



Certification Page Regular and Emergency Rules

Revised June 2020

Emergency Rules *(Complete Sections 1-3 and 5-6)*

Regular Rules

1. General Information

a. Agency/Board Name*			
b. Agency/Board Address		c. City	d. Zip Code
e. Name of Agency Liaison		f. Agency Liaison Telephone Number	
g. Agency Liaison Email Address			h. Adoption Date
i. Program			
Amended Program Name <i>(if applicable)</i> :			

* By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

2. Legislative Enactment For purposes of this Section 2, "new" only applies to regular (non-emergency) rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these non-emergency or regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No. Yes. If the rules are new, please provide the Legislative Chapter Numbers and Years Enacted (e.g. 2015 Session Laws Chapter 154):

3. Rule Type and Information For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.

a. Provide the Chapter Number, Title* and Proposed Action for Each Chapter. *Please use the "Additional Rule Information" form to identify additional rule chapters.*

Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name <i>(if applicable)</i> :		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name <i>(if applicable)</i> :		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name <i>(if applicable)</i> :		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name <i>(if applicable)</i> :		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name <i>(if applicable)</i> :		

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. No. Yes. N/A

b. A public hearing was held on the proposed rules. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:

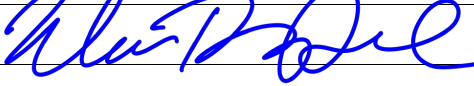
5. Checklist

a. For regular rules, the Statement of Principal Reasons is attached to this Certification and, in compliance with Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule

b. For emergency rules, the Memorandum to the Governor documenting the emergency, which requires promulgation of these rules without providing notice or an opportunity for a public hearing, is attached to this Certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct. By electronically submitting the emergency or regular rules into the Wyoming Administrative Rules System, the undersigned acknowledges that the Registrar of Rules will review the rules as to form and, if approved, the electronic filing system will electronically notify the Governor's Office, Attorney General's Office, and Legislative Service Office of the approval and electronically provide them with a copy of the complete rule packet on the date approved by the Registrar of Rules. The complete rules packet includes this signed certification page; the Statement of Principal Reasons or, if emergency rules, the Memorandum to the Governor documenting the emergency; and a strike and underscore copy and clean copy of each chapter of rules.

Signature of Authorized Individual	
Printed Name of Signatory	
Signatory Title	
Date of Signature	

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	

STATEMENT OF PRINCIPAL REASONS

Business Ready Community Grant and Loan Program Rule Change – January 2021

The purpose of the Business Ready Community Grant and Loan Program (BRC) Rules is to implement W.S. 9-12-601 through 9-12-603, which provides for the making of grants and loans to eligible applicants for economic 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. In addition to updating language and format to conform with the Secretary of State's requirements, the revised rules: renamed Community Enhancement projects to Community projects and changed the grant amount for Category 2 applicants; updated the match requirements for Community and Planning projects; revised the revenue recapture requirement; and updated definitions. The purpose of the rules changes is to clarify components of the program, simplify the process, and ensure the program is usable for applicants.

More specific changes to the BRC rules include:

Purpose

- Removed the Guiding Principles of the Business Ready Community Grant and Loan Program.

Definitions

- Some of the definitions have been updated to add clarity.
- Added “applicant” and “award recipient”.
- Added “economic development” and utilized language from the Statute.
- Added “infrastructure” and utilized language from the Statute.
- Moved “managed data center” definition from Chapter 4 to Chapter 1.
- Moved “non-recourse loan” definition from Chapter 3 to Chapter 1.
- Added the statement to the “phased projects” definition that receipt of funding for a phased project does not guarantee additional funding for future phases.

Eligible Applicants

- Added that two or more eligible applicants may apply for a joint project via one application.

Ownership of Infrastructure

- Added the requirement that if the infrastructure or facility is sold to a private entity prior to the end of the project reporting requirements, the new owner must fulfill the requirements of the grant agreement.

Community Projects

- Changed the title of “Community Enhancement Projects” to “Community Projects”.
- Changed the maximum grant amount for Category 2 applicants to \$750,000.

Revenue Recapture

- Updated the language to clarify how an applicant must calculate the revenue recaptured to the BRC fund.
 - If the total net revenue generated is less than the BRC grant amount, then no less than 25% of net revenue must be recaptured to the BRC fund.
 - If the total net revenue generated is equal to or more than the BRC grant amount, then no less than 25% of the BRC award must be recaptured to the BRC fund.
 - Revenue paid to the BRC fund will not exceed the original grant amount of the project.

Local Public Hearing and Approval

- Updated the requirement that public notice can be published in an official medium such as local newspapers, public fora, and/or local government social media pages.
- Applicants must conduct specific outreach from any affected industry(ies) and/or competitors within that industry.

Application Evaluation

- Staff will create and utilize a scoring matrix to evaluate a grant and/or loan application.

Grant Match Requirements

- Applicants must provide a portion of the match for the project.
 - Eligible in-kind match includes property, building(s) and other as determined by Council staff.
 - Ineligible in-kind match includes operations, maintenance, grant writing, grant administration and other as determined by Council staff.
- Changed the required match for Community Projects to:
 - Category 1 applicants: 20%
 - Category 2 applicants: 10%
- Changed the required match for Planning to half of the match must be cash.

Managed Data Center Cost Reduction Program

- Moved the definition to Chapter 1 and removed the outdated Four-Tier Classification System.
- Staff will create and utilize a scoring matrix to evaluate applications.

Wyoming Business Council

Business Ready Community Grant and Loan Program – Amended Rules

Chapters 1, 3 and 4

Summary of Public Comment

A Public Comment period for this proposed rulemaking opened on January 26, 2021 and closed on March 12, 2021. Within the comment period, the WBC received two comments:

1. A citizen seeking funding options for a group housing project/re-entry center in Natrona County which are not germane to the rules or rulemaking process. WBC staff will follow-up with this individual directly to connect them with resources.
2. The Wyoming Telecommunications Association submitted via their counsel a comment pertaining to exclusive agreements for telecommunications services, the requirements of W.S. 37-15-413, and the suggestion that these rules either a) be amended to require a BRC applicant to be compliant with this section prior to seeking BRC funding; or b) that WBC include clear notice of required compliance with this statute on the BRC application.
 - a. RESPONSE: WBC staff concurs this section of statute is relevant as the amended rules permit for the funding of telecommunication infrastructure projects through the BRC program. Accordingly, the WBC will revise its application process to ensure applicants are aware of this statute's language and restrictions/requirements, and include a review of the applicant's compliance with W.S. 37-15-413 as part of the project review process.

These amended rules were considered and adopted by unanimous action of the Wyoming Business Council Board of Directors at its December 10, 2020 public meeting. Due to the interim public comment period, the adoption of these rules was affirmed by unanimous action of the Wyoming Business Council Board of Directors at its May 12, 2021 public meeting.

The Wyoming Business Council is statutorily exempt from the Wyoming Administrative Procedures Act under W.S. 9-12-102(g)(iii).

Chapter 1

GENERAL PROVISIONS

Section 1. Purpose. The purpose of the program is to promote economic development at the city, town, county and regional 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.

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) “Applicant” means a county, incorporated city or town, or joint powers board who applies for funding under the Business Ready Community Grant and Loan Program (BRC).

(b) “Award recipient” means a county, incorporated city or town, or joint powers board who has been awarded funds under the BRC.

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

(d) “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.

(e) “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, county or region by providing necessary resources and assistance.

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

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

(h) “Economic development” means creating additional economic health and a stronger state economy.

(i) “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.

(j) “Ineligible project costs” means project costs that are not eligible for BRC funding and include appliances, equipment, furnishings and other features of the facility which are not physically attached, and any other items identified by Council staff.

(k) “Infrastructure” means the purchase of land, buildings, facilities, telecommunications infrastructure, rights of way, airports, sewer and water projects, roads, landscaping, recreational and convention facilities or other infrastructure determined by Council staff. It does not include rehabilitation or expansion of existing infrastructure unless Council staff determines the rehabilitation or expansion is necessary to meet the purposes of this program.

(l) “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.

(m) “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 workstations, servers associated with workstations or small server rooms.

(n) “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.

(o) “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.

(p) “Non-recourse loan” is a loan that is secured by a pledge of collateral, typically real property.

(q) “Phased projects” means a project in which parts (“phases”) are completed and fully functional before the entire project is built-out. Receipt of funding for a phased project does not guarantee additional funding for future phases.

(r) “Political subdivision” means a division of the state that exists primarily to

discharge some function of local government.

(s) “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, that meet an unmet need in the market area and result in the creation of new wealth or economic diversification. An additional consideration will be wages and benefits.

(t) “Revenue generating project” means real property developed with BRC grants or loans that can generate revenue from lease payments or the proceeds from the sale of real property.

(u) “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, joint powers board, or some combination thereof may apply for BRC funding. A joint powers board may apply with the approval of all participating agencies to the joint powers agreement. Two or more eligible applicants may apply for a joint project via one application.

(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) 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. 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 three million dollars (\$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. The applicant must demonstrate potential exists for creation of new primary jobs. The maximum grant amount is three million dollars (\$3,000,000). Funding in excess of the maximum grant amount may be applied for as a BRC loan.

(c) A Community 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. 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 for Category 1 applicants is five hundred thousand (\$500,000) and the maximum grant amount for Category 2 applicants is seven hundred fifty thousand (\$750,000). 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 may include regional targeted industry plans. The maximum award is fifty thousand (\$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 twenty-five thousand (\$25,000).

(iii) A promotional plan addresses marketing of a community's assets that promotes business and/or workforce retention and attraction. The maximum award is twenty-five thousand (\$25,000).

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

Section 6. Eligible Activities.

(a) 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.

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

(c) 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.

Section 7. Ownership of Infrastructure

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

(b) Unless the project is owned by the applicant, there shall be documentation that in the event of dissolution of the owner, the BRC-funded infrastructure shall revert to the sponsoring applicant or a related city, town, county, joint powers board or tribe acting as agent of the applicant. 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 award recipient makes a determination that the sale will benefit the economic development of the community and holds the sale in accordance with W.S. 15-1-112(b) and any other applicable statute.

(d) If the owner of any infrastructure or facility built with BRC funds sells the infrastructure or facility to a private entity prior to the end of the project reporting requirements, the new owner shall fulfill the requirements of the grant agreement.

Section 8. Revenue Generating Projects.

(a) Revenue generated by the applicant or an owner described in Section 7 of this Chapter must be recaptured at a negotiated rate commensurate with the public investment.

(b) Revenue recaptured to the BRC fund must comply with the following requirements:

(i) If the total net revenue generated is less than the BRC grant amount, then no less than twenty-five percent (25%) of net revenue shall be recaptured to the BRC fund; or

(ii) If the total net revenue generated is equal to or more than the BRC grant amount, then no less than twenty-five percent (25%) of the BRC award shall be recaptured to the BRC fund.

(c) Revenue paid to the BRC fund shall not exceed the original grant amount of the project.

(d) Revenue recapture requirements may be satisfied by repayment of a BRC loan or via revenue recapture payments unless otherwise prohibited by applicable statutes, rules or regulations.

(e) All funds recaptured at the local level shall be placed in a segregated economic development account or separate line item within a budget.

(f) No more than fifty percent (50%) of local recapture may be used for operational

expenses of the agent of the applicant such as a local economic, community, or state organization if matched dollar-for-dollar by local funds. The Council staff may, at its expense, conduct an audit of records of the agent for the applicant.

(g) 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.

(a) Projects involving a private developer shall demonstrate that adequate consideration exists by showing that the expected benefit to the State is at least as great as the BRC assistance. Such projects shall meet at least two of the following four criteria:

- (i) Repayment of BRC funds as described in Section 8;
- (ii) Direct, permanent jobs created as a result of the project;
- (iii) Projected tax benefits;

(iv) 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 an official medium such as local newspapers, public fora, local governmental social media pages or another venue as approved by Council staff. If the project facility is to be located outside the geographical 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 shall at a minimum:

- (A) Identify the economic development opportunity or opportunities;

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

(C) Be advertised with 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;

(E) Conduct specific outreach to any affected industry or industries and any competitors within that industry.

(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) The applicant must schedule a consultation with a Wyoming Business Council Regional Director to discuss the project.

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

(ii) Final draft applications and final draft application materials must be provided to the Regional Director no less than two weeks prior to submission.

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

(c) Incomplete applications will be either tabled or sent back to the applicant for resubmittal at a different time. If Council staff determine that an application is incomplete, the applicant shall be provided an explanation of the Council staff's findings and recommendations.

(d) The Council staff shall provide statewide notice of Council and Board meetings at which BRC applications will be discussed.

(e) The Council staff shall provide the Council with a summary of each application and a recommendation as to that application.

(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 BRC.

(g) The Council staff shall provide the Board with a summary of each application including the Council’s recommendation.

Section 12. Application Submittal Requirements.

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

(b) Recipient of Previous Awards. An applicant shall demonstrate satisfactory performance 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 Project	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. Council staff shall utilize a scoring matrix to evaluate a grant and/or loan application.

Section 15. Grant Match Requirements.

(a) BRC loans do not require a match.

(b) A BRC loan can be used to satisfy the grant match requirement.

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

- (d) The total required match is based on total eligible project costs.
- (e) Applicants must provide five percent (5%) of the required match for the project.
 - (i) Eligible in-kind sources of match funds include property, building(s) and other sources as determined by Council staff.
 - (ii) Ineligible in-kind sources of match funds include operations, maintenance, grant writing, grant administration and other as determined by Council staff.
- (f) The following is a breakdown of the required match percentages by category:

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 Project	20%	10%	Half of match must be cash
Planning	25%	25%	Half of match must be cash
All matches are calculated as a percentage of total project cost.			

(g) 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 category determinations 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 seventy percent (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 seventy percent (70%) of the statewide average.

(iii) In the event the applicant is 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, Council staff or qualified consultants reserve the right to review that policy prior to fund disbursements and to disburse funds in accordance with that policy to the extent it is consistent with State law.

(b) Fund Disbursement. Funds shall be disbursed to the applicant only as needed to discharge obligations incurred in accordance with 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, Council staff shall notify the award recipient 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 shall notify an award recipient of a pending expiration prior to the one-year anniversary of the grant/loan approval. The award recipient may submit a written request to continue the project. Council staff may request new or updated information and documentation. Council staff may recommend, and the Council may grant an extension of time in which to start or terminate the project.

(iv) For projects with contingencies, Council staff may request a monthly update on the status of any project contingency. The award recipient 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 grant a modification to the contingency terms.

(d) Project Monitoring.

(i) Reports. Within fifteen (15) calendar days of the conclusion of each calendar quarter during the term of the award contract, the applicant shall provide 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 provide Council staff a comprehensive report of the project and a cumulative financial statement that reflects the total fund expenditure pursuant to the award contract.

(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. Award recipients shall agree to retain all records related to the project for five (5) years following the Council staff's date of notice to award recipient of closeout of the grant.

(e) Project Evaluation.

(i) Reports. Upon project construction, the award recipient shall submit annual reports for five years to evaluate project outcomes against established measures on an annual basis. Council staff shall tailor reports to the specific nature of each grant or loan, in agreements between the Council and award recipient. This requirement shall transfer with the transfer of any ownership interest in the infrastructure or building constructed with BRC funds.

(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 shall be available to other award recipients.

(iii) Project outcomes reported shall be substantiated by the applicant.

(iv) At the end of the term of a BRC project, the award recipient 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; the match contributed and the source of the match monies; recapture revenue(s) received, including an accounting of 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 the accomplishments that resulted from the grant or loan. An authorized official of the award recipient shall certify, under penalty of false swearing, that the information in the report is true. The Council staff reserves the right to require the award recipient to request a BRC project audit be conducted by the director of the department of audit or his designee. The award recipient shall be responsible to pay the cost of this audit.

Chapter 3

BUSINESS READY COMMUNITY LOAN INFORMATION

Section 1. 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 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 may 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 the 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 remediation or review requirements to be undertaken or that have been or will be undertaken at the expense of the applicant. Council staff shall determine the level of environmental review required and, if after consultation with the Attorney General's Office, Council staff determine that further review or remediation is required, the applicant shall undertake that review or remediation at its own expense;

(iii) If applicable, determination whether the real 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 applicant;

(iv) If applicable, an applicant shall include guarantees, letters of credit and any other proposed security for the loan;

(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 the loan will require an election;

(D) The proposed method of repayment and identified revenue sources

for that repayment; and

(E) An affirmation that the Wyoming State Constitution debt provisions and all other applicable statutory duties of the applicant 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, each 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; and

(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.

Section 4. Maximum Loan Amount. The maximum loan amount is three million dollars (\$3,000,000) per application.

Section 5. Interest Rate and Term.

(a) 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.

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

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

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

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

(v) The term of the loan will be based upon the useful life of the asset not to exceed thirty (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 shall 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 shall be required to provide a complete appraisal on the collateral. The Council reserves the right to review and accept the appraisal or to hire a third party to perform an appraisal at the cost of the applicant. An appraisal may be waived in the event Council staff determine the project has sufficient equity coverage without considering the value of the collateral.

(b) Loans may be made as non-recourse loans. If the borrower defaults, the Council can seize collateral but will not seek any further compensation from the borrower.

Section 7. Attorney General Opinion.

(a) No loan shall be made without the written opinion of the Attorney General certifying the legality of the transaction and all loan documents.

(b) 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 or the applicant's attorney determines such an election is required by law.

Section 8. Loan Evaluation.

(a) In addition to Application Evaluation criteria in Chapter 1, Council staff shall evaluate a loan application utilizing the following criteria:

(i) 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; and

(ii) If applicable, whether the applicant is current on repayment obligations to the BRC account or other state loan accounts on any other existing loans.

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. Requests 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. 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 2. Maximum Amount and Match.

(a) The maximum grant amount for a Managed Data Center Cost Reduction project is two million two hundred fifty thousand (\$2,250,000). The grant amount will be determined by the business's 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 (5) years.

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% of 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 for Managed Data Centers.

Section 4. Fund Disbursement, Project Monitoring and Project Evaluation.

(a) Managed Data Center Cost Reduction projects are subject to all requirements listed in Chapter 1, Section 16 and the following:

(i) Funds shall only be disbursed for businesses that are in operation in the jurisdiction of the applicant. Funds may be disbursed over five (5) years if the applicant achieves 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.

(ii) If the Council staff determines that a business participating in a Managed Data Center Cost Reduction project is not operating within one (1) year from the time the grant is approved, the grant will automatically expire. Based on information supplied by the award recipient, Council staff may grant an extension of time in which the business must start operations.

(iii) 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. Council staff shall utilize a scoring matrix to evaluate an application.

Section 6. Application Submittal Requirements

(a) Each applicant under this Chapter shall follow the application requirements in Chapter 1.

(b) In addition to other requirements listed for a development agreement in Chapter 1, the following shall 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) A written timeline for the business to become operational and a signed commitment to meet the milestones within that timeline;

(vi) An offer by the business and an acceptance or rejection 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) If applicable, a signed lease agreement or memorandum committing the applicant and business to follow the terms of lease agreement.

(c) The signed development agreement 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.

(d) At the applicant's expense, Council staff may request a disinterested third party review the applicant's business plan or examine other aspects of an application made under this Chapter. Selection of the disinterested third party is at the sole discretion of Council staff.

Chapter 1

GENERAL PROVISIONS

Section 1. Purpose.

~~(a)~~—The purpose of the program is to promote economic development at the city, town, ~~and county~~ and regional 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.

~~(a) 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) “Applicant” means a county, incorporated city or town, or joint powers board who applies for funding under the Business Ready Community Grant and Loan Program (BRC).~~

~~(b) “Award recipient” means a county, incorporated city or town, or joint powers board who has been awarded funds under the BRC.~~

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

(d) “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.

~~(be)~~ “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, county or region ~~or state~~ by providing necessary resources and assistance.

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

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

(h) “Economic Development” means creating additional economic health and a stronger state economy.

~~(ei)~~ “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.~~

(j) “Ineligible project costs” means project costs that are not eligible for BRC funding and include appliances, equipment, furnishings and other features of the facility which are not physically attached, and any other items identified by Council staff.

(k) “Infrastructure” means the purchase of land, buildings, facilities, telecommunications infrastructure, rights of way, airports, sewer and water projects, roads, landscaping, recreational and convention facilities or other infrastructure determined by Council staff. It does not include rehabilitation or expansion of existing infrastructure unless Council staff determines the rehabilitation or expansion is necessary to meet the purposes of this program.

~~(gl)~~ “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.

(m) “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 workstations, servers associated with workstations or small server rooms.

~~(hn)~~ “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.

(o) “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.

(p) “Non-recourse loan” is a loan that is secured by a pledge of collateral, typically real property.

~~(iq) “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. Receipt of funding for a phased project does not guarantee additional funding for future phases.~~

~~(jr) “Political subdivision” means a division of the state that exists primarily to discharge some function of local government. 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.~~

~~(ks) “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 or economic diversification. An additional consideration will be wages and benefits.~~

~~(lt) “Revenue generating project” means real property developed with Business-~~

~~Ready Community BRC grants or loans~~ 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.~~

(mu) “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, or some combination thereof~~ may apply for BRC funding. A joint powers board may apply with the approval of all participating agencies to the joint powers agreement. Two or more eligible applicants may apply for a joint project via one application.

(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 three million dollars (\$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 three million dollars (\$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 for Category 1 applicants is five hundred thousand (\$500,000) and the maximum grant amount for Category 2 applicants is seven hundred fifty thousand (\$750,000). 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 may includes regional targeted industry plans. The maximum award is fifty thousand (\$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 twenty-five thousand (\$25,000).

(iii) A promotional plan addresses marketing of a community's assets that promotes business and/or workforce retention and attraction. The maximum award is twenty-five thousand (\$25,000).

(iv) A tourism plan addresses economic development opportunities for a defined region or community related to tourism and visitor attraction. The maximum award is twenty-five thousand (\$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.~~

(ba) 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.

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

_____ (c) 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.

_____ Section 7. Ownership of Infrastructure

(a) The infrastructure funded by this program shall be owned by the applicant or an agent of the applicant; such as a community development organization, state development organization or political subdivision acting in the role of agent of the applicant.

(b) Unless the project is owned by ~~an~~ the applicant, there shall be documentation that in the event of dissolution of the owner, the BRC-funded infrastructure must shall revert to the sponsoring applicant or a related city, town, county, joint powers board or tribe acting as agent of the applicant. 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~~ award recipient makes a determination that the sale will benefit the economic development of the community and holds the sale in accordance with W.S. 15-1-112(b) and any other applicable statute. ~~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.~~

_____ (d) If the owner of any infrastructure or facility built with BRC funds sells the infrastructure or facility to a private entity prior to the end of the project reporting requirements, the new owner shall fulfill the requirements of the grant agreement.

_____ Section 8. Revenue Generating Projects.

_____ (a) Revenue generated by the applicant- or an owner described in Section 7 of this Chapter 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.~~

(b) Revenue recaptured to the BRC fund must comply with the following requirements:

(i) If the total net revenue generated is less than the BRC grant amount, then no less than twenty-five percent (25%) of net revenue must be recaptured to the BRC fund; or

(ii) If the total net revenue generated is equal to or more than the BRC grant amount, then no less than twenty-five percent (25%) of the BRC award must be recaptured to the BRC fund.

(c) Revenue paid to the BRC fund will not exceed the original grant amount of the project.

(d) Revenue recapture requirements may be satisfied by repayment of a BRC loan or via revenue recapture payments unless otherwise prohibited by applicable statutes, rules or regulations.

(ae) All funds recaptured at the local level shall be placed in a segregated economic development account or separate line item within a budget.

(bf) No more than fifty percent (50%) of local recapture may be used for operational expenses of the agent of the applicant such as a local economic, community, or state organization if matched dollar-for-dollar by local funds. The Council staff may, at its expense, conduct an audit of records of the agent for the applicant.

(eg) 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.

(a) Projects involving a private developer ~~must~~ shall demonstrate that adequate consideration exists by showing that the expected benefit to the State is ~~the projected economic impacts~~ are at least as great as the BRC assistance, ~~and may be demonstrated through~~ Such projects shall meet at least two of the following four criteria:

(i) ~~Repayment of BRC funds;~~ as described in Section 8;

(ii) ~~Direct, permanent jobs created as a result of the project;~~

(iii) ~~Projected tax benefits;~~ and/or

_____ (iv) ~~d~~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 an official medium such as local newspapers, public fora, local governmental social media pages of general circulation within the boundaries of the applicant or another venue as approved by the Council staff. If the project facility is to be located outside the geographical 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~~shall at a minimum:

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

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

(C) ~~Contain~~Be advertised with 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;

_____ (E) Conduct specific outreach to any affected industry or industries and any competitors within that industry.

(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) The applicant must schedule a consultation with a Wyoming Business Council Regional Director to discuss the project.

~~(i) 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.~~

~~(ii) Final ~~D~~draft applications and final draft application materials must be provided to the Regional Director no less than 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~~ Each application shall be reviewed by the ~~e~~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.~~

~~(dc) 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. If Council staff determine that An application that is determined by the Council staff to be incomplete, the applicant shall be provided an explanation of the findings and recommendations in writing within thirty (30) working days of its receipt where practical.~~

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

~~(fe) The Council staff shall provide the Council with a summary of each application with a recommendation as to that application. ~~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.

(gf) 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~~BRC.

(g) The Council staff shall provide the Board with a summary of each application including the Council’s recommendation.

Section 12. Application Submittal Requirements.

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

~~(b) Other information as requested by Council staff.~~

~~(eb) Recipient of Previous Applicant Awards. An applicant must show~~shall demonstrate 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 <u>Project</u>	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 staff shall utilize a scoring matrix to~~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 the grant match requirement.

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

~~(d) The total required Mmatch is based on total eligible project costs.~~

~~(e) Applicants must provide five percent (5%) of the required match for the project.~~

~~(i) Eligible in-kind sources of match funds include property, building(s) and other funds as determined by Council staff.~~

~~(ii) Ineligible in-kind sources of match funds include operations, maintenance, grant writing, grant administration and other as determined by Council staff.~~

~~(df) The Ffollowing is a breakdown of the required match percentages by category:~~

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 Project	25 <u>0</u> %	2 <u>1</u> 0%	Half of match must be cash
Planning	25%	25%	<u>Half of <u>M</u>match must be all-cash</u>
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.~~

(fg) 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 category determinations 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 seventy percent (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 seventy percent (70%) of the statewide average.

(iii) In the even the applicant is ~~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, Council staff or qualified consultants reserve the right to review that policy prior to fund disbursements and to disburse funds in accordance with that policy to the extent it is consistent with State law.

(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~~ the award recipient 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~~ shall notify a ~~grantee/borrower~~ award recipient of a pending expiration prior to the one-year anniversary of the grant/loan approval. The ~~grantee/borrower~~ award recipient may ~~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 any project contingencies~~. The ~~grantee/borrower award recipient~~ 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 grant a modification to the contingencies terms.

(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 award~~ contract, the applicant shall ~~supply~~ provide 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~~ provide Council staff with a comprehensive report of the project. ~~The applicant shall likewise furnish the Council staff with and a cumulative financial statement, that reflects~~ ing the total fund expenditure pursuant to ~~this grant agreement~~ the award contract.

(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~~ Award recipients shall agree to retain all records related to the project for five (5) years following the Council staff's date of notice to ~~grantee award recipient~~ of closeout of the grant.

(e) Project Evaluation.

(i) Reports. Upon project construction, the ~~grantee/borrower award recipient~~ shall submit annual reports for five years to evaluate project outcomes against established measures on an annual basis. Council staff shall tailor reports to the specific nature of each grant or loan, in agreements between the Council and ~~grantee award recipient~~. This requirement shall transfer with the transfer of any ownership interest in the infrastructure or building constructed with BRC funds.

(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~~ shall be available to other ~~grantees~~ award recipients.

(iii) Project outcomes reported shall be substantiated by the applicant.

~~(iii)~~ (iv) At the end of the term of a BRC project, the ~~Grantee/Borrower award recipient~~ 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; the match contributed and the source of the match monies; recapture revenue(s) received, including an account of 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~~ award recipient 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 award recipient ~~cost of this audit shall be~~ responsible for the cost of this audit ~~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. 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 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) A BRC loan may be made to fund all or a portion of any project that is an eligible activity. A BRC loan ~~can~~ may 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 the 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 remediation or review requirements to be undertaken or that have been or will be undertaken ~~(at the expense of the borrower)~~ applicant. Council staff ~~will~~ shall determine the level of environmental review required and, if after consultation with the Attorney General’s Office, Council staff determine that further review or remediation is required, the applicant shall undertake that review or remediation at its own expense;

(iii) If applicable, determination ~~if whether~~ the real 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~~ applicant;

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

(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 theis loan will require an election;

(D) The proposed mMethod of repayment and identified revenue sources for that repayment; and

(E) An affirmation that the Wyoming State Constitution debt provisions and all other applicable statutes statutory duties of the applicant 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~~each 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; and

(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. Maximum Loan Amount.** _____

~~_____ (a) _____~~ The maximum loan amount is three million dollars (\$3,000,000) per application.

_____ **Section 5. Interest Rate and Term.**

_____ (a) _____ 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.

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

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

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

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

_____ (ey) The term of the loan will be based upon the useful life of the asset not to exceed thirty (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~~ shall 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~~ shall be required to provide a complete appraisal on the collateral. ~~The Council reserves the right to review and accept the appraisal or assign the appraisal to a third party to hire a third party to perform an appraisal at the cost of the applicant. An appraisal may be waived in the event Council staff determines the project has sufficient equity coverage without considering the value of the collateral.~~

(b) Loans may be made as non-recourse loans. If the borrower defaults, the Council can seize collateral but will not seek any further compensation from the borrower.

_____ **Section 7. Attorney General Opinion.**

_____ (a) No loan shall be made without the written opinion of the Attorney General certifying the legality of the transaction and all loan documents.

_____ (b) 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 or the applicant's attorney determines such an election is ~~otherwise~~ required by law.

_____ **Section 8. Loan Evaluation.**

_____ (a) In addition to Application Evaluation criteria in Chapter 1, eCouncil staff shall evaluate a loan application utilizing the following criteria:

_____ (ai) 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;

and

_____ (bii) If applicable, whether the applicant is current on repayment obligations to the ~~Business Ready Community~~ BRC account or other state loan accounts on any other existing loans.

_____ **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. Requests 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. 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. 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 for a Managed Data Center Cost Reduction project is two million two hundred fifty thousand (\$2,250,000). The grant amount will be determined by the business’s 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 DataCenter-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 (5) 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% of 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.

 (a) Grants for Managed Data Center Cost Reduction projects may be used for the reduction of the costs of electrical power, broadband or both for Managed Data Centers.

 Section 4. Fund Disbursement, Project Monitoring and Project Evaluation.

 (a) Managed Data Center Cost Reduction projects are subject to all requirements listed in Chapter 1, Section ~~165~~ and the following:

 (ai) Funds ~~will~~ shall only be disbursed for businesses that are in operation in the jurisdiction of the applicant. Funds may be disbursed over five (5) years if the applicant realizes/achieves 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.

 (bij) If the Council staff determines that a business participating in a “Managed Data Center Cost Reduction” project is not operating within one (1) year from the time the grant is approved, the grant will automatically expire. Based on information supplied by the ~~grantee~~ award recipient, Council staff may grant an extension of time in which the business must start operations.

 (eiii) 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. Council staff shall utilize a scoring matrix to evaluate an application. ~~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) ~~Each a~~ Applicant under this Chapter shall ~~must follow~~ the application requirements in Chapter 1.

(b) In addition to other requirements listed for a development agreement in Chapter 1, the following ~~must~~ shall 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~~ written timeline for the business to become operational and a signed commitment to meet the milestones within that timeline;

(vi) An offer by the business and an acceptance or ~~declination~~ rejection 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, a signed lease agreement or memorandum committing the applicant and business to follow the terms of 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) The signed development agreement 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.

_____ (d) _____ At the applicant's expense, ~~the~~ Council staff may request a disinterested third party ~~to validate a data center's Tier level,~~ review ~~at~~ the applicant's business plan or examine other aspects of an application made under this Chapter. Selection of the disinterested third party is at the sole discretion of Council staff ~~must approve the third party.~~