

**ARPA GRANT AGREEMENT BETWEEN
STATE OF WYOMING, OFFICE OF STATE LANDS AND INVESTMENTS
AND
CITY OF LANDER**

1. **Parties.** The parties to this Reimbursement Agreement (Agreement) are the State of Wyoming, Office of State Lands and Investments (OSLI), whose address is: 122 West 25th Street, Cheyenne, Wyoming, 82001, and the grant recipient, City of Lander (Grantee), whose address is: 240 Lincoln Street, Lander, WY 82520.
2. **Purpose of Agreement.** The purpose of this Agreement is to set forth the terms and conditions by which OSLI will disburse State and Local Fiscal Recovery Funds (Grant Funds) pursuant to the American Recovery Plan Act (ARPA) and 2022 Wyo. Sess. Laws Ch. 50 § 2(c), FN 18. Grant Funds disbursed under this Agreement shall reimburse only expenditures for the Project approved by the State Loan and Investment Board (the Board) pursuant to Chapter 40 of the Board's rules.
3. **Term of Agreement.** This Agreement is effective when all parties have executed it (Effective Date). The term of the Agreement is from the Effective Date through the end of the period during which the Inspector General for the U.S. Department of the Treasury may audit the State's use of ARPA Funds.
4. **Payment.**
 - A. OSLI shall disburse Grant Funds to the Grantee to reimburse Project expenditures. Total reimbursements under this Agreement shall not exceed two million, six hundred forty thousand dollars (\$2,640,000.00). Disbursements from OSLI shall be made within forty-five (45) days after submission of an invoice.
 - B. Should the reimbursement requested by the Grantee fail to comply with all federal and State laws, Board rules, and the terms and conditions set forth in this Agreement, OSLI shall not disburse Grant Funds.
5. **Responsibilities of Grantee.** The Grantee agrees:
 - A. **Drawing Funds.**
 - (i) The Grantee shall request reimbursement only for expenses incurred completing the Project described in the application attached to and incorporated into this Agreement as Attachment A.
 - (ii) The Grantee shall submit a request for reimbursement accompanied by invoices and supported by adequate proof that such obligations are due and

owing and have been incurred for expenses that are eligible pursuant to this Agreement, Board rules, and all relevant federal and State laws. Grant Funds shall not be spent for any other purpose or project.

B. Construction. The Grantee shall:

- (i)** Make arrangements for appropriate professional supervision and management of the Project.
- (ii)** Provide to OSLI all project plans and specifications.
- (iii)** Be solely responsible for its compliance with all applicable state statutes, including but not limited to, state statutes regarding local preferences, procurement, accounting, and contractor retainage accounts.
- (iv)** Provide the OSLI with access to all information on all aspects of the project and make available for inspection such documents and reports on the progress of the work and on the results of tests of materials and workmanship or other information as may be requested by the OSLI.
- (v)** Establish payment schedules providing that all work shall be completed prior to December 31, 2026.
- (vi)** Ensure that all Grant Funds are encumbered by October 31, 2024 and expended by December 31, 2026.
- (vii)** If the Project has not been bid before the Effective Date, submit to OSLI the following materials prior to issuing an advertisement for bids:
 - a)** An attorney's title opinion, a letter and documents from a title company or abstractor, or other proof and certification acceptable to the OSLI that all access, easements, and rights-of-way for the construction and long term operation and maintenance of the Project have been secured and recorded;
 - b)** Engineer's cost estimate and proposed construction budget for the Project;
- (viii)** The Grantee shall keep OSLI staff informed on a contractor's plan for use of a Retainage Account pursuant to Wyo. Stat. §§ 16-6-702, -704, and -705. The Grantee shall provide to OSLI Retainage or Interest Bearing account documentation in order for OSLI to send retainage funds to the Grantee for deposit in the contractor's identified retainage account.
- (ix)** The Grantee shall require a completed Affidavit Acknowledging Payment to Materialmen, Subcontractors and Laborers (available at

<http://lands.wyo.gov>) from Prime Contractor with all requests for progress payment beginning with the second request pursuant to Wyo. Stat. § 16-6-1001(a)(iv).

(x) The Grantee shall submit Final Payment Documentation to OS LI pursuant to Wyo. Stat. §§ 16-6-116, -117, and 15-1-113(h), to the extent those provisions are applicable to the Project.

(xi) Prior to ordering a change to the project, the Grantee shall submit proposed changes to OS LI for review. The State shall have a minimum of five (5) business days to review the proposed change. Upon written approval of OS LI, the Grantee shall execute an amendment or change order to affected agreements. If the Grantee executes an amendment or change order without OS LI approval, OS LI reserves the right to withhold reimbursement for such a request until it is able to confirm the change complied with Board rules and all relevant federal and State laws. If the change does not comply with Board rules and all relevant federal and State laws, OS LI shall not disburse any funds for expenses related to the change.

C. The Grantee shall establish and maintain sufficient internal controls to ensure that Grant Funds are spent in accordance with this Agreement, Board rules, and all State and federal laws.

D. The Grantee shall comply with all applicable state and federal laws, rules, and regulations, including compliance with any applicable provisions of Wyo. Stat. § 16-6-1001 and all applicable state procurement laws.

6. **Responsibilities of Agency** The Agency agrees:

A. To disburse Grant Funds to the Grantee as set forth in Section 5 above.

7. **Special Provisions.**

A. **Administration of Federal Funds.** The Grantee agree its use of the Grant Funds awarded herein is subject to Uniform Administrative Requirements of 2 C.F.R. Part 200, *et seq.*; any additional requirements set forth by the U.S. Department of the Treasury; all applicable regulations published pursuant to section 602 and 603 of the Social Security Act; 31 C.F.R. Part 35; and all guidance issued by Treasury regarding the foregoing. The Grantee shall take all necessary actions to comply with all requirements for the use of these federal funds.

B. **Ineligible Expenditures.** If OS LI or the Inspector General for the U.S. Department of the Treasury determines that any of the Grant Funds were not utilized for an eligible expense under ARPA, the Grantee shall repay such funds within fourteen (14) days to OS LI. In the event the Grantee does not repay the Grant Funds, the

obligation shall be booked as a debt of the Grantee owed to the State of Wyoming. The Grantee further agrees to provide OS LI, upon request, a full and complete accounting as to the use of the Grant Funds; said accounting to be done in accordance with generally accepted accounting principles and shall be provided to the OS LI within a reasonable time.

- C. **State Inspection of Records.** OS LI, or another approved designee of the Board, may perform an audit or examination of the books and records of the Grantee at any time and without notice, and that the Board or its designee may at any time without notice perform on-site visits and inspections of the project being funded.
- D. **Federal Audit and Access to Records.** The Inspector General for the U.S. Department of the Treasury shall have access to any books, documents, papers, electronic data and records of the Grantee which are pertinent to this Agreement.
- E. **Board Rules.** The grant and this Agreement are governed by Chapter 40 of the Board's rules and subject to all applicable provisions therein. In the event of any inconsistency between this Agreement and the Board's rules, the Board's rules shall control.

8. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties 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. **Assignment Prohibited and Agreement Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The Grantee shall not use this Agreement, or any portion thereof for collateral for any financial obligation without the prior written permission of OS LI.
- D. **Availability of Funds.** Each disbursement obligation under this Agreement 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, this Agreement may be terminated at the end of the

period for which funds are available. OS LI shall notify the Grantee at the earliest possible time if this Agreement will or may be affected by a funding shortage. No penalty shall accrue to OS LI in the event this provision is exercised, and OS LI shall not be obligated or liable for any future payments as a result of termination under this section.

- E. Compliance with Laws.** The Grantee shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.
- F. Entirety of Agreement.** This Agreement, consisting of eight (8) pages, and Attachment A, consisting of eighteen (18) pages, 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. Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes completely 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.
- H. 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.
- I. No Employment Relationship.** The Grantee shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Agreement, the Grantee shall be free from control or direction over the details of the performance of its duties under this Agreement. The Grantee shall assume sole responsibility for any debts or liabilities that may be incurred by the Grantee in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Grantee or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or OS LI or to incur any obligation of any kind on behalf of the State of Wyoming or OS LI. The Grantee agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the Grantee or the Grantee's agents or employees as a result of this Agreement.

- J. Nondiscrimination.** The Grantee shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. Ann. § 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.
- 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. Single Audit Requirements.** The Grantee 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 may be required to undergo an organization-wide financial and compliance single audit. If an audit is required, the Grantee 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 Grantee 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.
- N. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and OSLI expressly reserve sovereign immunity by entering into this Agreement and the Grantee expressly reserves governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereign 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.
- 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.
- S. Counterparts.** This Agreement may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Agreement. Delivery by the Grantee of an originally signed counterpart of this Agreement by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to OSLI.

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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 signatory for the Grantee also hereby certifies that he or she is authorized to sign this Agreement on behalf of the Grantee and bind the Grantee to the terms herein.

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

STATE OF WYOMING, OFFICE OF STATE LANDS AND INVESTMENTS:

Jenifer E. Scoggin, Director

Date


GRANTEE:
City of Lander

Signature

Date

Printed Name and Title

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

 #236491

Tyler M. Renner, Supervising Attorney General

02-08-2024
Date