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Cheyenne, WY 82002  
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To: The Honorable Seth Coleman

From: **Stephanie Horton, CDBG Project Manager**  
**Community Development Division**  
**214 W. 15<sup>th</sup> Street**  
**Cheyenne, WY 82002**  
307.777.2813

Date: 4/3/2018

Re: Grant Agreement – copies for signature

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Dear Mayor Coleman;

Enclosed is the original copy of the Grant Agreement and three original signature pages for the Asbestos Cement Water Line Replacement project funded through the Community Development Block Grant Program.

Please sign and date both copies and return to me in the self-addressed envelope provided for your convenience.

Do not make any changes, strike outs or use white-out on the contract without contacting our office as this will make the contract null and void.

Thank you,

A handwritten signature in black ink that reads "Stephanie Horton". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Stephanie Horton

**COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT BETWEEN THE  
WYOMING BUSINESS COUNCIL, COMMUNITY DEVELOPMENT DIVISION  
AND THE TOWN OF MILLS**

1. **Parties.** The parties to this Agreement are the Wyoming Business Council, Community Development Division (Council), whose address is 214 West 15<sup>th</sup> Street, Cheyenne, Wyoming 82002 and the town of Mills, Wyoming (Grantee), whose address is 704 4<sup>th</sup> Street, Mills, Wyoming 82644 (DUNS #041608522).
2. **Purpose of Grant Agreement.** The purpose of this Agreement is to set forth the terms and conditions by which the Council shall provide federal Community Development Block Grant (CDBG) (CFDA #14.228) funds to Grantee in the amount set forth in Section 4 below, and Grantee shall undertake and complete materials, projects and/or services (Project) described in Attachments A and B, which are attached to and incorporated into this Agreement by this reference. Performance by Grantee (and any Subgrantee hereunder) of the requirements of this Agreement and compliance with all CDBG program rules and regulations is a condition to Grantee's receipt of monies hereunder (FAIN #B-17-56-0001).
3. **Term of Grant Agreement and Required Approvals.** This Agreement is effective when all parties have executed it and all required approvals have been granted (Effective Date). All construction services shall be completed by December 31, 2019 unless otherwise amended or terminated in accordance with the terms and conditions specifically provided herein. This Agreement shall terminate on December 31, 2024.
4. **Payment.**
  - A. Council agrees to grant monies to Grantee for the Project as invoices are submitted for work done in connection with the Project and completed in accordance with the requirements of this Agreement. The total payment to Grantee under this Agreement shall not exceed four hundred ninety-eight thousand, eight hundred fifty-seven dollars (\$498,857.00). Payment will be made following Grantee's delivery to Council of invoices detailing services performed in connection with the Project in a form satisfactory to Council. Payment shall be made from Council's CDBG budget pursuant to the schedule shown on Attachment A. Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Grantee shall submit invoices in sufficient detail to ensure that payments may be made in conformance with the Agreement.
  - B. No payment shall be made for work performed before the Effective Date of this Agreement. Should the Grantee fail to perform in a manner consistent with the terms and conditions set forth in this Agreement, payment under this Agreement may be withheld until such time as the Grantee performs its duties and responsibilities to the satisfaction of Council.
  - C. Except as otherwise provided in this Agreement, the Grantee shall pay all costs and expenses, including travel, incurred by Grantee or on its behalf in connection with

Grantee's performance and compliance with all of Grantee's obligations under this Agreement.

5. **Responsibilities of Grantee.**

In undertaking and completing the Project, the Grantee agrees as follows:

- A. Required Compliance.** This section will include but not be limited to: Two (2) hearings required for public participation, Change of Use of Real Property, Federal procurement, Davis-Bacon and labor requirements, environmental review requirements, required monitorings and Federal audit.
- (i) Grantee is required to hold two (2) public hearings. The first public hearing shall be held before application is submitted and the second shall be held before receipt of final payment. Documentation of notice and affidavit of publication for each public hearing must be sent to the Council.
- B. Budget.** The Project and Project Budget (Budget) are described in Attachment A. In addition:
- (i) Grantee agrees it will not exceed any of the line item totals listed in the Budget by more than twenty percent (20%) without prior approval from Council. Such changes will not result in any change in the total Project costs, or any change in the Grant amount.
  - (ii) In the Budget, "Non Construction Costs" include: appraisal, architectural, engineering, and project inspection fees; "Construction Costs" include: site work, materials, labor, utilities, and contingencies.
  - (iii) This grant is incrementally funded as costs are incurred according to the Budget.
  - (iv) The Council will release funds only after payment vouchers or invoices approved by the Grantee are submitted to the Council. All Grantees will be required to conduct debarment checks on their subgrantees before drawdowns will be processed. After receipt of cash requests and billing documentation, the Council will pay eighty percent (80%) of each invoice billed. Verification of all in-kind contributions must be submitted to the Council.
  - (v) If actual costs of the Project exceed the Budget, Grantee agrees to pay the difference in the amount of funds awarded through the CDBG program and the actual costs of the completed Project. If there is additional funding for the Project, the Grantee must provide the Council with all necessary information regarding the funding.

(vi) For a consultant to be reimbursed for travel expenses, the following documentation must be provided to the Council:

- (a) Date of the trip;
- (b) Reason for the trip;
- (c) Person(s) making the trip;
- (d) Amount of miles charged and at what rate; and
- (e) Receipts for lodging and meals (if over fifteen dollars (\$15.00) an itemized receipt is required).

**C. Community Development Plan.** Grantee shall develop a community development plan that identifies community development and housing needs and specifies both short and long-term community development objectives that have been developed in accordance with the primary goals of the CDBG program, as described in 24 CFR 570 Subpart C, and the requirements of 24 CFR Part 91. Grantees using CDBG funds for housing related projects shall also submit a brief narrative describing how they determined their need for their housing program to include pertinent local housing data, surveys, or statistics. The plan should include:

- (i) The needs of low to moderate income individuals; and
- (ii) A plan to minimize displacement of citizens because of Project activities. By signing this Agreement, Grantee certifies that it will comply with the requirements of 24 CFR 570.606 and 24 CFR Part 42 and concerning displacement, relocation assistance, acquisition, and replacement of housing and that it will maintain records in sufficient detail to demonstrate compliance with this section.

**D. Compliance with Laws.** In the interpretation, execution, administration, and enforcement of this Agreement, Grantee agrees to 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. Additional requirements and other certifications being made by Grantee as a part of this Agreement are more particularly described in Attachment B.

**E. Copies of Written Product.** If the Project includes a final printed or written product such as a brochure, report, book, or poster. Grantee agrees to provide one (1) copy of such product upon its completion to Council without charge.

**F. Grantee Project Monitoring/Recordkeeping.** The Grantee agrees to establish and maintain recordkeeping requirements and to retain Project records in sufficient detail to facilitate reviews and audits in compliance with 24 CFR § 570.490(b), including but not limited to, Project expenditures paid for with funds provided from this Agreement, match contributed (cash and in-kind), program income received, how program income was and/or will be used and proof of compliance with other Federal requirements as identified in this Agreement. The Grantee will monitor

Project activities during the entirety of the Agreement. This includes site inspections, file reviews which shall include verification that the national objective is being met as well as documentation on the validity of the methodology used to ensure compliance with the national objective. The Grantee shall also assure that any Subgrantee adheres to the terms set out in Attachment B of the Agreement. There will be a mid-monitoring meeting scheduled for all projects that have expended fifty percent (50%) of the grant to ensure that all federal requirements are being adhered to.

- G. Indirect Costs.** There is no indirect cost rate for this Agreement and the Council will not reimburse Grantee for indirect costs.
- H. Performance Measures.** Grantee will be required to provide information as requested by the State of Wyoming and the Council.
- I. Procurement Requirements.** Grantee agrees to comply with the Wyoming Preference Act, Preference for State Laborers (Wyo. Stat. § 16-6-201 through 16-6-206) and with federal procurement regulations as stated in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (hereinafter 2 CFR Part 200). Grantee further agrees that:
  - (i)** Consultants used in connection with the Project must be chosen by Grantee on a competitive basis.
  - (ii)** Conflict of interest provisions shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.
  - (iii)** A letter will be provided to the Council from a qualified engineer certifying the completion of Project construction and that all construction standards were adhered to during construction.
- J. Professional Services.** The Grantee agrees to perform all aspects of the Project in a professional manner and in accordance with the degree of care, competence, and skills that would be exercised by a Grantee under similar circumstances, to the satisfaction of the Council.
- K. Program Income.** Grantee shall not deposit grant funds in an interest-bearing account without prior approval of the Council. Some or all income attributable to the grant funds distributed under this Agreement may be used to continue the activity from which it was generated or returned to the Council. Program income received and retained by the Grantee shall be treated as additional CDBG funds and is subject to all applicable requirements of 24 CFR Part 570.489(e).

**L. Reporting.**

- (i) **Quarterly Reports.** Within fifteen (15) calendar days after the conclusion of each calendar quarter during the Term of this Agreement, Grantee shall furnish Council with a progress report, in a format prescribed by the Council. Each progress report shall set forth, in narrative form, the Project work accomplished under the Grant during the quarter and a financial status report that includes a detailed accounting of Project expenditures, cash and in-kind match expenditures, program income received and how program income was or will be used. Grantee shall certify, under penalty of false swearing, that the information in the report is true.
- (ii) **Final Report.** At the end of the Term of this Agreement, Grantee shall furnish Council with a comprehensive report of the Project and accomplishments and personnel retained pursuant to the Agreement. Grantee shall likewise furnish Council with a cumulative detailed financial statement reflecting total Project expenditures, cash and in-kind match expenditures, private funds leveraged, program income received and how the program income was used. Grantee shall certify, under penalty of false swearing, that the information in the report is true and shall also provide a letter certifying the completion of the Project and that all required construction standards were adhered to relative to the construction of this Project.
- (iii) **Annual Reports.** After completion of Project construction and for five (5) years thereafter, the Grantee shall furnish the Council with annual reports detailing program income and other performance measures as requested. All reports must be submitted within thirty (30) days from the end of the calendar year.

**M. Retention of Records.** Grantee agrees to retain all records related to the Project which are required to be retained pursuant to this Agreement or CDBG program rules and regulations for five (5) years following Council's date of notice to Grantee of administrative closeout of the Grant.

**N. Change of Use of Real Property.** Grantee agrees that any real property acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (2 CFR 200.88) shall comply with the standards described in 24 CFR Part 570.489(j). These standards shall apply from the date CDBG funds are first spent for the property until five (5) years after closeout of the project.

**O. Training.** Grantee must attend CDBG training provided by Council staff before Council will pay any funds to the Grantee.

**6. Responsibilities of Council.** Council will, at its discretion, assist in providing Grantee

access to information including, without limitation, providing Grantee with information concerning CDBG program requirements, rules and regulations and other statutes and regulations referred to herein, and will cooperate with Grantee whenever possible. Council shall have no obligations, other than those specifically set forth herein, regarding the Project or its performance.

7. **Special Provisions.**

- A. Assumption of Risk.** The Grantee shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Grantee's failure to comply with state or federal requirements. The Council shall notify the Grantee of any state or federal determination of noncompliance.
- B. Environmental Policy Acts.** Grantee agrees all activities under this Agreement will comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental protection laws, rules or regulations.
- C. Human Trafficking.** As required by 22 U.S.C. § 7104(g) and 2 CFR Part 175, this Agreement may be terminated without penalty if a private entity that receives funds under this Agreement:
- (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.
- D. Kickbacks.** Grantee 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 Grantee breaches or violates this warranty, Council may, at its discretion, terminate this Agreement without liability to Council, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.
- (i) The Grantee 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 Grantee 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.

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

(i) Grantee and subgrantees may also be required to submit an additional certification statement and disclosure form acceptable to the Council before commencement of the work.

**F. Monitoring of Activities, Evaluation, and Access.** Council shall have the right and Grantee hereby agrees to allow Council, the State, the U.S. Inspector General, the U.S. Department of Housing and Urban Development (HUD), the U.S. General Accounting Office, and any of their duly authorized representatives to:

(i) Conduct two monitorings (one at project mid-point and one at close-out). At any time, if Council documents non-compliance, corrective actions may include:

(a) Immediately terminating the grant agreement without further liability or obligation of the Council.

(b) Issuing a letter of warning advising the grantee of the deficiency and putting the grantee on notice that additional action will be taken if the deficiency is not corrected or is repeated.

(c) Recommending or requesting grantee to submit proposals for corrective actions including the correction or removal of the causes of the deficiency.

(d) Advising grantee that certification will no longer be acceptable and that additional assurances will be required in such form and detail as Council and HUD may require

(e) Advising grantee to suspend disbursement of funds for the deficient activity

(f) Advising grantee to reimburse any amounts improperly expended and reprogram the use of funds in accordance with applicable requirements

(g) Changing the method of payment to grantee

(h) Reducing, withdrawing or adjusting the amount of the grant

(i) Taking enforcement action as described in 2 CFR Part 200.338



- (ii) Have access at any time to any books, ledgers, documents, papers, and records of Grantee related to the Project or any activities related to this Agreement including all such records and activities of any sub-Grantee of Grantee hereunder (Records); and
- (iii) Make site inspections at any time and with reasonable notice, and bring experts and consultants on Grantee's site; and
- (iv) Observe all Grantee personnel on site in every phase of performance of this Agreement and the Project, for purposes which include but are not limited to: audit and examination of Records, copying of Records, examination or evaluation of completed work or work in progress in connection with the Project, determination as to Grantee's compliance with applicable laws and regulations as required hereunder, and to evaluate Grantee's fiscal and administrative compliance with this Agreement and CDBG program rules and regulations; and
- (v) Grantee shall, immediately upon receiving written request from Council, the Comptroller General, or HUD, provide to any independent auditor, accountant, or accounting firm, all Records pertinent to this Agreement in such form and detail as Council and HUD may require. Grantee shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any such audit.

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

- (i) Federal law requires the Grantee to include all relevant special provisions of this Agreement in every subagreement awarded over ten thousand dollars (\$10,000.00) so that such provisions are binding on each subgrantee.

**H. No Finder's Fees:** No finder's fee, employment agency fee, or other such fee related to the procurement of this Agreement, shall be paid by either party.

**I. Publicity.** Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Grantee and related to the services and work to be performed under this Agreement, shall identify the Council as the sponsoring agency and shall not be released without prior written approval of Council.

- J. Suspension and Debarment.** By signing this Agreement, Grantee certifies that neither it nor its principals/agents are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction or from receiving federal financial or nonfinancial assistance, nor are any of the participants involved in the execution of this Agreement suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension), 44 CFR Part 17, or 2 CFR Part 180, or are on the debarred, or otherwise ineligible, vendors lists maintained by the federal government. Further, Grantee agrees to notify Council by certified mail should it or any of its principals/agents become ineligible for payment, debarred, suspended, or voluntarily excluded from receiving federal funds during the term of this Agreement.
- K. Administration of Federal Funds.** Grantee 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 Council.
- L. Copyright License and Patent Rights.** Grantee acknowledges that federal grantor, the State of Wyoming, and Council reserve a royalty-free, nonexclusive, unlimited, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal and state government purposes: (1) the copyright in any work developed under this Agreement; and (2) any rights of copyright to which Grantee purchases ownership using funds awarded under this Agreement. Grantee must consult with Council regarding any patent rights that arise from, or are purchased with, funds awarded under this Agreement.
- M. Federal Audit Requirements.** 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 must undergo an organization-wide financial and compliance single audit. 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, Grantee shall provide one (1) copy of the audit report to Council and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to Council's records.
- N. Non-Supplanting Certification.** Grantee hereby affirms that federal grant funds will be used to supplement existing funds, and shall not replace (supplant) funds that have been appropriated for the same purpose. Grantee should be able to document that any reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds under this Agreement.
- O. Program Income.** Grantee shall not deposit grant funds in an interest bearing account without prior approval of Council. Any income attributable to the grant funds distributed under this Agreement must be used to increase the scope of the

program or returned to Council.

P. **Training.** Grantee must attend CDBG training provided by Council staff before Council will pay any funds to the Grantee.

8. **Default and Remedies.** In the event Grantee or any Subgrantee of Grantee under this Agreement defaults or is deficient in the performance of any term of this Grant or any requirements of the CDBG program rules and regulations, then Council and/or HUD shall have the right to exercise all remedies provided by law or in equity, including without limitation:

- A. Immediately terminating this Agreement without further liability or obligation of Council;
- B. Issuing a letter of warning advising Grantee of the deficiency and putting the Grantee on notice that additional action will be taken if the deficiency is not corrected or is repeated;
- C. Recommending or requesting Grantee to submit proposals for corrective actions, including the correction or removal of the causes of the deficiency;
- D. Advising Grantee that a certification will no longer be acceptable and that additional assurances will be required in such form and detail as Council and HUD may require;
- E. Advising Grantee to suspend disbursement of funds for the deficient activity;
- F. Advising Grantee to reimburse any amounts improperly expended and reprogram the use of the funds in accordance with applicable requirements;
- G. Changing the method of payment to Grantee;
- H. Reducing, withdrawing, or adjusting the amount of the Grant;
- I. Taking enforcement action as described in 2 CFR Part 200.338.

9. **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. 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 the Council.
- D. Audit and Access to Records.** The Council and its representatives shall have access to any books, documents, papers, electronic data, and records of the Grantee which are pertinent to this Agreement. The Grantee shall immediately, upon receiving written instruction from the Council, provide to any independent auditor or accountant all books, documents, papers, electronic data, and records of the Grantee which are pertinent to this Agreement. The Grantee shall cooperate fully with any such independent auditor or accountant during the entire course of any audit authorized by the Council.
- E. Availability of Funds.** Each payment obligation of the Council is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Agreement, the Agreement may be terminated by the Council at the end of the period for which the funds are available. The Council shall notify the Grantee at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Council in the event this provision is exercised, and the Council shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. Award of Related Agreements.** The Council may award supplemental or successor agreements for work related to this Agreement or may award agreements to other grantees for work related to this Agreement. The Grantee shall cooperate fully with other grantees and the Council in all such cases.
- G. Certificate of Good Standing.** The Grantee shall provide to the Council a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Grantee is authorized to conduct business in the State of Wyoming, if required, before performing work under this Agreement. Grantee shall ensure that annual filings and corporate taxes due and owing to the Secretary of State's office are up-to-date before signing this Agreement.
- H. Compliance with Laws.** The Grantee shall keep informed of and comply with all applicable federal, state, and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Agreement.

- I. Confidentiality of Information.** Except when disclosure is required by the Wyoming Public Records Act or court order, all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Grantee in the performance of this Agreement shall be kept confidential by the Grantee unless written permission is granted by the Council for its release. If and when Grantee receives a request for information subject to this Agreement, Grantee shall notify Council within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Council.
- J. Entirety of Agreement.** This Agreement, consisting of sixteen (16) pages; Attachment A, Project Information, consisting of one (1) page; and Attachment B, Compliance, consisting of three (3) 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.
- K. Ethics.** Grantee shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Grantee's profession.
- L. 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. Any extension of this Agreement shall be initiated by the Council and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Agreement or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Agreement.
- M. 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.
- N. 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.

- O. Independent Contractor.** The Grantee shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Agreement, the Grantee shall be free from control or direction over the details of the performance of services 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 the Council or to incur any obligation of any kind on behalf of the State of Wyoming or the Council. 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.
- P. 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.
- Q. Ownership and Destruction of Documents and Information.** Council owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Grantee in the performance of this Agreement. Upon termination of services, for any reason, Grantee agrees to return all such original and derivative information and documents to the Council in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Council's verified receipt of such information, Grantee agrees to physically and electronically destroy any residual Council-owned data, regardless of format, and any other storage media or areas containing such information. Grantee agrees to provide written notice to Council confirming the destruction of any such residual Council-owned data.
- R. Patent or Copyright Protection.** The Grantee recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Grantee or its subcontractors will violate any such restriction. The Grantee shall defend and indemnify the Council for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- S. Prior Approval.** This Agreement shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Agreement has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).

- T. Insurance Requirements.** Grantee is protected by the Wyoming Governmental Claims Act, Wyo. Stat. § 1-39-101, et seq., and certifies that it is a member of the Wyoming Association of Risk Management (WARM) pool or the Local Government Liability Pool (LGLP), Wyo. Stat. § 1-42-201, et seq., and shall provide a letter verifying its participation in the WARM or LGLP to the Council.
- U. 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.
- V. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and Council expressly reserve sovereign immunity by entering into this Agreement and the Grantee 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.
- W. Taxes.** The Grantee shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- X. Termination of Agreement.** This Agreement may be terminated, without cause, by the Council upon thirty (30) days written notice. This Agreement may be terminated by the Council immediately for cause if the Grantee fails to perform in accordance with the terms of this Agreement. If at any time during the performance of this Agreement, in the opinion of the Council, the work is not progressing satisfactorily or within the terms of this Agreement, then, at the discretion of the Council and after written notice to the Grantee, the Council may terminate this Agreement or any part of it. As of the termination date, the Grantee will be entitled to a pro rata payment for all work accomplished and accepted by the Council; however, the Grantee shall be liable to the Council for the entire cost of replacement services for the duration of the Agreement term.
- Y. 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.

- Z. Time is of the Essence.** Time is of the essence in all provisions of this Agreement.
- AA. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Agreement.
- BB. 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.
- CC. 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 the Council. The Grantee's failure to deliver, either personally or via US Mail, postage prepaid, the originally signed counterpart to the Council within five (5) business days shall be considered a material breach and may result in immediate termination of this Agreement by the Council.
- DD. Minority Business Enterprise.** Grantee is strongly encouraged to actively promote and encourage maximum participation of Minority Business Enterprises (MBE) as sources of supplies, equipment, construction and services in connection with performance of the Project.
- EE. Office Space.** Grantee will not include charges or seek reimbursement in any invoice submitted to Council for office or building space of any kind obtained by Grantee for the performance of the Project. Grantee will make no charge for office or building spaces unless specific provisions are included for such in this Agreement. Under no circumstances will Grantee be allowed to purchase office equipment with funds received through this agreement.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**



10. **Signatures.** By signing this Agreement, the parties represent and warrant that they have read and understood it, that they agree to be bound by the terms of the Agreement, that they have the authority to sign it, and that they have received a signed and dated copy of the Agreement.

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

**COUNCIL:**  
WYOMING BUSINESS COUNCIL

\_\_\_\_\_  
Shawn Reese, Chief Executive Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Julie Kozlowski, Director  
Community Development

\_\_\_\_\_  
Date

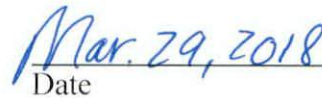
**GRANTEE:**  
TOWN OF MILLS

\_\_\_\_\_  
Seth Coleman, Mayor

\_\_\_\_\_  
Date

**ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM**

 # 179257  
Margaret A.R. Schwartz, Assistant Attorney General

  
Date

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**COUNCIL:**  
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\_\_\_\_\_  
Shawn Reese, Chief Executive Officer

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Date

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Julie Kozlowski, Director  
Community Development

\_\_\_\_\_  
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**GRANTEE:**  
TOWN OF MILLS

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Seth Coleman, Mayor

\_\_\_\_\_  
Date

**ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM**

 #179257  
Margaret A.R. Schwartz, Assistant Attorney General

  
Date



TEL 307.777.2800 FAX 307.777.2837  
214 WEST 15TH STREET • CHEYENNE, WY 82002  
[www.wyomingbusiness.org](http://www.wyomingbusiness.org)

To: Mayor Coleman

From: **Brayden Connour, BRC/CDBG Project Manager**  
**Community Development Division**  
214 W. 15<sup>th</sup> Street  
Cheyenne, WY 82002  
307.777.2811

Date: 3/23/2018

Re: Amendment One to the Grant Agreement.

---

Dear Mayor Coleman,

Enclosed is an original copy of Amendment One to the Grant Agreement for the Water Well and Water Loop Project funded through the Community Development Block Grant Program.

Please sign and date where marked on the page 3, and return to me in the self-addressed envelope provided for your convenience.

Do not make any changes, strike outs or use white-out on the contract without contacting our office as this will make the contract null and void.

Thank you,

Brayden Connour

**AMENDMENT NUMBER ONE TO THE GRANT AGREEMENT BETWEEN THE  
WYOMING BUSINESS COUNCIL AND THE TOWN OF MILLS**

1. **Parties.** This Amendment is made and entered into by and between the Wyoming Business Council (Council), whose address is 214 West 15<sup>th</sup> Street, Cheyenne, WY 82002; and the Town of Mills, a political subdivision of the State of Wyoming (Grantee), whose address is 704 4th Street, Mills, WY, 82644.
2. **Purpose of Amendment.** This Amendment shall constitute the first amendment to the Agreement between the Council and the Grantee. The purpose of this Amendment is to amend the Responsibilities of the Grantee.

The original Agreement, dated March 18, 2016, required the Grantee to re-drill water well #6 and loop dead-end water lines to restore the water flow to 450 gallons per minute for a total Agreement amount of three hundred ninety-four thousand, nine hundred ninety-two dollars (\$394,992.00) with an expiration date of July 1, 2021.

3. **Term of the Amendment.** This Amendment shall commence upon the date the last required signature is affixed hereto and shall remain in full force and effect through the term of the Agreement, as amended, unless terminated at an earlier date pursuant to the provisions of the Agreement, or pursuant to federal or state statute, rule or regulation.
4. **Amended Responsibilities of Council.** Responsibilities of Council have not changed.
5. **Amended Responsibilities of Grantee.**

A. Section 5 of the original Contract is hereby amended to add Subsection L, which reads as follows:

“L. Perform a second public hearing and provide Council with all documentation of public input, upon completion of the Project.”

6. **Special Provisions**
  - A. **Same Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the original Agreement, and any previous amendments, between the Council and the Grantee, including but not limited to sovereign immunity, shall remain unchanged and in full force and effect.
  - B. **Counterparts.** This Amendment 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 Amendment. Delivery by the Grantee of an originally signed counterpart of this Amendment by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Council.

7. **General Provisions**

- A. **Entirety of Grant Agreement.** The original Agreement, consisting of thirteen (13) pages; Attachment A, Project Description, consisting of two (2) page; Attachment B, Compliance, consisting of three (3) pages; and this Amendment One, consisting of three (3) pages; represent the entire and integrated Agreement between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral.

**THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.**

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

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

**WYOMING BUSINESS COUNCIL**

\_\_\_\_\_  
Shawn Reese, Chief Executive Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Julie Kozlowski, Director  
Community Development Division

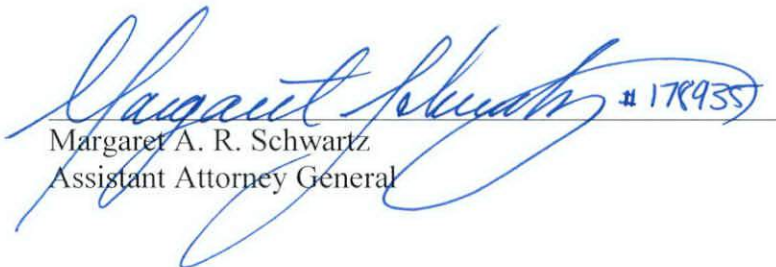
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Date

**TOWN OF MILLS**

\_\_\_\_\_  
Seth Coleman, Mayor  
Town of Mills

\_\_\_\_\_  
Date

**ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM**

 # 178935

Margaret A. R. Schwartz  
Assistant Attorney General

Mar. 22, 2018  
Date

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

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

**WYOMING BUSINESS COUNCIL**

\_\_\_\_\_  
Shawn Reese, Chief Executive Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Julie Kozlowski, Director  
Community Development Division

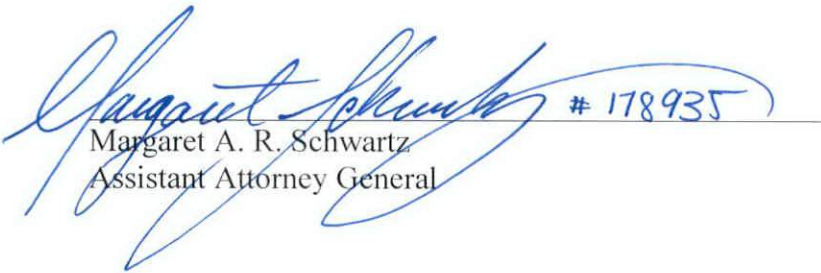
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Date

**TOWN OF MILLS**

\_\_\_\_\_  
Seth Coleman, Mayor  
Town of Mills

\_\_\_\_\_  
Date

**ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM**

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Margaret A. R. Schwartz  
Assistant Attorney General

\_\_\_\_\_  
Mar. 22, 2018  
Date