

**SUBGRANT AGREEMENT BETWEEN
WYOMING BUSINESS COUNCIL
AND
SUBRECIPIENT NAME**

1. **Parties.** The parties to this Subgrant Agreement (Agreement) are Wyoming Business Council (Council), whose address is: 214 West 15th Street, Cheyenne, Wyoming 82001 and _____ . (Subrecipient), whose address is: _____ .
2. **Purpose of Agreement.** The purpose of this Subgrant Agreement is to set forth the terms and conditions by which the Council shall provide Broadband Equity Access and Deployment (BEAD) Funding to the Subrecipient for the completion of the broadband project outlined in Attachment A, which is attached to and incorporated into this Agreement by this reference.
3. **Term of Agreement.** This Agreement is effective when all parties have executed it (Effective Date). The term of this Agreement is from the Effective Date to four (4) years from the Effective Date.
4. **Payment.** Payments to Subrecipient are limited to the unpaid, obligated balance of the Grant Funds. Council agrees to pay the Subrecipient in the amounts and in accordance with the schedule and other conditions set forth and described in Attachment A, which is attached to and incorporated into this Agreement by this reference. Total payment under this Agreement shall not exceed [Insert total dollar amount, for example, five thousand, two hundred thirty-four dollars and twenty-five cents (\$5,234.25)]. Subrecipient shall initiate payment requests by invoice to the Council, in a form and manner approved by the Council. Subrecipient warrants that it will not attempt to invoice the State for any Work, materials, or supplies that are not Reimbursable Expenditures, as defined in BEAD Notice of Funding Opportunity (NOFO). Council shall pay each invoice within forty-five (45) days following the Council's receipt pursuant to Wyo. Stat. § 16-6-602 of that invoice, so long as the amount invoiced contains sufficient detail for Council to understand the work the Subrecipient claims to have completed, and any reimbursable materials or supplies utilized in the completion of that work for which reimbursement is sought during the period that the invoice covers. The acceptance of an invoice shall not constitute acceptance of any work performed or deliverables provided under this Agreement. Subrecipient agrees that, while reimbursement by Council will occur as work is properly invoiced pursuant and subject to the other terms of this Agreement, ultimate acceptance by Council of all work will need to be verified pursuant to the Project Closeout process.

Subrecipient shall provide Matching Funds as described in this Agreement. The Subrecipient shall have secured the full amount of Matching Funds prior to the Effective Date and shall report to Council regarding the status of such funds upon request. Subrecipient's obligation to pay all or any part of any Matching Funds, whether direct or contingent, only extend to matching those funds which are duly and lawfully appropriated

for the purposes of this Agreement. Subrecipient represents to the State that the amount designated as Matching Funds has been legally appropriated for the purposes of this Agreement by its authorized representatives, is set-aside solely to be used as Matching Funds for Subrecipient work under this Agreement, and is not subject to conditions restrictions, or encumbrances which could prevent Subrecipient use of the Matching Funds. Subrecipient agrees that the Matching Funds shall be expended first prior to any payments under this agreement and accounted for in the invoice described within this Agreement.

5. **Responsibilities of Subrecipient.** The Subrecipient agrees to perform the services described in Attachment A.

6. **Responsibilities of Council.** Pay Contractor in accordance with Section 4.

7. **Special Provisions.**

A. **Assumption of Risk.** The Subrecipient shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Subrecipient's failure to comply with state or federal requirements. The Council shall notify the Subrecipient of any state or federal determination of noncompliance. Council Reserves the right to take enforcement actions, including the clawback funds for non-compliance as described in Attachment A.

B. **Environmental Policy Acts.** Subrecipient agrees all activities under this Agreement will comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.

C. **Human Trafficking.** As required by 22 U.S.C. § 7104(g) and 2 CFR Part 175, this Agreement may be terminated without penalty if a private entity that receives funds under this Agreement:

(F) Engages in severe forms of trafficking in persons during the period of time that the award is in effect;

(ii) Procures a commercial sex act during the period of time that the award is in effect; or

(iii) Uses forced labor in the performance of the award or subawards under the award.

D. **Kickbacks.** Subrecipient certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If Subrecipient breaches or violates this warranty, Council may, at its discretion, terminate this Agreement without liability to Council, or deduct from

the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

Subrecipient will receive the predetermined set amount of funding for the completion of the project.

- E. Limitations on Lobbying Activities.** By signing this Agreement, Subrecipient certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by Subrecipient or its subcontractors in connection with lobbying member(s) of Congress, or any federal agency in connection with the award of a federal grant, contract, cooperative agreement, or loan.
- F. Monitoring Activities.** Council shall have the right to monitor all activities related to this Agreement that are performed by Subrecipient or its subcontractors. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Agreement; and to observe personnel in every phase of performance of Agreement related work.
- G. Nondiscrimination.** The Subrecipient shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Agreement.
- H. No Finder's Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement of this Agreement, shall be paid by either party.
- F. Publicity.** Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Subrecipient and related to the services and work to be performed under this Agreement, shall identify the Council as the sponsoring agency and shall not be released without prior written approval of Council.
- J. Suspension and Debarment.** By signing this Agreement, Subrecipient certifies that neither it nor its principals/agents are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction or from receiving federal financial or nonfinancial assistance, nor are any of the participants involved in the execution of this Agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension), or 2 CFR Part 180, or are on the debarred, or otherwise ineligible, vendors lists maintained

by the federal government. Further, Subrecipient agrees to notify Council by certified mail should it or any of its principals/agents become ineligible for payment, debarred, suspended, or voluntarily excluded from receiving federal funds during the term of this Agreement.

- K. Administration of Federal Funds.** Subrecipient agrees its use of the funds awarded herein is subject to the Uniform Administrative Requirements of 2 CFR Part 200, *et seq.*; [Insert additional requirements specific to federal grant or program]; any additional requirements set forth by the federal funding agency; all applicable regulations published in the Code of Federal Regulations; and other program guidance as provided to it by Council.
- L. Copyright License and Patent Rights.** Subrecipient acknowledges that federal grantor, the State of Wyoming, and Council reserve a royalty-free, nonexclusive, unlimited, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal and state government purposes: (1) the copyright in any work developed under this Agreement; and (2) any rights of copyright to which Subrecipient purchases ownership using funds awarded under this Agreement. Subrecipient must consult with Council regarding any patent rights that arise from, or are purchased with, funds awarded under this Agreement.
- M. Federal Audit Requirements.** Subrecipient agrees that if it expends an aggregate amount in excess of the amount set forth in 2 CFR Part 200, Subpart F in federal awards during its fiscal year, it must undergo an organization-wide financial and compliance single audit. Subrecipient agrees to comply with the audit requirements of the U.S. General Accounting Office Government Auditing Standards and Audit Requirements of 2 CFR Part 200, Subpart F. If findings are made which cover any part of this Agreement, Subrecipient shall provide one (1) copy of the audit report to Council and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to Council's records.
- N. Non-Supplanting Certification.** Subrecipient hereby affirms that federal grant funds shall be used to supplement existing funds, and shall not replace (supplant) funds that have been appropriated for the same purpose. Subrecipient should be able to document that any reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds under this Agreement.
- O. Program Income.** Broadband infrastructure project subrecipients may retain program income and use of supported networks and connections for profit. This does not change the BEAD Program's prohibition on claiming profit and fees as allowable costs. Proposed subrecipient budgets thus may not include profit, fees, or similar charges. (Notice of Funding Opportunity (NOFO) V.H.2.b, p.82, and BEAD Terms and Conditions, p. 16, 21)
- P. Applicability of Appendix II to 2 CFR Part 200.** This Agreement has been funded, in whole or in part, with an Award of Federal funds and is bound by the federal contract provisions required by the Uniform Guidance Appendix II of 2

CFR Part 200 (the Federal Contract Provisions), incorporated herein by this reference. In the event of a conflict between the Special Provisions section of this Agreement, or any attachments or exhibits incorporated herein, and the Federal Contract Provisions, the Federal Contract Provisions shall control. Failure to comply with the Federal Contract Provisions shall constitute an event of default under this Agreement. If such a default remains uncured five (5) calendar days following the termination of a thirty (30) day prior written notice period, the Council may terminate this Agreement. This remedy will be in addition to any other remedy available to the State of Wyoming and the Council under this Agreement, at law, or in equity.

8. General Provisions.

- A. Amendments.** Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties to this Subgrant Agreement shall be incorporated by written instrument, executed by all parties to this Subgrant Agreement.
- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Agreement as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Assignment Prohibited and Subgrant Agreement Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The Subrecipient shall not use this Agreement, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Council.
- D. Audit and Access to Records.** The Council and its representatives shall have access to any books, documents, papers, electronic data, and records of the Subrecipient which are pertinent to this Agreement. The Subrecipient shall immediately, upon receiving written instruction from the Council, provide to any independent auditor or accountant all books, documents, papers, electronic data, and records of the Subrecipient which are pertinent to this Agreement. The Subrecipient shall cooperate fully with any such independent auditor or accountant during the entire course of any audit authorized by the Council.
- E. Availability of Funds.** Each payment obligation of the Council is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If

funds are not allocated and available for continued performance of the Agreement, the Agreement may be terminated by the Council at the end of the period for which the funds are available. The Council shall notify the Subrecipient at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Council in the event this provision is exercised, and the Council shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

- F. Award of Related Agreements.** The Council may award supplemental or successor Agreements for work related to this Agreement or may award contracts to other subrecipients for work related to this Agreement. The Subrecipient shall cooperate fully with other subrecipients and the Council in all such cases.
- G. Certificate of Good Standing.** The Subrecipient shall provide to the Council a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Subrecipient is authorized to conduct business in the State of Wyoming, if required, before performing work under this Agreement. Subrecipient shall ensure that annual filings and corporate taxes due and owing to the Secretary of State's office are up-to-date before signing this Agreement.
- H. Compliance with Laws.** The Subrecipient shall keep informed of and comply with all applicable federal, state, and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Agreement.
- (i) Subrecipient agrees to comply with **Infrastructure Investment and Jobs Act of 2021** – Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021), also known as the Bipartisan Infrastructure Law – <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, including but not limited to applicable statutes and regulations prohibiting discrimination in programs receiving federal financial assistance and all applicable federal environmental laws and regulations, and Subrecipient shall provide for such compliance in any agreements it enters into with other parties relating to this award.
- (ii) Federal regulations applicable to this award include, without limitation, the following:
- (a) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

- (b) Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, and pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- (c) Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- (d) OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19. C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R.
- (e) Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- (f) New Restrictions on Lobbying, 31 C.F.R. Part 21.

I. Conflict of Interest. Conflict of Interest. Subrecipient agrees that it will maintain in effect a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) covering each activity funded under this award. Subrecipient and sub-Subrecipients shall disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

J. Protections for Whistleblowers.

- (i) In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing information to any of the list of persons or entities provided below that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- (ii) The list of persons and entities referenced in the paragraph above includes the following:

- (a) A member of Congress or a representative of a committee of Congress;
- (b) An Inspector General;
- (c) The Government Accountability Office;
- (d) A Treasury employee responsible for contract or grant oversight or management;
- (e) An authorized official of the Department of Justice or other law enforcement agency;
- (f) A court or grand jury; and/or
- (g) A management official or other employee of Subrecipient, contractor, or sub-Subrecipient who has the responsibility to investigate, discover, or address misconduct.
- (h) Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

K. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Subrecipient in the performance of this Subgrant Agreement shall be kept confidential by the Subrecipient unless written permission is granted by the Council for its release. If and when Subrecipient receives a request for information subject to this Subgrant Agreement, Subrecipient shall notify Council within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Council.

L. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Award funds may not be used to procure or obtain any covered telecommunication and video surveillance services or equipment as described in 2 C.F.R. § 200.216, including covered telecommunication and video surveillance services or equipment provided or produced by entities owned or controlled by the People's Republic of China and telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

M. Domestic Preferences in Procurement. Council and Subrecipient shall provide a preference for the procurement or use of goods, products, or materials produced in the United States as described in 2.C.F.R § 200.322 and Executive Order 14005 Ensuring the Future is Made in All of America by All of America's Workers (January 25, 2021).

- N. Federal Interest and Insurance.** Subrecipient agrees that any equipment, supplies or real property purchased or, in the case of real property, improved, using award funds will be used for the purpose and in the manner described in the approved Grant Plan or Program Plan, subject to the Guidance, the requirements of 2 C.F.R. § 200.310, Insurance, 2 C.F.R. § 200.311, Real Property, 2 C.F.R. § 200.313, Equipment, 2 C.F.R. § 200.314 Supplies, 2 C.F.R. § 200.315, Intangible Property, as applicable, and any other condition to approving Council's Application.
- O. Entirety of Subgrant Agreement.** This Agreement, consisting of sixteen (16) pages; Attachment A, consisting of nineteen (19) pages, and the Federal Contract Provisions, represent the entire and integrated Agreement between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Agreement and the language of any attachment or document incorporated by reference, the language of this Agreement shall control.
- P. Ethics.** Subrecipient shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Subrecipient's profession.
- Q. Extensions.** Nothing in this Subgrant Agreement shall be interpreted or deemed to create an expectation that this Subgrant Agreement will be extended beyond the term described herein.
- R. Force Majeure.** Neither party shall be liable for failure to perform under this Subgrant Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- S. Indemnification.** The Subrecipient shall release, indemnify, and hold harmless the State, the Council, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Subrecipient's failure to perform any of Subrecipient's duties and obligations hereunder or in connection with the negligent performance of Subrecipient's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Subrecipient's negligence or other tortious conduct.
- T. Independent Contractor.** The Subrecipient shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express

terms of this Agreement, the Subrecipient shall be free from control or direction over the details of the performance of services under this Agreement. The Subrecipient shall assume sole responsibility for any debts or liabilities that may be incurred by the Subrecipient in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Subrecipient or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Council or to incur any obligation of any kind on behalf of the State of Wyoming or the Council. The Subrecipient agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance, or similar benefits available to State of Wyoming employees will inure to the benefit of the Subrecipient or the Subrecipient's agents or employees as a result of this Agreement.

- U. **Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing either by regular mail or delivery in person at the addresses provided under this Subgrant Agreement.
- V. **Notice of Sale or Transfer.** The Subrecipient shall provide the Council with notice of any sale, transfer, merger, or consolidation of the assets of the Subrecipient. Such notice shall be provided in accordance with the notices provision of this Agreement and, when possible and lawful, in advance of the transaction. If the Council determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Subrecipient's obligations under this Agreement, then the Council may, at its discretion, terminate or renegotiate the Agreement.
- W. **Ownership and Return of Documents and Information.** Council is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Subrecipient in the performance of this Agreement. Upon termination of services, for any reason, Subrecipient agrees to return all such original and derivative information and documents to the Council in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Council's verified receipt of such information, Subrecipient agrees to physically and electronically destroy any residual Council-owned data, regardless of format, and any other storage media or areas containing such information. Subrecipient agrees to provide written notice to Council confirming the destruction of any such residual Council-owned data.
- X. **Patent or Copyright Protection.** The Subrecipient recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Subrecipient or its sub-subrecipients will violate any such restriction. The Subrecipient shall defend and indemnify the Council for any infringement or

alleged infringement of such patent, trademark, copyright, license, or other restrictions.

Y. Prior Approval. This Subgrant Agreement shall not be binding upon either party, and the Wyoming State Auditor shall not draw warrants for payment, until this Subgrant Agreement has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-3204(b)(iv).

Z. Insurance Requirements.

- (i) During the term of this Subgrant Agreement, the Subrecipient shall obtain and maintain, and ensure that each sub-Subrecipient obtains and maintains, each type of insurance coverage specified in Insurance Coverage, below.
- (ii) All policies shall be primary over any insurance or self-insurance program carried by the Subrecipient or the State of Wyoming. All policies shall include clauses stating that each insurance carrier shall waive all rights of recovery under subrogation or otherwise against Subrecipient or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- (iii) The Subrecipient shall provide Certificates of Insurance to the Council verifying each type of coverage required herein. If the policy is a “claims made” policy instead of an “occurrence” policy, the information provided shall include, but is not limited to, retroactive dates and extended reporting periods or tails.
- (iv) All policies shall be endorsed to provide at least thirty (30) days advance written notice of cancellation to the Council. A copy of the policy endorsement shall be provided with the Certificate of Insurance.
- (v) In case of a breach of any provision relating to Insurance Requirements or Insurance Coverage, the Council may, at the Council’s option, obtain and maintain, at the expense of the Subrecipient, such insurance in the name of the Subrecipient, or sub-Subrecipient, as the Council may deem proper and may deduct the cost of obtaining and maintaining such insurance from any sums which may be due or become due to the Subrecipient under this Subgrant Agreement.
- (vi) All policies required by this Subgrant Agreement shall be issued by an insurance company with an A.M. Best rating of A- VIII or better.
- (vii) The Council reserves the right to reject any policy issued by an insurance company that does not meet these requirements.

AA. Insurance Coverage. The Subrecipient shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth above:

- (i) Commercial General Liability Insurance. Commercial general liability insurance (CGL) coverage, occurrence form, covering liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations, and personal and advertising injury, with minimum limits as follows:
 - (a) \$1,000,000.00 each occurrence;
 - (b) \$1,000,000.00 personal injury and advertising injury;
 - (c) \$2,000,000.00 general aggregate; and
 - (d) \$2,000,000.00 products and completed operations.

The CGL policy shall include coverage for Explosion, Collapse and Underground property damage. This coverage may not be excluded by endorsement.

- (ii) Automobile Liability Insurance. Automobile liability insurance covering any auto (including owned, hired, and non-owned) with minimum limits of \$1,000,000.00 each accident combined single limit.
- (iii) Builder's Risk Insurance. Builder's all risk insurance, through a company lawfully authorized to do business in the State of Wyoming, protecting the interests of the Council and subrecipients of all tiers against loss as specified below, through the date of Final Completion or until final payment has been made and no person or entity other than the Owner has an insurable interest in the property:

- (a) The policy shall be in the amount of the initial Subgrant Agreement Sum, plus the value of subsequent Subgrant Agreement modifications and costs of material supplied or installed by others, and shall at all times provide coverage for 100% of the insurable value of the Work, including Subrecipient's change orders and any Council furnished work. The policy shall include replacement cost coverage for all real and personal property incorporated into the Work, including engineered and Project specific false works and formings, while at the Project Site, off-site, or in transit. Coverage shall be extended to include increased construction cost, soft costs (such as reasonable compensation for Design Professional, Council, and Subrecipient s' services and expenses required as a result of an insured loss, excluding any Liquidated Damages), extra expense, and expediting expense.

- (b) The policy shall insure against “all risks” and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, subsidence or earth movement, windstorm, flood, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and ensuing damage as a result of faulty workmanship or material or both.
 - (c) The policy shall name the State of Wyoming and Council as loss payee for all covered losses as their interests may appear.
 - (d) The policy shall be endorsed waiving the insurer’s right of recovery under subrogation against the Council, Subrecipient and sub-Subrecipients, for losses covered under the Builder’s Risk policy. The Subrecipient shall be responsible for the deductible on each loss and shall retain responsibility for any loss not covered by the Builder’s Risk policy. Unless otherwise agreed, all monies received due to a covered loss shall be first applied to rebuilding or repairing the destroyed or injured Work.
 - (e) The Subrecipient shall be solely responsible for any required notice to or consent of the insurer providing the Builder’s Risk coverage regarding a) a covered event or occurrence and b) occupancy of the Work, or a portion thereof, by the Council.
 - (f) The policy shall not cover any Subrecipient’s equipment, including, but not limited to, machinery, tools, equipment, or other personal property owned, rented, or used by the Subrecipient or sub-Subrecipients in the performance of their work on the Work, which will not become a part of the Work to be accepted by the Council.
- (iv) Professional Liability or Errors and Omissions Liability Insurance. Professional liability insurance or errors and omissions liability insurance protecting against any and all claims arising from the Subrecipient’s alleged or real professional errors, omissions, or mistakes in the performance of professional duties under this Subgrant Agreement, with minimum limits as follows:
- (a) \$1,000,000.00 each occurrence; and
 - (b) \$1,000,000.00 general aggregate.

The policy shall have an extended reporting period of two (2) years.

- BB. Severability.** Should any portion of this Subgrant Agreement be judicially determined to be illegal or unenforceable, the remainder of the Subgrant Agreement shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- CC. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and Council expressly reserve sovereign immunity by entering into this Agreement and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions supplied by the Subrecipient, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Agreement, or in any attachments or documents incorporated by reference, will not be binding on the State of Wyoming. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.
- DD. Taxes.** The Subrecipient shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- EE. Termination of Subgrant Agreement.** This Agreement may be terminated, without cause, by the Council upon thirty (30) days written notice. This Agreement may be terminated by the Council immediately for cause if the Subrecipient fails to perform in accordance with the terms of this Agreement.
- If at any time during the performance of this Agreement, in the opinion of the Council, the work is not progressing satisfactorily or within the terms of this Agreement, then, at the discretion of the Council and after written notice to the Subrecipient, the Council may terminate this Agreement or any part of it.
- FF. Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement.

The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

- GG. Time is of the Essence.** Time is of the essence in all provisions of this Agreement.
- HH. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Agreement.
- II. Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- JJ. Counterparts.** This Agreement may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Agreement. Delivery by the Subrecipient of an originally signed counterpart of this Agreement by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Council.

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DRAFT

9. **Signatures.** The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The Effective Date of this Agreement is the date of the signature last affixed to this page.

COUNCIL:

Wyoming Business Council

Amy L. Grenfell, Chief Operating Officer

Date

Brandon Marshall, Services Division Director

Date

SUBRECIPIENT:

Subrecipient Name

NAME, Title

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Madison Barber, Assistant Attorney General

Date