

**DRINKING WATER STATE REVOLVING FUND
LOAN AGREEMENT
BETWEEN THE WYOMING STATE LOAN AND INVESTMENT BOARD
AND THE CITY OF LANDER
DW259**

1. **Parties.** The parties to this Loan Agreement (Agreement) are the Wyoming State Loan and Investment Board (Board) and the City of Lander, Fremont County, Wyoming (the Borrower). The Wyoming Office of State Lands and Investments (OSLI) shall administer this Agreement on behalf of the Board.
2. **Purpose of Agreement.** The purpose of this Agreement is to set forth the terms and conditions governing a Drinking Water State Revolving Fund Loan (Loan) awarded by the Board in the amount of Sixteen Million Eight Hundred Seventy-Nine Thousand Eight Hundred Sixty-Nine Dollars and Zero Cents (\$16,879,869.00) for the Multi Year Rehab (Project). The Borrower acknowledges and agrees that Loan funds are provided by the U.S. Environmental Protection Agency (EPA), Clean Water Act, CFDA #66.458, through the State Clean Water State Revolving Fund Loan Program, administered by OSLI and the Board.
3. **Term of Agreement.** This Agreement is effective when all parties have executed it (Effective Date). The repayment term of the Loan is Twenty (20) years, beginning on the earlier of the date of substantial completion or the commencement of operations, or, in the case of early repayment, until the Loan has been repaid in full. This Agreement shall remain in effect until the Loan has been repaid in full.
4. **Disbursement.**
 - A. The Borrower shall submit all requests for disbursement on a form provided by OSLI.
 - B. OSLI shall disburse funds only for project costs that have been incurred. All disbursement requests shall be subject to review by OSLI and the Wyoming Department of Environmental Quality (DEQ). Upon review and approval of a disbursement request, OSLI shall disburse Loan funds.
 - C. The Borrower shall make payment for loan draft request invoices within ten (10) business days of receipt of reimbursement from OSLI. If the Borrower is unable to comply for any reason, the Borrower shall notify OSLI immediately.
 - D. The Borrower shall draw all funds on this Loan by November 28, 2028. In the event the Borrower is unable to draw all the funds by this date, the Borrower may request an extension from OSLI, provided such request is received at least ninety (90) days prior to this date. In the event the Borrower fails to draw all of its eligible Loan funds by November 28, 2028 or to secure an extension from OSLI, all remaining funds shall revert back to the State Revolving Fund and Loan funds shall no longer be available to the Borrower.

- E. The Borrower shall promptly reimburse the OSLI for any portion of the Loan which is disbursed, but subsequently determined by OSLI to be a cost of the wastewater system which is not eligible for funding from the State Clean Water State Revolving Fund. The Borrower shall promptly refund the disbursement to the OSLI upon written request.
- F. The Borrower shall notify OSLI in February of each year of the amount of funding that will be needed from the loan for a given construction season. This agreement will be amended to add an attachment establishing the binding commitment date for that year's project funding, thus allowing for funding from newly awarded Capitalization Grants to be used to fund this project.

5. **Security and Repayment.**

- A. **Security.** The Borrower hereby pledges and assigns to the Board all revenues generated from the City of Lander Optional Tax and Enterprise funds as the source of repayment for this Loan and security therefor. This pledge and assignment by the Borrower shall not be subordinate to any other pledge or assignment of such revenues. This assignment and security shall be in effect until the full amount of the loan has been repaid in full.
- B. **Repayment.** The Borrower shall repay to the Board principal in the amount of Sixteen Million Eight Hundred Seventy-Nine Thousand Eight Hundred Sixty-Nine Dollars and Zero Cents (\$16,879,869.00) or, if a lesser sum is actually borrowed, such lesser sum, together with interest thereon at the rate of Zero-point Two Five percent (0.25%) per annum for the term of the Loan.
 - (i) The Borrower shall begin annual repayment of principal and interest not later than one (1) year after the earlier of substantial completion or initiation of operation of the project.
 - (ii) The Borrower shall repay the Loan in accordance with an Amortization Schedule that will be included with each year's borrowing attachment, as described in Section 4.F. of this Agreement and will be hereby incorporated by reference. The amount of the first payment due shall include accrued interest on disbursements. In the event the Borrower does not borrow the full amount of principal authorized under this Agreement, the Parties shall amend this Agreement to reflect the principal sum actually borrowed.
- C. **Prepayment.** The Borrower may make payments in excess of the amount due under the Amortization Schedule (Prepayments) at any time. Prepayments shall be credited first to interest due and any balance shall then be applied to the principal. Prepayments shall not reduce the amount of the next annual payment due, rather Prepayments shall have the effect of reducing the term of the Loan.
- D. **Principal Forgiveness.** Upon completion of the Project and prior to repayment of the Loan, this Loan shall be granted principal forgiveness of up to Twenty Five Percent (25%) percent of the drawn Loan funds, not to exceed Four Million Two

Hundred Nineteen Thousand Two Hundred Seventeen Dollars and Twenty-Five Cents (\$4,219,217.25), if the Borrower is eligible for principal forgiveness pursuant to this subsection.

- (i) The Borrower shall be eligible for principal forgiveness only if the Borrower:
 - (a) Completes its first Loan draw within eighteen (18) months of the Effective Date of this Agreement;
 - (b) Makes Loan draws at least quarterly from the first draw until the Project is complete;
 - (c) Complies fully with all terms and conditions in this Agreement; and
 - (d) Pays all accrued interest in full at the time of the principal forgiveness.
- (ii) If the Borrower fails to comply with any of the conditions in Paragraph (i) of this Subsection, the Borrower shall not be eligible for any principal forgiveness.

6. Responsibilities of the Borrower.

- A. Origination Fee.** The Borrower shall pay a loan origination fee of one-half of one percent (0.5%) of the amount of the Loan upon the execution of this Agreement.
- B. Cost Certification.** The Borrower hereby certifies that the cost of the Project, as listed in the Application for Financial Assistance, is a reasonable and accurate estimation.
 - (i) Upon the request of OSLI, the Borrower shall supply a certificate from its engineer stating that such is a reasonable and accurate estimation, taking into account investment income to be realized during the course of the Project and other money that would, absent the Loan, have been used to pay the cost of the Project.
 - (ii) The Borrower shall ensure that funding is sufficient to complete the project and, if necessary, shall provide from its own fiscal resources any additional funds required to complete the Project.
- C. Project Site.** As a condition of the Loan, the Borrower hereby warrants that the Borrower has, or will have prior to advertising bids for construction, a fee simple or such other estate or interest in the site of the Project. The Borrower further agrees to ensure that such site is satisfactory to OSLI, including necessary easements and right-of-ways sufficient to assure undisturbed use and possession for the purpose of construction and operation of the Project for the estimated life of the Project.

- (i) The Borrower shall comply with all requirements and mitigation efforts as described in the environmental assessment documents.
 - (ii) The Borrower shall comply with all applicable local government regulations prior to construction.
- D. Commencement of Construction.** Within twelve (12) months of the Effective Date, unless DEQ and OSLI approve an alternative schedule pursuant to Paragraph (iii) of this Subsection, the Borrower shall expeditiously commence construction on the Project.
- (i) The Borrower shall not advertise the project for bids until DEQ has approved the plans and specifications, including but not limited to, the engineer's cost estimate with bid extensions and detailed cost estimates for major components for the Project.
 - (ii) The Borrower, subsequent to bid opening and prior to commencing construction, shall submit to DEQ a Project schedule with key construction dates. The Borrower shall not implement changes that delay the project schedule without the written approval of OSLI and DEQ.
 - (iii) In the event the Borrower determines that it cannot reasonably commence construction within twelve (12) months of the Effective Date, it shall present a request for an extension and an updated project schedule to OSLI and DEQ as soon as practicable. OSLI may approve the extension and updated project schedule if it determines that the changes are in the best interests of the State and the Project. The Borrower shall not implement the updated schedule without the written approval of OSLI and DEQ.
 - (iv) In the event an extension is not approved pursuant to Paragraph (ii) of this Subsection and construction has not commenced within twelve (12) months of the Effective Date, the Loan shall be closed. OSLI shall provide written notice of the closing of the Loan to the Borrower. The Borrower shall begin repayment of any drawn funds within one (1) year of receipt of OSLI's notice.
- E. Construction.** The Borrower shall exercise all reasonable diligence and care to ensure the completion of the Project in accordance with the project schedule and specifications.
- (i) In the event the Borrower determines that changes to the project schedule are necessary, the Borrower shall notify OSLI and DEQ immediately and propose an alternative schedule. OSLI may approve the alternative schedule if it determines that the changes are in the best interests of the State and the Project. The Borrower shall not implement changes to the project schedule without the written approval of OSLI and DEQ.

- (ii) In the event the Borrower determines that changes to the project specifications are necessary, the Borrower shall notify OSLI and DEQ immediately and propose such changes to the specifications. OSLI may approve the changes if it determines that the changes are in the best interests of the State and the Project. The Borrower shall not implement changes to the project schematics without the written approval of OSLI and DEQ.
- (iii) The Borrower understands and agrees:
 - (a) That neither OSLI nor the Board are responsible for compliance with project construction schedules or completion dates;
 - (b) That the Borrower shall be solely responsible for its compliance with all applicable local regulations and state statutes, including but not limited to, state statutes regarding procurement, accounting, and contractor retainage accounts;
 - (c) That the Borrower shall inform the OSLI and DEQ of any changes, irregularities, or problems, including but not limited to: change orders, contract interpretation issues, withholding liens, and scheduling alterations; and
 - (d) That the Borrower shall permit OSLI, DEQ, or any party designated by OSLI or DEQ to examine, visit, and inspect, at any and all reasonable times, all property and work sites constituting the Project, and to inspect and make copies of any accounts, books and records, including without limitation: records regarding receipts, disbursements, contracts, investments, and any other matters relating thereto and to its financial standing. The Borrower shall supply such reports and information as the OSLI, and DEQ may reasonably require in connection with the Project.
- (iv) The Borrower shall notify OSLI and DEQ in writing within thirty (30) days of the earlier of substantial completion or initiation of operations.
- (v) Prior to commencing operations, the Borrower shall provide to OSLI a certification from the engineer stating that the Project was constructed as shown in the plans submitted or a justification by the engineer or operating entity of any changes that were made without prior OSLI or DEQ approval.

F. Operation and Maintenance of Wastewater System. The Borrower shall, in accordance with prudent wastewater system practice:

- (i) At all times operate the properties of its wastewater system and any business in connection therewith in an efficient manner;

- (ii) Maintain its wastewater system in good repair, working order, and operating condition;
- (iii) From time to time make all necessary and proper repairs, renewals, replacements, additions, betterment and improvements with respect to its wastewater system so that at all times the business carried on in connection therewith shall be properly and advantageously conducted. Nothing in this subsection shall require the Borrower to expend any funds which are derived from sources other than the operation of its wastewater system or to prevent the Borrower from doing so; and
- (iv) Cooperate with OSLI and the DEQ in its observance and performance of its duties and obligations under this Agreement.

G. User Charges. The Borrower shall establish a system of rents, rates, and other charges (User Charges) for products and services provided by its wastewater system.

- (i) User Charges shall be at least sufficient to:
 - (a) Meet the operation and maintenance expenses of its wastewater system, including any reserve or replacement fund established by the Borrower for the sound fiscal management and/or for maintenance of the wastewater system;
 - (b) Comply with any and all covenants pertaining thereto contained in, and all other provisions of, any bond resolution, trust indenture or other security agreement, if any, relating to any bonds, notes or other evidences of indebtedness issued by the Borrower or any other contractual obligations incurred by the Borrower;
 - (c) Pay the debt service requirements on all other bonds, notes or other subordinated evidences of indebtedness whether now outstanding or incurred in the future issued to finance improvements to the wastewater system and to make any other payments required by law which are payable from funds pledged to the payment of the Loan Agreement,
 - (d) Generate funds sufficient to fulfill the terms of all other contracts and agreements made by the Borrower, including, without limitation, this Agreement; and
 - (e) Pay all other amounts payable from or constituting a lien or charge on the funds pledged to the payment of the Loan.
- (ii) User Charges shall ensure each recipient of wastewater system services

from the wastewater system will pay such recipient's proportionate share of the cost of operation and maintenance, including replacement of the wastewater system.

- (iii) Upon the execution of this Agreement, the Borrower shall immediately modify its User Charges as necessary to comply with this subsection and shall maintain such system of user charges for the duration of this Agreement.

H. Disposition of Wastewater System. The Borrower shall not sell, lease, abandon, or otherwise dispose of all or any substantial portion of its wastewater system or any other system which provides revenues for upkeep and maintenance of the wastewater system unless:

- (i) The Borrower assigns this Agreement and its rights and interests hereunder in accordance with Subsection 7.B. of this Agreement to a purchaser or lessee; and
- (ii) The Board, in its sole discretion, by appropriate action determines that such sale, lease, abandonment or other disposition will not adversely affect:
 - (a) The ability of the Borrower or its assignees to meet its duties, covenants, obligations and agreements under this Agreement; or
 - (b) Any other agreement entered into by the Board, or any condition of any grant received by the Board from the United States of America which is related to any capitalization grant received by the Board under the Clean Water Act.

I. Floodplain Management. The Borrower shall comply with the floodplain management standards of the National Flood Insurance Program.

J. Records and Accounting. The Borrower shall keep accurate records and accounts for its wastewater system (System Records) separate and distinct from its other records and accounts (General Records). Such System Records shall be maintained in accordance with generally accepted government accounting standards and, at a minimum, the Borrower shall have annual financial statements prepared by an independent party. OSLI may require system records to be audited annually by an independent accountant, in which case the audit may be part of the annual audit of the General Records of the Borrower. Such System Records and General Records shall be made available for inspection by OSLI and DEQ at any reasonable time, and a copy of the financial statements or the independent annual audit, including all written comments and recommendations of such accountant, shall be furnished to OSLI within one hundred fifty (150) days of the close of the fiscal year.

K. Compliance with Federal Requirements. The Borrower shall comply with all federal requirements applicable to the Project, including, but not limited to:

- (i) American Iron and Steel. The Borrower covenants and agrees that no funds from this Loan may be used for this Project unless all of the iron and steel used in the Project are produced in the United States, unless a waiver is provided to the borrower by the EPA. The Borrower shall comply with all regulations and guidance issued by EPA and DEQ regarding this requirement.
- (ii) DBE Utilization Report. Prior to awarding a contract for the Project, the Borrower shall submit the Disadvantaged Business Enterprise Bidder Good Faith Effort Documentation and the DBE Notification of Intent to Subcontract forms to DEQ.
- (iii) "Fair Share Goal." The Borrower shall establish a "Fair Share Goal" percentage of not less than three percent (3%) of prime contract and subcontract awarded for this Project with OSLI and DEQ before the Borrower awards any contracts under this Agreement.
 - (a) The Borrower shall, at a minimum, take the six (6) affirmative steps to ensure to the fullest extent possible that at least the negotiated "Fair Share Goal" percentage of Loan funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, and historically black colleges and universities.
 - (b) The Borrower agrees to include in its bid documents a "3% Fair Share Goal" percentage and require all of its prime contractors to include in their bid documents for subcontracts a "3% Fair Share Goal" percentage.
- (iv) Equal Employment Opportunity. The Borrower shall include the seven (7) equal employment clauses mandated by Presidential Executive Order No. 11246 in all contracts awarded as part of the Project.
- (v) Davis-Bacon Wage Act. The Borrower agrees that all laborers and mechanics employed by contractors and subcontractors on the Project, funded directly by or assisted in whole or in part by this Loan, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor pursuant to 40 U.S.C.A. § 3142(b).
 - (a) The Borrower must acknowledge prior to the bidding of the Project the receipt of the Guidance requirements provided by the DEQ at the following website: <http://deq.wyoming.gov/wqd/state-revolving-loan-fund/resources/1-srf-forms-and-guidance/>

- (b) At the time of bidding, the Borrower shall confirm that all applicable federal wage guidance is being followed.
- (c) Upon completion of the Project, the Borrower shall certify compliance with the Davis-Bacon Wage Act and Section 513 of the Clean Water Act.
- (d) The Borrower shall make all certifications required under this Paragraph on forms provided by the OSLI.
- (iv) Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment. As a recipient of EPA-funded assistance, the Borrower shall comply with 2 CFR 200.216 and § 889 of Public Law 115-232.
- (v) The Borrower shall retain any necessary compliance documentation related to the federal requirements identified in this subsection for three (3) years after Project completion and make such documentation available to the OSLI and the DEQ upon request.

7. Special Provisions.

- A. Archaeological Artifacts.** In the event that archaeological artifacts or historical resources are unearthed during construction excavation, the Borrower shall stop, or cause to be stopped, construction activities and will notify the superintendent of the State Historic Preservation Office, and DEQ of such unearthing and follow all applicable state and federal laws and regulations governing such occurrences. The Borrower may hire a qualified archaeologist to monitor construction activities.
- B. Assignment by the Borrower.** The Borrower shall not assign this Agreement unless all conditions enumerated in this Subsection are satisfied. No assignment under this Subsection shall relieve the Borrower from primary liability for any of its obligations under this Agreement. In the event of an assignment, the Borrower shall continue to remain liable for the performance and observance of its obligations to be performed and observed under this Agreement. The Borrower shall not assign all or any part of this Agreement unless:
 - (i) The Board has approved the proposed assignment in writing;
 - (ii) The assignment provides expressly that the assignee assumes the full and faithful observance and performance of all duties, covenants, agreements and obligations subject to the proposed assignment;
 - (iii) The assignment will not result in or increase the risk of default in the performance or observance of any duties, covenants, or obligations of the Borrower under this Agreement; and

- (iv) OSLI has received an opinion of counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Board with, or condition of any grant received by the Board from, the United States of America which is related to any capitalization grant received by the Board under the Clean Water Act.
- C. **Assumption of Risk.** The Borrower shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Borrower's failure or the failure of any of its agents, contractors, or subcontractors to comply with state or federal requirements. OSLI shall notify the Borrower of any state or federal determination of noncompliance.
- D. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Board, OSLI, the Borrower, and their respective successors and assigns.
- E. **Default.** In the event that OSLI does not receive the required annual payment of principal and interest by the specified due date of each year, the Borrower shall be in Default.
 - (i) Upon Default, the Board may declare the whole of the unpaid balance of the Loan due and payable on demand.
 - (ii) Upon Default, the Board may proceed against the revenues assigned and pledged by the Borrower.
 - (iii) The Borrower hereby accepts the conditions of this Agreement and expressly waives presentment for payment and any claims presented pursuant to Wyo. Stat. § 15-1-125, protest and notice of protest for nonpayment hereof, and all defenses on the grounds of any extension of time of payment that may be given by the Board.
 - (iv) In the event the Board must bring suit to enforce payment under this Agreement for any installment, interest, or part thereof, the Borrower agrees to pay, in addition to the costs and disbursements provided and allowed by law, reasonable attorneys' fees and costs.
- F. **Environmental Policy Acts.** The Borrower agrees all activities under this Agreement will comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.
- G. **Federal Audit Requirements.** The Borrower agrees that if it expends an aggregate amount of seven hundred fifty thousand dollars (\$750,000.00) or more in federal funds during its fiscal year, it must undergo an organization-wide financial and compliance single audit. The Borrower agrees to comply with the audit

requirements of the U.S. General Accounting Office Government Auditing Standards and Audit Requirements of 2 C.F.R. Part 200, Subpart F. If findings are made which cover any part of this Agreement, the Borrower shall provide one (1) copy of the audit report to OSLI and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to OSLI's records.

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

- (i) Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
- (ii) Procures a commercial sex act during the period of time that the award is in effect; or
- (iii) Uses forced labor in the performance of the award or subawards under the award.

I. Kickbacks. Borrower certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If Borrower breaches or violates this warranty, OSLI may, at its discretion, terminate this Agreement without liability to OSLI, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee. The Borrower shall comply with the Copeland Anti-Kickback Act (18 U.S.C. § 874) as supplemented in the Department of Labor Regulations (29 CFR, Part 3). This Act provides that the Borrower is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works to give up any part of the compensation to which he or she is otherwise entitled.

J. Limitations on Lobbying Activities. By signing this Agreement, the Borrower certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by the Borrower, its contractor or any subcontractors in connection with lobbying member(s) of Congress, or any federal agency in connection with the award of a federal grant, contract, cooperative agreement, or loan.

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

- L. **Administration of Federal Funds.** The Borrower agrees its use of the Funds awarded herein is subject to the Uniform Administrative Requirements of 2 C.F.R. Part 200, *et seq.*; any additional requirements set forth by the federal funding agency; all applicable regulations published in the Code of Federal Regulations; and other program guidance as provided to it by OSLI.

8. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed by all parties to this Agreement.
- B. **Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Agreement as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. **Agreement Shall Not be Used as Collateral.** The Borrower shall not use this Agreement, or any portion thereof, for collateral for any financial obligation without the prior written permission of OSLI.
- D. **Availability of Funds.** Each payment obligation of OSLI is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Agreement, the Agreement may be terminated by OSLI at the end of the period for which the funds are available. OSLI shall notify the Borrower at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the State, the Board, or OSLI in the event this provision is exercised, nor shall those entities be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- E. **Compliance with Laws.** The Borrower shall keep informed of and comply with all applicable federal, state, and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Agreement.
- F. **Entirety of Agreement.** This Loan Agreement consisting of sixteen (16) pages; and Attachment A, Amortization Schedule, consisting of one (1) page; represent the entire and integrated Agreement between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Agreement and the language of any attachment or document incorporated by reference, the language of this Agreement shall control.

- G. Ethics.** The Borrower shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*).
- H. Extensions.** Nothing in this Agreement shall be interpreted or deemed to create an expectation that this Agreement will be extended beyond the term described herein.
- I. Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- J. Indemnification.** Each party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
- K. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing either by regular mail or delivery in person at the addresses provided under this Agreement.
- L. Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- M. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming, the Board, and OSLI expressly reserve sovereign immunity by entering into this Agreement and the Borrower expressly reserves governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable law. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to immunity shall be construed in favor of immunity.
- N. Termination of Agreement.** This Agreement may be terminated, without cause, by the Agency upon thirty (30) days written notice. This Agreement may be terminated by the Agency immediately for cause if the Borrower fails to perform in accordance with the terms of this Agreement.

- O. Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.
- P. Time is of the Essence.** Time is of the essence in all provisions of this Agreement.
- Q. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Agreement.
- R. Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

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

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

IN TESTIMONY WHEREOF, I, Mark Gordon, President of the Wyoming State Loan and Investment Board, have executed these presents and caused the official seal of the Wyoming State Loan and Investment Board of the State of Wyoming to be affixed hereto at the City of Cheyenne, State of Wyoming, this _____ day of _____, 2024.

WYOMING STATE LOAN AND INVESTMENT BOARD

BY: _____

Governor Mark Gordon

ATTEST:

Jason Crowder, Interim Director

Wyoming Office of State Lands and Investments

City of Lander

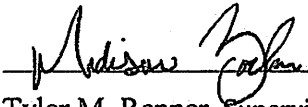
BY: _____

City of Lander

ATTEST:

City of Lander

Attorney General's Office Approval as to Form:

 # 241347 10/18/24
For: Tyler M. Renner, Supervising Attorney General