer the program.

(j) “Joint Powers Board” means as enumerated in W.S. 16-1-101 through 16-1-110.

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

(l) "Phased projects" mean a project in which parts ("phases") are completed and fully functional before the entire project is built-out. For example, a subdivision that will eventually have twenty lots may be phased such that infrastructure will open up five lots at a time over four different phases. The first five lots can be occupied immediately upon completion of the infrastructure, and do not require completion of remaining three phases.

(m) “State development organization” means as defined by W.S. 9-12-301 (a)(iv).

(n) “Workforce housing” means owner-occupied, residential dwellings priced to be affordable to families that have a gross income capped at or below 120 percent of the area median income. The 120 percent cap may be modified to accommodate the needs of an applicant if it can be demonstrated that housing costs are high relative to the ability to pay based on a comparison of area median income to the cost of housing. In no case shall the cap exceed 150 percent of the area median income.

(o) “Workforce housing infrastructure” means publicly owned infrastructure to the boundaries of a workforce housing subdivision or development, and if determined by the Council to be consistent with the purposes of this program, through a workforce housing subdivision or development. To be considered “workforce housing infrastructure” under this program, the infrastructure shall be for a workforce housing subdivision or development for which the political subdivision making application under this program has required, through a development agreement, zoning or other land use restriction, the inclusion of a specified percentage or number of housing units at specified maximum initial sale prices or to have a specified initially finished, maximum square footage.

Section 4. Eligible Applicants.

(a) A county, an incorporated city or town, special improvement district and joint powers board may apply. A joint powers board may apply with the approval of all participating agencies to the joint powers agreement.

(b) The Council may enter into cooperative agreements with the Eastern Shoshone Tribe and the Northern Arapaho Tribe in order to promote the purpose of this program and fund infrastructure projects.

(c) A county, an incorporated city or town and joint powers board may contract with a Community Development Organization, State Development Organization or non-profit organization to use loan funds from an approved application.

Section 5. Eligible Workforce Housing Infrastructure Activities. Workforce housing infrastructure includes:

- (a) Rights of way;
- (b) Sewer and water distribution projects;
- (c) Storm water control and drainage facilities;
- (d) Streets, roads and bridges;
- (e) Curbs, gutters and sidewalks;
- (f) Lift stations;
- (g) Traffic signals;
- (h) Street lighting;
- (i) Payment for the additional cost of over-sizing water and sewer distribution lines through or to a subdivision to accommodate future expansion;
- (j) The purchase of land as necessary to accommodate infrastructure projects;
- (k) Other infrastructure consistent with the purpose of this program, including, but not limited to, the following if publicly owned:
 - (i) Telecommunications
 - (ii) Electric utility lines
 - (iii) Gas utility lines
 - (iv) Infrastructure required by local government development regulation.

Section 6. **Ineligible Workforce Housing Infrastructure Activities.** Workforce housing infrastructure shall not include:

(a) Projects, the primary purpose of which is to bring public infrastructure to existing housing which is supplied by a well or uses a septic system. Nothing prohibits the use of funding under this program to provide such infrastructure as incidental to an approved project.

(b) Refinancing of existing projects that have been financed previously with other resources.

(c) Financing any project under the Wyoming Water Development Program established by W.S. 41-2-112 through 41-2-124.

(d) Financing any project that does not provide for the construction of additional housing units or that involves rehabilitation or expansion of existing infrastructure unless the Council determines the rehabilitation or expansion is necessary to meet the purposes of this program.

(e) Financing any infrastructure project which is not under public ownership.

Section 7. **Ownership of Infrastructure.** The infrastructure funded by this program shall be publicly owned.

Section 8. **Local Public Hearing and Approval.**

(a) An applicant is required to solicit citizen input through a published public hearing before submission of an application. For the purposes of this program seven (7) days is the minimum period for notification of a hearing date.

(b) An application must be accompanied by a signed resolution passed by the applicant.

Section 9. **Funding Cycles.**

(a) Applications will be accepted once a year or as determined by the availability of funds. Applications will be ranked and reviewed through a competitive application and scoring system adequate to measure the benefits of each application.

(b) An applicant may only submit one application per funding cycle.

(c) An applicant may request, with a single application, funds up to the annual maximum amount for a multi-year project for a period not to exceed three fiscal years.

Section 10. **Application Procedures.** Responsibilities of the Council or contractor.

(a) The Wyoming Business Council Regional Director is available to assist applicants with the development of projects and preparation of applications.

(b) An application shall be reviewed by the Council Staff or contractor to determine eligibility and completeness. An application that is determined by the Council Staff or contractor to be incomplete shall be provided an explanation of the findings in writing within fifteen (15) working days of its receipt where practical.

(c) An application that is complete shall be forwarded by the Council Staff or contractor with a recommendation to the Council for its review.

(d) The Council Staff or contractor shall publish statewide notice of Council and Board meetings at which Workforce Housing Infrastructure Program applications will be discussed.

(e) The Council shall consider each application, allow for comments from the public, the applicant, and the Council Staff or contractor, and refer to the Board the application with a recommendation.

(f) Under extraordinary circumstances the Council may recommend a waiver of rule requirements if the Council determines the waiver is consistent with the purpose of the Workforce Housing Infrastructure Program.

Section 11. Application Evaluation and Scoring System. The Council and Board shall evaluate an application utilizing the following criteria. The score is not intended to be the only basis for a final recommendation by the Council or award decision by the Board (170 total points).

(a) The need for the proposed housing (25 points).

(b) The affordability of the proposed housing (40 points).

(c) The number of additional housing units to be developed, with consideration of the percentage of critical workforce housing needs in the community to be served (15 points).

(d) The extent to which the project is part of and fulfills an overall community and economic development plan (10 points).

(e) The extent to which the project demonstrates readiness (20 points).

(f) The viability and thoroughness of a housing development plan which includes, at a minimum, a subdivision development description with build out plan, , market investigation and marketing plan (25 points).

(g) Developer/builder performance and experience including management qualifications, financial capacity and track record of successful development. (25 points).

(h) Contributions toward the project from non Council sources. Non Council contributions may include but are not limited to cash, land for rights of way, construction materials and manpower. (10 points).

Section 12. **Program Administration.** The Council may negotiate and enter into contacts or memoranda of understanding with Wyoming state agencies, authorities or instrumentalities as necessary or convenient to facilitate the Council's duties under this program.

Section 13. **Fund Disbursement and Project Monitoring**

(a) Fund Disbursement. Funds shall be disbursed to the applicant only as needed to discharge obligations incurred in accordance with the Board approved eligible project costs. Request for disbursement shall be made on a form supplied by Council Staff or contractor and supported by adequate proof that such an obligation has been incurred for the project purpose.

(b) Fund reversion.

(i) If the Council Staff or contractor determines the project has not started within one (1) year from the date the loan is approved, the loan will automatically expire. Based on information supplied by the applicant, Council Staff or contractor may grant an extension of time in which to start the project.

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

(iii) If the Council Staff or contractor determines that the project is complete, but the full amount of the loan has not been expended, the Council Staff or contractor shall notify the applicant of this determination. Thirty (30) days following the notification, the unused portion of the loan shall revert to uncommitted status.

(c) Project Monitoring.

(i) Written reports. Within 15 calendar days at the conclusion of each calendar quarter during the term of the loan contract, the applicant shall supply Council Staff or contractor with a written progress report. Each progress report shall set forth in narrative form the work accomplished under the loan during the quarter and shall include a financial status report. At the end of the project, the applicant shall furnish Council Staff or contractor with a comprehensive report of the project. The applicant shall likewise furnish Council Staff or contractor with a cumulative financial statement, reflecting total expenditures pursuant to the loan agreement.

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

(iii) Record retention. Applicant agrees to retain all records related to the project for three (3) years following Council Staff's or contractor's date of notice to applicant of closeout of the loan.

(d) Project Evaluation.

(i) Written evaluation reports. The applicant shall submit periodic narratives evaluating program outcomes against established measures. Council Staff or contractor shall stipulate the frequency and content of the report, tailored to the specific nature of each loan, in agreements between the Council and the applicant.

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

State of Wyoming
Wyoming Housing Infrastructure Loan Program
Rules

Chapter 2
WORKFORCE HOUSING INFRASTRUCTURE LOANS

Section 1. **General Policy.** It is the policy and intent of the program to support and encourage communities to develop innovative responses to their workforce housing challenges. Project structure however, must demonstrate a method to ensure:

(a) Constraints are in place that prevent unduly enriching a developer/builder.

(i) This may include but is not limited to the following method: to ensure the land developer or homebuilder is not unduly enriched as a result of the public investment for the workforce housing infrastructure, the applicant, developer and builder shall enter into a development agreement that includes the following cost information for the lot and the house:

(A) Developer lot cost: the developer shall provide cost information for the workforce housing subdivision. The costs shall include but are not limited to, land costs, on-site and off-site improvement costs (i.e. water, sewer, roads), materials and labor, soft costs including design and planning, consultant fees, permitting costs, construction interest and developer fees (developer fees shall be limited to no more than 15% of development costs). This information will be used to determine the developer cost for each lot.

(B) Public investment lot cost: the applicant shall provide cost information for the eligible workforce housing infrastructure as outlined in Chapter 1, Section 5. This information will be used to determine the public investment cost for each lot.

(C) House cost: the builder shall provide cost information for the workforce housing. The cost shall include but are not limited to, cost of construction including materials and labor, soft costs including design and planning, consultant fees, permitting costs, construction interest and builder profit, overhead and general requirements (this shall be limited to no more than 14% of builders costs).

(D) As part of the development agreement the applicant shall place a lien on each workforce housing lot. For example, if the public investment cost to construct the workforce housing infrastructure is \$300,000 and 30 workforce housing lots will be developed the lien amount per lot would be \$10,000. The lien is filed with the county clerk along with the final plat of the subdivision or at the time the workforce housing infrastructure loan is executed if the plat was previously filed. All homes sell for the predetermined lot cost, plus house cost as identified in the development agreement. At the time of closing the sale price of the home to the homebuyer is reduced by the per lot cost of the public investment for the workforce housing infrastructure. The homebuyer has two payments, one to their mortgage company and the other to the applicant of the workforce housing loan i.e. city, town, county, special improvement district, joint powers board or tribe.

(b) Constraints are in place to prevent speculators from buying a house in order to quickly sell at a profit.

(i) This may include but is not limited to the following: The homebuyer shall live in the house for a minimum of 5 yrs in order to receive the benefit of the lower workforce housing loan interest rate. If the homebuyer sells the house before five years from the date of closing, the interest rate would then be calculated at the same rate as the first mortgage. The loan may be assumed by the new homeowner if the family gross income is at or below 120 percent of the area median income.

(c) The public investment is passed on to the home buyer.

(d) Loan repayment.

(e) Loan collateralization.

(f) Land trust requirements are satisfied.

Section 2. **Application Submittal Requirements.** An applicant shall submit four (4) copies of its completed application to the Council or contractor. It shall include:

(a) An application cover page in a form provided by the Council Staff or contractor.

(b) A copy of the certificate of incorporation of the organization, if the project will be carried out by contract with a Community Development Organization, State Development Organization or non-profit organization.

(c) A copy of the certificate of organization filed with the Secretary of State and a copy of an executed joint powers agreement approved by the Attorney General, if the applicant is a joint powers board.

(d) A copy of the signed resolution of support from the applicant or the member agencies if the applicant is a joint powers board

(e) A full description of the proposed project including a development agreement between the applicant and the developer/builder.

(f) A clear total development costs statement and a sources and uses statement listing all funds needed to complete the project. An explanation of the level of commitment of other funds to complete the project. The budget must be supported by an engineer's or architect's estimate of project costs. Loans will be made only to applicants who demonstrate that upon receipt of the loan all project costs will be funded.

(g) A detailed map of the project showing the location of the entire infrastructure project and identifying the housing site(s) and all other sites which will benefit from the infrastructure to be funded.

(h) The method to prevent unduly enriching a developer/builder.

(i) The method to prevent speculators from buying a house and quickly selling at a profit.

(j) The method to ensure the public investment is passed on to the home buyer.

(k) The source of repayment of the loan.

(l) Proposed security for the loan.

(m) In order for the Council to determine the ability of the applicant to repay a loan and to aid the Attorney General in evaluating the legality of the proposed indebtedness, an applicant shall provide an annual budget for the preceding and current fiscal years and a completed financial statement provided on a "General Financial Information" form provided by the Council Staff or contractor, that includes, but is not limited to the following information:

(i) As available, assessed valuation for the current and two 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 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.

(v) A summary of the applicant's total investments and cash balances for the two preceding fiscal years.

(n) The housing developer(s) will be required to submit information on the housing to be developed to determine need, feasibility, affordability and readiness.

(o) An agreement or plan that outlines future operations and maintenance schedules, funding, and responsible parties.

(p) Information sufficient to evaluate the project against scoring criteria in Chapter 1, Section 11, Application Evaluation.

(q) For community land trust projects information sufficient to determine compliance with the community land trust requirements in Chapter 2, Section 3.

- (r) Any other applicable information as requested by the Council Staff or contractor.

Section 3. Community Land Trust Projects.

(a) In addition to meeting all other requirements of the program, loans made for a project involving a community land trust shall require:

- (i) The land subject of the trust be owned or leased by a political subdivision of the state, including a city, town, county, special improvement district or a housing authority authorized under W.S. 15-10-116.

- (ii) The land be used for workforce housing with lots for housing leased and with the political subdivision remaining the owner of the land or the primary lessee.

- (iii) The leases of the lots be upon such terms as to allow commercial lenders to lend funds for housing construction on terms comparable to housing built on fee owned lands. The commercial lender shall have all remedies in the event of a default by the homebuyer, however, in no case shall the commercial lender be allowed to foreclose on the land subject to the trust.

- (iv) The housing development on lands subject to the trust include a specified percentage or number of housing units at specified maximum initial sale prices or be required to have a specified initially finished, maximum square footage as required by the political subdivision making application under this program, through zoning or other land use restriction.

- (v) The lease terms for the housing constructed on the land subject to the trust provide for continuation of the initial long term community benefit through subsequent sales of the housing.

(b) The political subdivision owning or leasing the land subject to the community land trust may fulfill the requirements of this section directly, through a housing authority created pursuant to W.S. 15-10-116, or by agreement with private non-profit entities.

Section 4. Previous Applicant. An applicant must show that satisfactory performance has been demonstrated under previous loans awarded through this program, any other grant and loan programs through the Council or through any agency or instrumentality of the State.

Section 5. Loan Amount. An annual maximum of \$1,000,000.

Section 6. Interest Rate and Term.

(a) The Council shall establish the interest rate and term based on the quality of the revenue stream dedicated to repay the loan and the quality of the collateral to secure the loan..

The following criteria shall be used when determining the quality of the revenue stream and collateral:

- (i) Revenue stream
 - (A) Certainty of stream over time
 - (B) Debt coverage ratio
- (ii) Collateral
 - (A) Liquidity
 - (B) Loan to value ratio
 - (C) Market risk influence on collateral

(b) The interest rate shall not exceed an annual interest rate equal to the average prime interest rate as determined by the State Treasurer. To determine the average prime interest rate, the State Treasurer shall average the prime interest rate for at least seventy-five percent (75%) of the thirty (30) largest banks in the United States. The interest rate shall be adjusted on January 1 of each year. Adjustment to the maximum interest rate each year is applicable to new applications only.

(c) The interest rate may be lower than the maximum allowed if the Council determines the quality of revenue stream dedicated to repayment of the loan demonstrates a high likelihood the loan will be repaid. The term of the loan shall not exceed the economic life of the infrastructure financed. In no case shall the term of the loan exceed thirty years.

Section 7. **Security Interest.** A loan shall be adequately collateralized. Collateral may include but is not limited to land, buildings, marketable securities, bank deposits and equipment.

Section 8. **Attorney General Opinion.** No loan shall be made without the written opinion of the Attorney General certifying the legality of the transaction and all loan documents. An election approving the project and borrowing for the project by the qualified electors of the borrowing entity shall be required only if the Attorney General determines such an election is otherwise required by law.

Section 9. **Council Consideration.** The Council shall consider each application, allow for comments from the public, the applicant, and the Council Staff or contractor and refer to the Board the application with a recommendation including the amount of the loan, the term of the loan, and the type of security required to secure the loan.

Effective: 03/10/2008

Section 10. **Disbursement of Loan Proceeds.** At closing, the loan proceeds shall be deposited in an escrow account to be disbursed solely for the approved loan purposes. The applicant shall pay the costs of the escrow account. If the escrow account is interest bearing, interest earned shall be credited to the applicant. Applicant shall submit all requests for payment on a form provided by the Council Staff or contractor, with supporting documentation. The Council Staff or contractor shall approve or disapprove pay requests in whole or in part within 5 working days and notify escrow bank of the amount to be disbursed to the applicant. Escrow deposits over \$100,000 shall be secured with securities or other assets owned by the bank and acceptable to the applicant and the Council.

Wyoming Business Council
Wyoming Minerals to Value Added Products Program

<u>No.</u>	<u>Chapter Name</u>	<u>Date Filed</u>
1	Wyoming Minerals to Value Added Products Program	1/27/2016



STATE OF WYOMING

WYOMING MINERALS TO VALUE ADDED PRODUCTS PROGRAM

Rules and Regulations

CHAPTER 1 – WYOMING MINERALS TO VALUE ADDED PRODUCTS PROGRAM

Section 1. Purpose.

- (a) These rules are adopted in order to implement W.S. 9-20-101 through 9-20-104, which provide for entering into a contractual agreement with eligible mineral to value added products facilities. The rules provide for a method of application, review and recommendations, the establishment of terms and a hearing process;
- (b) The legislature finds that the state of Wyoming has an abundance of natural mineral resources which provide the basis of the state's economy. The vast majority of Wyoming's extracted mineral wealth is consumed or converted to higher value products outside of the state of Wyoming;
- (c) The legislature finds that it is in the interest of the state of Wyoming to encourage the development of industries in the state which convert the state's mineral resources to higher valued products prior to exportation from the state.

Section 2. Authority.

- (a) Authority for the promulgation of these rules is granted in W. S. 9-20-102 through 9-20-104

Section 3. Definitions

- (a) "Minerals to value added products facility" includes a commercial scale mineral to liquid fuels or other value added products facilities but shall not include any facility which will derive fifty percent (50%) or more of its anticipated revenues from the generation of electricity;
- (b) "Tolling fee" means a negotiated fee for the conversion of feedstock mineral provided by the state of Wyoming under a contract with the operator of a value added facility;
- (c) "Council" means the Wyoming Business Council;
- (d) "Board" means the Wyoming State Loan and Investment Board.

Section 4. Applicants. An Applicant shall consist of an enterprise which operates or intends to operate a commercial-scale facility which manufactures fuels or products in Wyoming using mineral feedstock materials substantially produced in Wyoming as further described in W.S. 9-20-103 (c).

Section 5. Proposal Review and Approval Process; Due Diligence

- (a) Any commercial scale minerals to value added products facility shall first submit a proposal to the governor. The governor may provide recommendations for the size and parameters of the proposed contract.
- (b) An application to participate in the program shall then be submitted to and reviewed by the Council under the process set forth in W.S. 9-12-601 through 9-12-603.
- (c) The Council shall provide recommendations for terms and conditions contained in a proposed contract. The Council's recommendations shall be forwarded to the Board for final consideration of the application.
- (d) Attorney General's Office. The Attorney General's Office shall provide a written opinion certifying the legality of the transaction and all documents.
- (e) The Governor, Council or Board is authorized to employ such experts as necessary to fully evaluate an application and negotiate the terms and conditions of a contract under the act. If experts are retained, the cost for the experts shall be paid by the applicant.
- (f) The Council may contract with such experts as necessary to assist in determining proof of performance of its obligations under any contract entered into, including assistance with feed stock purchases and the sale of value added products.
- (g) Material change or new information. After Board's final approval of application/project the Council may request from the applicant any materials or information the Council deems necessary to create a contract.

Section 6. Materials Required for Council Review

- (a) Project application. An application including any recommendations by the Governor to participate in the program shall be submitted to and reviewed by the Council under the process set forth in W.S. 9-12-601 through 9-12-603. The project application must contain the following comprehensive information:
 - i. Tab A - A detailed overview of the applicant's business entity, including identification of all executive management and all owners including the names of the owners and the percentage interest of each owner with greater than or equal to ten percent (10%) of the entity making the proposal. For clarity, the ten percent (10%) disclosure requirement shall apply to any entity or individual with an option to increase ownership to equal to greater than ten percent (10%) of the entity making the proposal;
 - ii. Tab B - A detailed description of the proposal;

- iii. Tab C – A business plan accurately describing the existing business, and its history;
- iv. Tab D - A comprehensive chart and detailed description identifying all business entities related to the applicant, whether by contract or through a corporate affiliation;
- v. Tab E – Annual audited financials which contains an unqualified opinion of an independent certified public accountant for the preceding three (3) years, including tax returns. If the enterprise is a new entity without historical financial reports, the applicant must submit an audited balance sheet which contains an unqualified opinion of an independent certified public accountant issued not more than sixty (60) days before the application;
- vi. Tab F – A balance sheet and projected cash flow for the duration of the contract term proposed;
- vii. Tab G – Commitments to sell the finished product and other indices necessary to demonstrate the applicant’s ability to perform under the contract as determined by these rules and regulation;
- viii. Tab H – Detail of the costs associated to the value added conversion facility and associated financial comments including terms and structure. This detail shall demonstrate private investment in the county or counties in buildings, equipment and direct project infrastructure of not less than three (3) times the amount of any contract;
- ix. Tab I – A list of all permits and environmental analysis required for the project including the parties who will be responsible for each permit submission, permit issuance and environmental review;
- x. Tab J – Third party engineering and economic analysis;
- xi. Tab K - A project timeline indicating key dates for engineering review, permit application, permit receipt, environmental clearance, and any third party construction of facilities completion that are required for the commissioning and operation of the proposed facility;
- xii. Tab L – Notice and identification of any threatened or pending litigation involving the anticipated project and/or the applicant;
- xiii. Tab M – Industry-specific information and documentation concerning the applicant’s business activities within that industry, including without limitation, regulatory information related to the project to be undertaken;
- xiv. Tab N – Inventory and evaluation of social and economic conditions and impact assessment from the project. If the Wyoming Industrial Development Information and Siting Act is applicable to project, the contained Socieconomic Baseline and Impacts analysis may be submitted to the application;

- xv. Tab O – Any relevant ongoing or new information that arises any time after applicant’s initial submission of the above information which may influence or bear upon the review of the proposal, including without limitation, new or altered financing arrangements, statutory, regulatory or rule changes which may impact applicant’s project or operations or the proposal thereof, or changes in ownership.
- xvi. All of the foregoing requirements (i through xv) are a continuing obligation of disclosure by the applicant during the pendency of the application.

(b) Additional Information. In addition to information in the project application, the Council may ask for additional information necessary to conduct its due diligence and review of the project. Applicants shall respond to such requests in a timely manner with complete and current information. Any documents, materials or information provided to the Council may be shared with any other State agency, including without limitation, the Attorney General, Governor’s office, and Board. If the Applicant provides any additional information or documents to the Governor’s office in connection with their review of the project outside the information contained in the original proposal, the applicant must also provide such additional information or documents to the Council.

Section 7. Contract Review; Approval Process; Closing

- (a) After an application to participate in the program is approved by Board, the Council may complete negotiations to contract to supply not more than twenty percent (20%) of the expected mineral supply to the facility for the duration of the contract. Total contract amounts for any one (1) facility shall be set by rule of the Board based on the provisions of the act and the expected return to the state of Wyoming, but in no event shall a contract exceed fifty million dollars (\$50,000,000)
- (b) The proposed contract shall be submitted to the Council for review and determination under the process set forth in W.S. 9-12-601 through 9-12-603;
- (c) The Council’s recommendations shall be forwarded to the Board for final consideration of the contract;
- (d) The Applicant is required to close the contract within six (6) months of the final approval of state Board. The Applicant may request an extension of the closing deadline in writing and must demonstrate good cause why the deadline should not apply and why a new deadline should be set. The Board may agree to extend the closing deadline. In no event will Board provide an extension which would allow the loan or loan guarantee to close more than one (1) year after the final approval without resubmitting the request to the Council and the approval of the Board.