

## City of Cody City Council

Tuesday, February 21, 2023 – 7:00 p.m. (Pre-Meeting to begin at 6:53 p.m. to discuss agenda)

Meeting Place: City of Cody Council Chambers – 1338 Rumsey Avenue, Cody, WY

---

Meeting Called to Order

Pledge of Allegiance

Moment of Silence

Roll Call

Mayor's Recognitions and Announcements

### 1. Consent Calendar

All items under the consent calendar will be acted upon in one motion unless a Councilmember or member of the public requests that an individual item be taken up under Conduct of Business.

- a. Approval of Minutes: Regular Minutes from February 7, 2023, Special Work Session from February 14, 2023.
- b. Approve Vouchers and payroll in the amount of \$1,542,027.71.
- c. Consider approving a request to sponsor the 2023 Cody High School Graduation party for the amount not to exceed \$830.00.
- d. Approve a subdivision variance to allow Lots 4 and 5 of the Legacy Estates Subdivision to share a single sewer service.

### 2. Public Comments: The City Council welcomes input from the public. In order for everyone to be heard, please limit your comments to five (5) minutes per person. The Guidelines for the Conduct of City Council Meetings do not allow action to be taken on public comments.

### 3. Public Hearing

- a. A Public Hearing to consider if it is in the public's interest to issue a restaurant liquor license for Legionnaire Ent LLC dba Wyo-Dough located at 1244 Sheridan Ave. for the period through July 31, 2023.

### 4. Conduct of Business

- a. Consider issuing a restaurant liquor license for Legionnaire Ent LLC dba Wyo-Dough located at 1244 Sheridan Ave. for the period through July 31, 2023.

Staff Reference: Cindy Baker, Administrative Services Officer

- b. Resolution 2023-02

A resolution of the City of Cody, Wyoming Updating Fees and Charges Schedule for the Various Municipal Services and Products and Establish in an Effective Date of March 1, 2023 for Said Changes and/or Updates.

Spokesperson: Cindy Baker, Administrative Services Officer.

- c. Ordinance 2023-02 – Third and Final Reading  
An Ordinance to enter into a cable Franchise Agreement with Spectrum Pacific West LLC, L/K/A Charter Communications.  
Staff Reference: City Administrator, Barry Cook and/or Scott Kolpitcke, City Attorney
- d. Ordinance 2023-01 Second Reading  
An Ordinance Amending Title 10, Chapter 11 “Supplemental Development Standards for Commercial and Industrial Zoning District” Of the City of Cody Code.  
Staff Reference: Todd Stowell, City Panner
- e. Authorize the Mayor to enter into and sign the Grant Offer for the Bipartisan Infrastructure Law (BIL) - Airport Infrastructure Grant (AIG) Project No. 3-56-0006-045-2023 at the Yellowstone Regional Airport, contingent upon review by the City Attorney.  
Spokesperson: Aaron Buck, Yellow Regional Airport Manager

5. Tabled Items

- a. Consider awarding Bid 2022-18A to Muser Bros. Inc for the purchase of Lot 103 of the Benny’s Place Minor Subdivision for the amount of \$26,610.00.

6. Matters from Staff Members

7. Matters from Council Members

8. Adjournment

**Upcoming Meetings:**

**February 28, 2023 – Work Session 5:30 p.m.**

**March 7, 2023 – Regular Meeting – 7:00 p.m.**

**March 14, 2023 – Work Session 5:30 p.m.**

**March 21, 2023 – Regular Council Meeting – 7:00 p.m.**

**City of Cody**  
**Council Proceedings**  
**Tuesday, February 7, 2023**

A regular meeting of the Cody City Council was held in the Council Chambers at City Hall in Cody, Wyoming on Tuesday, February 7, 2023 at 7:00 p.m.

Present: Mayor Hall, Council Member, Andrew Quick, Jerry Fritz, Emily Swett, Lee Ann Reiter, Kelly Tamblyn and Don F. Shreve Jr. and City Attorney Scott Kolpitcke; City Administrator Barry Cook, and Cindy Baker, Administrative Services Officer.

Absent: None

Mayor Hall called the meeting to order at 7:00 p.m.

Council Member Quick made a motion seconded by Council Member Shreve to approve the Consent Calendar as presented including approval of Minutes Regular Minutes from January 17, 2023, Special Work Session from January 19, 2023 and Council Summit from February 2, 2023; approve Vouchers and payroll in the amount of \$1,053,962.78; award Bid 2022-18 – to The Armored Group LLC for one Ford F600 chassis with armored body in the amount of \$250,000. approve a request from the 2023 Cody High School Swim Team to sponsor their CHS Swim Fundraiser for the amount not to exceed \$150.00; authorize the Mayor to enter into and sign an Agreement for Encroachment License between the City of Cody and W.T. Phipps and Johanna Phipps, Trustees of the W.T. Phipps, Jr. Living Trust; approve a request from Samuel Hanna, on behalf of the Buffalo Bill Center of the West, to close Coe Circle in front of the Statute on Monday, February 27, 2023 for the Annual FFA wreath laying ceremony and allow traffic to be directed north through West Park Hospital's small parking lot, authorize City Administrator Barry Cook to sign the Amendment to the Agreement between the City of Cody and River Oaks Communication Corporation for the Spectrum cable franchise negotiations; authorize City Administrator, Barry Cook to sign the BOSS811 Software Subscription Service Agreement between the City of Cody and Business Oriented Software Solutions Inc. and approve the two-year appointment ending December 31, 2024 of Council Liaison as follows: Police Division – Council Members Swett & Fritz; Administration Council Members - Quick & Shreve; Parks, Recreation and Public Facilities Division - Council Members Tamblyn and Swett; Public Works Division – Council Members Fritz and Shreve; and Community Development Division – Council Members Reiter and Quick. Vote was unanimous.

At 7:01 p.m. Mayor Hall entered into a Public Hearing to consider if it is in the public interest for the City to adopt amendments to City Code Title 10, Chapter 11 – Supplemental Development Standards for Commercial and Industrial Zoning Districts. Todd Stowell, City Planner, provided background information relating to this item. After calling for comments three times and there being none, Mayor Hall closed the public hearing at 7:06 p.m.

At 7: 06 p.m. Mayor Hall entered into a second Public Hearing A Public Hearing to consider if it is in the public's interest to issue a restaurant liquor license for Ivan Werff Holdings LLC dba The Blanca Tatanka located at 1455 Sheridan Ave. for the period through July 31, 2023. Cindy Baker, Administrative Services Officer provided information relating to this item. After calling for comments three times and there being none, Mayor Hall closed the public hearing at 7:10 p.m.

At 7: 10 p.m. Mayor Hall entered into a third Public Hearing A Public Hearing to consider if it is in the public's interest to issue a restaurant liquor license for Withawd, LLC dba Pizza on the Run located at 1302 Sheridan Ave. for the period through July 31, 2023. Cindy Baker, Administrative Services Officer provided information relating to this item. After calling for comments three times and there being none, Mayor Hall closed the public hearing at 7:12 p.m.

Council Member Swett made a motion seconded by Council Member Reiter to issue a restaurant liquor license for Ivan Werff Holdings LLC dba The Blanca Tatanka located at 1455 Sheridan Ave. for the period through July 31, 2023 contingent upon receipt of valid food service permit from the Department of Ag and certificate of occupancy. Vote was unanimous.

Council Member Fritz made a motion seconded by Council Member Quick to issue aa restaurant liquor license for Withawd, LLC dba Pizza on the Run located at 1302 Sheridan Ave. for the period through July 31, 2023 Vote was unanimous.

Council Member Reiter made a motion seconded by Council Member Shreve to appoint Troy Kincheloe (Plumbing Contractor) to fill out the remining two-year term ending December 31, 2024, this appointment due to a recent resignation. Vote was unanimous.

Council Member Tamblyn made a motion seconded by Council Member Quick to appoint Carson Rowley and Chief Baker to the Cody Urban Systems and Traffic Committee for a three-year term ending December 31, 2025. Vote was unanimous.

Council Member Swett made a motion seconded by Council Member Reiter to table the item Bid 2022- 18A for the purchase of Lot 103 of the Benny’s Place Minor Subdivision. Vote was unanimous.

Ordinance 2023-02 – First Reading  
An Ordinance to enter into a cable Franchise Agreement with Spectrum Pacific West LLC, L/K/A Charter Communications. Council Member Shreve made a motion seconded by Council Member Tamblyn to approve Ordinance 2023-02 on First Reading. Vote was unanimous.

Ordinance 2023-01 First Reading  
An Ordinance Amending Title 10, Chapter 11 “Supplemental Development Standards for Commercial and Industrial Zoning District” Of the City of Cody Code. Council Member Quick made a motion seconded by Council Member Reiter to approve Ordinance 2023-01 on First Reading. Vote was unanimous.

Mayor Hall adjourned the meeting at 8: 20 p.m.

---

Mayor Matt Hall

---

Cindy Baker, Administrative Services Officer



**City of Cody**  
**Council Proceedings**  
**Tuesday, February 14, 2023**

A Leadership Summit meeting of the Cody City Council was held in the Council Chambers at City Hall on February 14, 2023 at 5:30 a.m.

Present: Mayor Matt Hall, Council Members Jerry, Fritz, Andrew Quick, Emily Swett, Kelly Tamblyn Lee Ann Reiter, Don F. Shreve Jr., Barry Cook, City Administrator, Scott Kolpitzke, City Attorney and Cindy Baker, Administrative Services Officer.

Absent: None

Mayor Hall called the meeting to order at 5:30 p.m.

Ordinance 2023-02- Second Reading  
An Ordinance to enter into a Cable Franchise Agreement with Spectrum Pacific West LLCC, L/K/A Charter Communications. Council Member Fritz made a motion seconded by Council Member Reiter to approve Ordinance 2023-02 on Second Reading. Vote was unanimous.

The Governing Body discussed Cody Club Room Fees. Staff was directed to revise the fee schedule by Resolution and present at the next Council meeting for consideration.

Phillip Bowman, Public Works Director, discussed with the Governing Body proposed changes to the City of Cody Electrical Distribution Standard Manual and Section XII - Net Metering Policy. Staff was provided direction on how to proceed.

The Governing Body discussed Airport Property Bid 2022-18A. No action was taken.

The Governing Body was provided updates on the following Boards or Committees:  
USNS CODY (EPF14) Christening Ceremony– Mayor Hall  
YCAN – Kelly Tamblyn  
Park County Supervised Treatment Program – Don F. Shreve Jr.  
Contractor Board – Lee Ann Reiter  
Community Development Liaison – Lee Ann Reiter & Andy Quick

There being no further discussion, the meeting adjourned at 6:41 p.m.

<hr/>	<hr/>
Cindy Baker	Matt Hall
Administrative Services Officer	Mayor

Report Criteria:  
Invoice Detail.Input date = 02/14/2023  
Invoice.Batch = {NOT LIKE} "1"

Secondary Name	Invoice	Description	Invoice Date	Total Cost
<b>ACKER ELECTRIC INC (270)</b>				
	61995	SERVICE REPLACEMENT	07/13/2022	4,948.01
	62019	CANAL PARK OUTLET BOX	06/30/2022	97.80
Total :				5,045.81
Total ACKER ELECTRIC INC (270):				5,045.81
<b>AFFEKTIVE SOFTWARE LLC (132642)</b>				
DIGIQUATICS	2842	DIGIQUATICS SOFTWARE	01/01/2023	832.84
Total :				832.84
Total AFFEKTIVE SOFTWARE LLC (132642):				832.84
<b>AMERICAN FAMILY LIFE ASSUR (550)</b>				
	373635	AFLAC PREMIUM	02/02/2023	2,167.76
Total :				2,167.76
Total AMERICAN FAMILY LIFE ASSUR (550):				2,167.76
<b>AMERICAN WELDING &amp; GAS, INC. (128592)</b>				
	09087059	CARBON DIOXIDE/CYLINDER RENTAL	01/31/2023	38.83
Total :				38.83
Total AMERICAN WELDING & GAS, INC. (128592):				38.83
<b>BAILEY ENTERPRISES INCORPORATED (130546)</b>				
	7004859	Fuel	02/01/2023	101.87
	7004859	Fuel	02/01/2023	901.09
	7004859	Fuel	02/01/2023	192.10
	7004859	Fuel	02/01/2023	64.03
	7004859	Fuel	02/01/2023	2,657.39
	7004859	Fuel	02/01/2023	192.10
	7004859	Fuel	02/01/2023	96.05
	7004859	Fuel	02/01/2023	46.15
	7004859	Fuel	02/01/2023	364.33
	7004859	Fuel	02/01/2023	281.02
	7004859	Fuel	02/01/2023	175.18
	7004859	Fuel	02/01/2023	29.46
	7004859	Fuel	02/01/2023	140.90
	7004859	Fuel	02/01/2023	136.69
	7004859	Fuel	02/01/2023	19.63
	7004859	Fuel	02/01/2023	202.37
	7004859	Fuel	02/01/2023	39.25
	7004859	Fuel	02/01/2023	880.75
	7004859	Fuel	02/01/2023	136.97
	7004859	Fuel	02/01/2023	448.05
	7004859	Fuel	02/01/2023	462.64
	7004859	Fuel	02/01/2023	26.21
	7004859	Fuel	02/01/2023	6.55
	7004859	Fuel	02/01/2023	13.10

Secondary Name	Invoice	Description	Invoice Date	Total Cost
	7004859	Fuel	02/01/2023	19.66
	7004859	Fuel	02/01/2023	5,071.52
	7004859	Fuel	02/01/2023	1,651.03
	7004859	Fuel	02/01/2023	461.17
	7004859	Fuel	02/01/2023	124.51
	7004859	Fuel	02/01/2023	134.09
	7004859	Fuel	02/01/2023	320.65
	7004859	Fuel	02/01/2023	199.96
	7004859	Fuel	02/01/2023	424.15
	7004859	Fuel	02/01/2023	83.71
	7004859	Fuel	02/01/2023	452.98
	7004859	Fuel	02/01/2023	1,528.53
Total :				18,085.84
Total BAILEY ENTERPRISES INCORPORATED (130546):				18,085.84
<b>BLACK HILLS GAS HOLDINGS, LLC (132866)</b>				
BLACK HILLS ENERGY	02062023	UTILITIES - BLACK HILLS ENERGY	02/06/2023	2,066.11
BLACK HILLS ENERGY	02062023	UTILITIES - BLACK HILLS ENERGY	02/06/2023	2,425.71
BLACK HILLS ENERGY	02062023	UTILITIES - BLACK HILLS ENERGY	02/06/2023	1,833.15
BLACK HILLS ENERGY	02062023	UTILITIES - BLACK HILLS ENERGY	02/06/2023	2,340.14
BLACK HILLS ENERGY	02062023	UTILITIES - BLACK HILLS ENERGY	02/06/2023	6,478.45
BLACK HILLS ENERGY	02062023	UTILITIES - BLACK HILLS ENERGY	02/06/2023	6,478.45
BLACK HILLS ENERGY	02062023	UTILITIES - BLACK HILLS ENERGY	02/06/2023	1,128.94
BLACK HILLS ENERGY	02062023	UTILITIES - BLACK HILLS ENERGY	02/06/2023	281.95
BLACK HILLS ENERGY	02062023	UTILITIES - BLACK HILLS ENERGY	02/06/2023	1,878.36
BLACK HILLS ENERGY	02062023	UTILITIES - BLACK HILLS ENERGY	02/06/2023	992.43
Total :				25,903.69
Total BLACK HILLS GAS HOLDINGS, LLC (132866):				25,903.69
<b>BLUE CROSS BLUE SHIELD OF WYOMING (1360)</b>				
	230131083511	INSURANCE Feb 2023	01/31/2023	165,528.76
Total :				165,528.76
Total BLUE CROSS BLUE SHIELD OF WYOMING (1360):				165,528.76
<b>BOWMAN, ZACHARY E (133137)</b>				
MOUNTAIN SNOW REMOVAL LLC	1920	SNOW REMOVAL	01/31/2023	972.00
Total :				972.00
Total BOWMAN, ZACHARY E (133137):				972.00
<b>C &amp; C WELDING, INC (1690)</b>				
	24883N	BBQ GRILLS	01/13/2023	127.12
Total :				127.12
Total C & C WELDING, INC (1690):				127.12
<b>CARQUEST AUTO PARTS (10200)</b>				
	2874-IC-467202	Credit not a City charge	01/18/2023	106.24-
	2874-ID-466813	urethane A27	01/11/2023	34.95
	2874-ID-466979	fuses A08	01/13/2023	8.10

Secondary Name	Invoice	Description	Invoice Date	Total Cost
	2874-ID-467195	not a City charge	01/18/2023	106.24
	2874-ID-467280	filter C08	01/19/2023	32.54
	2874-ID-467312	filter D15	01/19/2023	29.04
	2874-ID-467577	battery D13	01/24/2023	357.75
	2874-ID-467680	wipers F02	01/26/2023	21.42
	2874-ID-467855	battery B10	01/30/2023	147.39
	2874-ID-467893	batteries PT06	01/30/2023	426.50
Total :				1,057.69
Total CARQUEST AUTO PARTS (10200):				1,057.69
COPENHAVER KITCHEN KOLPITCKE LLC (3140)				
	46490	Legal Services	02/01/2023	3,108.56
	46490	Legal Services	02/01/2023	345.40
	46490	Legal Services	02/01/2023	690.79
	46490	Legal Services	02/01/2023	690.79
	46490	Legal Services	02/01/2023	690.79
	46490	Legal Services	02/01/2023	690.79
	46490	Legal Services	02/01/2023	690.79
	46490	Legal Services	02/01/2023	690.80
Total :				6,907.92
Total COPENHAVER KITCHEN KOLPITCKE LLC (3140):				6,907.92
CUSTOM DELIVERY SERVICE INC (3343)				
	320037	SAMPLE SHIPPING	12/19/2022	51.95
Total :				51.95
Total CUSTOM DELIVERY SERVICE INC (3343):				51.95
D & G ELECTRIC LLC (132885)				
	3990	HEATER REPAIR	02/02/2023	104.09
Total :				104.09
Total D & G ELECTRIC LLC (132885):				104.09
DEARBORN LIFE INSURANCE COMPANY (131563)				
	02012023	INSURANCE Feb 2023	01/11/2023	368.78
Total :				368.78
Total DEARBORN LIFE INSURANCE COMPANY (131563):				368.78
ENERGY LABORATORIES, INC (4120)				
DEPARTMENT 6250	533581	COLIFORM TESTING	02/08/2023	165.00
Total :				165.00
Total ENERGY LABORATORIES, INC (4120):				165.00
ENGINEERING ASSOCIATES (4140)				
	4301038	PROJECT 14111-04 WWTF PHASE 2	01/25/2023	1,811.07
	4301038	PROJECT 14111-04 WWTF PHASE 2	01/25/2023	3,219.69

Secondary Name	Invoice	Description	Invoice Date	Total Cost
Total :				5,030.76
Total ENGINEERING ASSOCIATES (4140):				5,030.76
<b>FARLOW, IRENE (131831)</b>				
DBA: CODY CAB LLC	2012023	TIPSY TAXI PROGRAM	02/01/2023	1,110.00
Total :				1,110.00
Total FARLOW, IRENE (131831):				1,110.00
<b>FERGUSON WATERWORKS (127653)</b>				
	1356465	2" METER MEASURING CHAMBER	01/11/2023	960.59
	1398329	12 x 1" METERS	02/03/2023	3,420.00
Total :				4,380.59
Total FERGUSON WATERWORKS (127653):				4,380.59
<b>FRANCK, STEVEN (133111)</b>				
OFF GRID INSPECTIONS	004R	CONTRACTED ELECTRICAL REVIEW AND INSPECTION SERVICES JANUARY 2023	02/06/2023	4,300.00
Total :				4,300.00
Total FRANCK, STEVEN (133111):				4,300.00
<b>FRANDSON SAFETY, INC. (130638)</b>				
	96505	CHLORINE MONITOR CALIBRATION	02/02/2023	84.00
Total :				84.00
Total FRANDSON SAFETY, INC. (130638):				84.00
<b>GARY BRINK INC (133166)</b>				
HOBART SALES & SERVICE	FD687284	REPAIRS TO DISHWASHER	01/27/2023	266.00
Total :				266.00
Total GARY BRINK INC (133166):				266.00
<b>GLOBE LIFE INC (133159)</b>				
	990517	CONTRIBUTIONS	02/03/2023	399.10
	996434	CONTRIBUTIONS	02/09/2023	399.10
Total :				798.20
Total GLOBE LIFE INC (133159):				798.20
<b>GOODYEAR, ROBERT W (125939)</b>				
GOODYEAR PRINTING	230234	WARNING NOTICES PRINTED	01/16/2023	185.00
Total :				185.00
Total GOODYEAR, ROBERT W (125939):				185.00
<b>H B I INSURANCE (12306)</b>				
	3795	EMPLOYEE BOND - DEPUTY COURT CLERK	01/31/2023	100.00

Secondary Name	Invoice	Description	Invoice Date	Total Cost
	3796	EMPLOYEE BOND - COURT CLERK	01/31/2023	100.00
Total :				200.00
Total H B I INSURANCE (12306):				200.00
IDEXX DISTRIBUTION INC (132908)				
	3122713935	ECOLI CAPSULES	02/05/2023	27.20
Total :				27.20
Total IDEXX DISTRIBUTION INC (132908):				27.20
KEN GARFF CHEYENNE (132839)				
	1006054	SUV Detective Unit	01/26/2023	45,066.88
Total :				45,066.88
Total KEN GARFF CHEYENNE (132839):				45,066.88
LEISURE IN MONTANA INC (131545)				
	CRM0003082	CREDIT FOR DRUM RETURN	11/29/2022	30.00-
	CRM0003082	CREDIT FOR DRUM RETURN	11/29/2022	30.00-
	SAL24771-1	POOL CHEMICALS AND REAGENTS	12/20/2022	545.49
	SAL24771-1	POOL CHEMICALS AND REAGENTS	12/20/2022	545.50
	SER23972-1	REPAIR TO CHEMICAL FEEDER FOR POOL	01/26/2023	1,102.75
Total :				2,133.74
Total LEISURE IN MONTANA INC (131545):				2,133.74
MERCHANT JT&S (123069)				
	7267	MERCHANT APPRENTICE 1ST YEAR BOOKS	02/01/2023	650.00
Total :				650.00
Total MERCHANT JT&S (123069):				650.00
MORRISON-MAIERLE INC (130985)				
	233186	2020 CODY SIDEWALK & PEDESTRIAN RAMP IMPROVEMENTS	02/07/2023	167.44
Total :				167.44
Total MORRISON-MAIERLE INC (130985):				167.44
NCPERS GROUP LIFE INS (125412)				
C/O MEMBER BENEFITS	2223	PREMIUM	02/02/2023	432.00
Total :				432.00
Total NCPERS GROUP LIFE INS (125412):				432.00
NORCO, INC. (128948)				
	36918129	BOTTLE RENTAL	01/31/2023	40.92
Total :				40.92

Secondary Name	Invoice	Description	Invoice Date	Total Cost
Total NORCO, INC. (128948):				40.92
<b>ONE-CALL OF WYOMING (127665)</b>				
	66090	ONE - CALL FEES	02/06/2023	31.38
	66090	ONE - CALL FEES	02/06/2023	31.38
	66090	ONE - CALL FEES	02/06/2023	31.38
	66090	ONE - CALL FEES	02/06/2023	31.36
Total :				125.50
Total ONE-CALL OF WYOMING (127665):				125.50
<b>PARK COUNTY (7670)</b>				
	8222	LEC CONTRACT - DISPATCH SERVICES	02/01/2023	223.56
	8222	LEC CONTRACT - DISPATCH SERVICES	02/01/2023	3,800.53
	8222	LEC CONTRACT - DISPATCH SERVICES	02/01/2023	670.68
	8222	LEC CONTRACT - DISPATCH SERVICES	02/01/2023	17,661.27
	8222	LEC CONTRACT - CAPITOL EQUIPMENT	02/01/2023	4,520.00
	8222	LEC CONTRACT - MAINTENANCE	02/01/2023	1,807.46
	8222	LEC CONTRACT - CONSOLE	02/01/2023	7.30
	8222	LEC CONTRACT - CONSOLE	02/01/2023	124.17
	8222	LEC CONTRACT - CONSOLE	02/01/2023	21.91
	8222	LEC CONTRACT - CONSOLE	02/01/2023	577.03
	8222	LEC CONTRACT - UTILITIES	02/01/2023	1,862.98
	8222	ADJ FOR INITIAL NETWORK SEGRAGATION CHANGES	02/01/2023	204.52-
	8222	ANTI VIRUS CLIENT CREDIT	02/01/2023	34.79-
Total :				31,037.58
Total PARK COUNTY (7670):				31,037.58
<b>PARK COUNTY LANDFILL (129053)</b>				
	01312023	LANDFILL CHARGES - JAN 2023	01/31/2023	44,729.00
	01312023	BULK ITEM DISPOSAL FEES - JAN 2023	01/31/2023	145.60
Total :				44,874.60
Total PARK COUNTY LANDFILL (129053):				44,874.60
<b>PARK COUNTY SHERIFF (7740)</b>				
	01312023	INCARCERATION - JAN 2023	01/31/2023	30.00
Total :				30.00
Total PARK COUNTY SHERIFF (7740):				30.00
<b>PARK DISTRICT COURT (132610)</b>				
	2223	GARNISHMENT Civil #29877	02/02/2023	196.97
Total :				196.97
Total PARK DISTRICT COURT (132610):				196.97
<b>PROVIDENT LIFE &amp; ACCIDENT INS (128033)</b>				
	2223	PREMIUMS	02/02/2023	23.40
Total :				23.40

Secondary Name	Invoice	Description	Invoice Date	Total Cost
Total PROVIDENT LIFE & ACCIDENT INS (128033):				23.40
<b>PURCELL TIRE AND RUBBER COMPANY (132837)</b>				
DBA: PURCELL TIRE AND SERVICE C	31207982	CREDIT FOR TIRE CASINGS	11/17/2022	900.00-
DBA: PURCELL TIRE AND SERVICE C	31211742	ELECTRIC TIRES	02/01/2023	1,156.20
Total :				256.20
Total PURCELL TIRE AND RUBBER COMPANY (132837):				256.20
<b>RAMEY, AMBER (133055)</b>				
	1312023	MILEAGE REIMBURSEMENT - JANUARY 2023	02/07/2023	6.94
Total :				6.94
Total RAMEY, AMBER (133055):				6.94
<b>RAPID FIRE PROTECTION, INC (129543)</b>				
	45020	REPAIRS FOR PLUMBING AND BACKFLOWER PREVENTER	01/26/2023	190.00
	45020	REPAIRS TO BACKFLOW PREVENTER	01/26/2023	190.00
Total :				380.00
Total RAPID FIRE PROTECTION, INC (129543):				380.00
<b>RHYSNBURGER, RYAN (133164)</b>				
	2.0200.35	UTILITY DEPOSIT REFUND	02/01/2023	49.31
Total :				49.31
Total RHYSNBURGER, RYAN (133164):				49.31
<b>RIVER OAKS COMMUINICATIONS CORP (131184)</b>				
	02012023	CHARTER FRANCHISE AGREEMENT REVIEW	02/01/2023	3,966.25
Total :				3,966.25
Total RIVER OAKS COMMUINICATIONS CORP (131184):				3,966.25
<b>ROBERTSON, LESLIE (130816)</b>				
	02032023	RESTITUTION FROM MC-2208-10	02/03/2023	100.00
Total :				100.00
Total ROBERTSON, LESLIE (130816):				100.00
<b>SABER PEST CONTROLL LLC (131183)</b>				
	AUD172	PEST CONTROL - AUDITORIUM	02/08/2023	100.00
	CH172	PEST CONTROL - CITY HALL	02/08/2023	70.00
	E159	PEST CONTROL - ELECTRIC	02/01/2023	100.00
	P171	PEST CONTROL - PUBLIC WORKS SHOP	02/01/2023	60.00
	P171	PEST CONTROL - PUBLIC WORKS SHOP	02/01/2023	30.00
	P171	PEST CONTROL - PUBLIC WORKS SHOP	02/01/2023	30.00
	R170	PEST CONTROL - RECYCLING/SANITATION	02/01/2023	70.00
	REC172	PEST CONTROL - REC CENTER	02/08/2023	105.00
	REC172	PEST CONTROL - REC CENTER	02/08/2023	105.00
	W170	PEST CONTROL - WASTEWATER DEPT	02/01/2023	100.00



Secondary Name	Invoice	Description	Invoice Date	Total Cost
Total :				770.00
Total SABER PEST CONTROLL LLC (131183):				770.00
SHOSHONE MUNICIPAL PIPELINE (9130)				
	02012023	SMP WATER PURCHASE - JANUARY 2023	02/01/2023	116,920.18
Total :				116,920.18
Total SHOSHONE MUNICIPAL PIPELINE (9130):				116,920.18
SHREVE JR, DON (133167)				
	37908	FUEL REIMBURSEMENT FOR WINTER WAM	01/26/2023	51.09
	570622	FUEL REIMBURSEMENT FOR WINTER WAM	01/25/2023	46.43
Total :				97.52
Total SHREVE JR, DON (133167):				97.52
STANTEC CONSULTING SERVICES INC (132890)				
	2035049	Big Horn Ave Study	01/27/2023	6,186.87
Total :				6,186.87
Total STANTEC CONSULTING SERVICES INC (132890):				6,186.87
SYSTEMS GRAPHICS INC (129162)				
ADVANCED INFO SYSTEMS	16043	OUTSOURCE BILLS	02/01/2023	12.19
ADVANCED INFO SYSTEMS	16043	OUTSOURCE BILLS	02/01/2023	77.18
ADVANCED INFO SYSTEMS	16043	OUTSOURCE BILLS	02/01/2023	69.06
ADVANCED INFO SYSTEMS	16043	OUTSOURCE BILLS	02/01/2023	69.06
ADVANCED INFO SYSTEMS	16043	OUTSOURCE BILLS	02/01/2023	89.37
ADVANCED INFO SYSTEMS	16043	OUTSOURCE BILLS	02/01/2023	89.36
Total :				406.22
Total SYSTEMS GRAPHICS INC (129162):				406.22
UNUM LIFE INSURANCE - LIFE (127935)				
	2223	PREMIUM	02/02/2023	940.56
Total :				940.56
Total UNUM LIFE INSURANCE - LIFE (127935):				940.56
WESTERN UNITED ELECTRIC SUPPLY (10605)				
	6079339	200 AMP FUSE CABINET	01/31/2023	7,255.56
	6079340	200 AMP FUSE CABINET	01/31/2023	7,255.56
Total :				14,511.12
Total WESTERN UNITED ELECTRIC SUPPLY (10605):				14,511.12
WOODBEEK, AME (133165)				
	14.7739.10	UTILITY DEPOSIT REFUND	02/03/2023	136.12

Secondary Name	Invoice	Description	Invoice Date	Total Cost
Total :				136.12
Total WOODBECK, AME (133165):				136.12
WYOMING CHILD SUPPORT (132047)				
	2223	Garnishment Remittance # 227551	02/02/2023	430.15
Total :				430.15
Total WYOMING CHILD SUPPORT (132047):				430.15
WYOMING DEPARTMENT OF WORKFORCE SERVICES (10670)				
WORKERS COMPENSATION DIV	2323	CONTRIBUTIONS	02/03/2023	7,909.83
WORKERS COMPENSATION DIV	2323	VOLUNTEER PD	02/03/2023	9.02
WORKERS COMPENSATION DIV	2323	VOLUNTEER REC	02/03/2023	36.07
WORKERS COMPENSATION DIV	2323	CREDIT	02/03/2023	310.05-
	2223	UNEMPLOYMENT FOR 4th QTR	02/02/2023	62.19
	2223	UNEMPLOYMENT FOR 4th QTR	02/02/2023	393.87
	2223	UNEMPLOYMENT FOR 4th QTR	02/02/2023	41.46
	2223	UNEMPLOYMENT FOR 4th QTR	02/02/2023	1,575.48
	2223	UNEMPLOYMENT FOR 4th QTR	02/02/2023	241.98
Total :				9,959.85
Total WYOMING DEPARTMENT OF WORKFORCE SERVICES (10670):				9,959.85
WYOMING MUNICIPAL POWER AGENCY (10920)				
	202301-1	POWER PURCHASE - JAN 2023	02/10/2023	360,489.25
	202301-1	DEMAND PURCHASE - JAN 2023	02/10/2023	391,090.35
Total :				751,579.60
Total WYOMING MUNICIPAL POWER AGENCY (10920):				751,579.60
Grand Totals:				1,275,215.75
Payroll 2/12 /23				266,811.96
Total				1,542,027.71

MEETING DATE: FEBRUARY 21, 2023  
DEPARTMENT: PARKS, RECREATION AND  
PUBLIC FACILITIES  
PREPARED BY: MIKE FINK  
PRESENTED BY: RICK MANCHESTER

## **AGENDA ITEM SUMMARY REPORT**

### **Annual Request for CHS Graduation Party 2023**

#### **ACTION TO BE TAKEN:**

Request motion to approve the City Council sponsoring the 2023 Cody High School Graduation Party for the amount not to exceed \$830.00.

#### **SUMMARY OF INFORMATION:**

In past years, the City Council has sponsored the annual Cody High School graduation party and paid a portion or all of the related fees out of the City Council contingency fund.

A group of local parents and students are organizing an all-night graduation celebration for the CHS Senior Class of 2023. This overnight activity is scheduled to be held on the "Dry Side" of the Recreation Center. They will not be using the Aquatics area.

The party has been scheduled for May 27, 2023.

The celebration will run from 9:00 pm on Saturday, May 27 to 2:00 am on Sunday, May 28th.

The normal closure time of the Recreation Center on Saturday is 6:00 pm. The committee is planning a wide variety of activities for the "lock-in" style of party. Students will not be allowed to leave and re-enter the celebration. In addition to the chaperones from the graduation committee, a City Rec Center staff member will also be on site.

#### **FISCAL IMPACT**

A minimum of one staff member will be scheduled to work this event. It is estimated that the direct salary cost to the City of Cody will be approximately \$130.00.

The standard member rental fee for the Rec Center is as follows:

Gymnasiums	\$450.00
Multipurpose room	\$100.00
Hallway	\$50.00
Racquetball Court	\$100.00
Front desk staff	<u>\$130.00</u>

Total Cost    **\$830.00**

**ALTERNATIVES**

1. Approve sponsoring the CHS graduation party in the amount not to exceed \$830.00
2. Do not sponsor the event, but instead waive the fee.
3. Deny the request.
4. Funding not to exceed a different amount approved by City Council.

**ATTACHMENTS**

None

**AGENDA & SUMMARY REPORT TO:**

Rick Manchester, Parks, Recreation & Public Facilities Director  
Mike Fink, Recreation and Public Facilities Superintendent  
Elizabeth Radokovich, CHS Parent Advisor Committee

## AGENDA ITEM SUMMARY REPORT

### Consider a Subdivision Variance to allow a shared sewer service for Lots 4 and 5 of the Legacy Estates Subdivision.

#### ACTIONS TO BE TAKEN

Consider whether to authorize a subdivision variance to allow Lots 4 and 5 of the Legacy Estates Subdivision to share a single sewer service.

#### SUMMARY

The City's subdivision ordinance requires each lot to have its own individual sewer service connecting to the sewer main (per 11-5-1(F)). This requirement is based on the concept that each lot should have full control and responsibility for their own sewer service. Shared lines constitute "mains" that are either City maintained, or necessitate private agreements and easements.

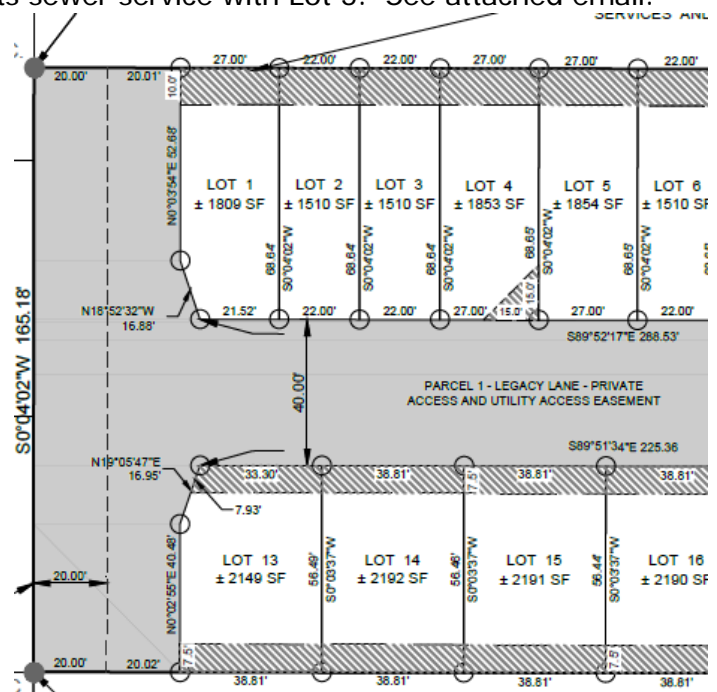
The physical development of Legacy Estates occurred without a sewer service being provided to Lot 5. It was not noticed until after the street was paved and sidewalk installed. The engineer and contractor do not readily accept responsibility for the error—each pointing the finger at the other. The owner has submitted a variance request to allow Lot 4 to share its sewer service with Lot 5. See attached email.

Public Works and the City planner have reviewed the situation and out of sympathy for the owner are agreeable if City Council is willing to grant a variance. As the sewer line would be shared, there should be an agreement prepared and recorded to acknowledge the shared ownership and shared maintenance responsibility. An easement has already been added to the final plat for the line. Staff would also suggest that it be required that the wye in the line and pipe to Lot 5 be installed before a building permit is issued for Lot 4.

#### RECOMMENDED MOTION

Grant a subdivision variance to allow Lots 4 and 5 of the Legacy Estates subdivision to share a single sewer service, subject to the following:

- 1) Provide an agreement establishing the shared ownership and responsibility for the shared sewer service, which agreement is to be recorded with the final plat.
- 2) Install the wye and the individual sewer line to Lot 5 prior to issuance of a building permit for Lot 4.





**CITY OF CODY**  
WYOMING

Todd Stowell <todds@codywy.gov>

---

## Legacy Subdivision, Lot 5, missing sewer service

1 message

---

**gary superiorcmu.com** <gary@superiorcmu.com>

Mon, Feb 13, 2023 at 1:16 PM

To: Todd Stowell <todds@codywy.gov>

Cc: Mark Allphin <mwallphin@yahoo.com>

Hi Todd. Thanks for your time the other day. I am writing to you to request a city council meeting to resolve the issue of the missing sewer service at Lot 5. I would like to resolve this issue by having Lot 4 & 5 share the same sewer service. Unfortunately, the missing service was not noticed until after the street was completed. I really don't want to cut and patch a new street as it will never look new again. I also have the contractor and the engineer pointing the finger at each other as to who is responsible if a new service is required to be installed. It is a real short straight lateral run from the sewer main to the homes. I think that sharing the service is the most practical solution in this situation. I have shown an easement on the Final Plat. Please let me know if you need anything else. Thank you for your assistance. Gary

NOTICE OF APPLICATION FOR A  
NEW RESTAURANT LIQUOR LICENSE

Notice is hereby given that on the 23<sup>rd</sup> day of January, 2023, LEGIONNAIRE ENTERPRISES LLC, filed an application for a new restaurant liquor license in the office of the clerk of the City of Cody for the following described place: 1244 Sheridan Ave., Cody, WY 82414. Protests, if any there be, against the issuance of the license will be heard at the hour of 7:00 pm, or as soon thereafter as practical, on the 21<sup>st</sup> of February in the Council Chambers of City Hall, 1338 Rumsey Avenue, Cody, Wyoming.

Date: January 23, 2023

Cynthia D. Baker  
Administrative Services Officer

PUBLISH: Jan 31<sup>st</sup> and Feb 7<sup>th</sup>

MEETING DATE: FEBRUARY 21, 2023  
DEPARTMENT: ADMINISTRATIVE SERVICES  
PREPARED BY: CINDY BAKER  
ADMIN SERVICES OFFICER  
DEPT. DIR. APPROVAL: \_\_\_\_\_  
CITY ADM. APPROVAL: \_\_\_\_\_

## **AGENDA ITEM SUMMARY REPORT**

### **Request for New Restaurant License**

#### **ACTION TO BE TAKEN:**

Consider approving the request for a New Restaurant License.

#### **SUMMARY OF INFORMATION:**

Legionnaire Enterprise LLC dba Wyo Dough submitted an application for a Restaurant Liquor License to be located at 1244 Sheridan Ave for the license term ending 07/31/2023

#### **FISCAL IMPACT**

Receive \$500.00 in prorated fees, no negative impact.

#### **ALTERNATIVES**

1. Approve the Restaurant liquor license
2. Deny the Restaurant liquor license

#### **ATTACHMENTS**

Liquor license application and associated documents.

#### **AGENDA & SUMMARY REPORT TO:**

wyodough@gmail.com

**AGENDA ITEM NO. \_\_\_\_\_**



# NEW OR TRANSFER LIQUOR LICENSE OR PERMIT APPLICATION

FOR LIQUOR DIVISION USE ONLY

Customer #:

Trf from:

Reviewer:

Initials

Date

Agent:

Chief:

**To be completed by City/County Clerk**License  
Fees

Annual Fee:

\$

Prorated Fee:

\$

Transfer Fee:

\$

Publishing Fee:

\$

Local License #:

Date filed with  
clerk:

Advertising Dates: (2 Weeks)

Hearing Date:

Publishing Fee Direct Billed to Applicant: ☐

License Term:

Month

Day

Year

Through

Month

Day

Year

**LICENSING AUTHORITY:** Begin publishing promptly. As W.S. 12-4-104(d) specifies: **NO LICENSING AUTHORITY SHALL APPROVE OR DENY THE APPLICATION UNTIL THE LIQUOR DIVISION HAS CERTIFIED THE APPLICATION IS COMPLETE.**

Applicant: Legionnaire Ent LLCTrade/Business Name (dba): Wyo - DoughBuilding to be licensed/Building Address: 1244 Shendan Ave

Number &amp; Street

Local Mailing Address:

1244

City

Shendan

State

Zip

County

Cody

City

WY

State

82414

Zip

Local Business Telephone Number: (307) 250 9083

Fax Number: ( )

Business E-Mail Address: wyodough@gmail.com**FILING FOR**☒ NEW LICENSE☐ TRANSFER OF LOCATION☐ TRANSFER OWNERSHIP

FORMERLY HELD BY: \_\_\_\_\_

**FILING IN (CHOOSE ONLY ONE)**☒ CITY OF: Cody☐ COUNTY OF: \_\_\_\_\_☐ ASSIGNMENT LETTER ATTACHED**FILING AS (CHOOSE ONLY ONE)**☐ INDIVIDUAL☐ PARTNERSHIP☐ LP/LLP☒ LLC☐ CORPORATION☐ LTD PARTNERSHIP☐ ORGANIZATION☐ OTHER \_\_\_\_\_**TYPE OF LICENSE OR PERMIT (CHOOSE ONLY ONE)****RETAIL LIQUOR LICENSE**☐ ON-PREMISE ONLY  
(BAR)☐ OFF-PREMISE ONLY  
(PACKAGE STORE)☐ COMBINATION  
ON/OFF PREMISE  
(BOTH BAR & PACKAGE STORE)☒ RESTAURANT LIQUOR LICENSE☐ RESORT LIQUOR LICENSE☐ BAR AND GRILL**LIMITED RETAIL (CLUB)**☐ VETERANS CLUB☐ FRATERNAL CLUB☐ GOLF CLUB☐ SOCIAL CLUB☐ MICROBREWERY☐ WINERY☐ DISTILLERY SATELLITE☐ WINERY SATELLITE☐ COUNTY RETAIL/SPECIAL

MALT BEVERAGE PERMIT

**SPECIAL DESIGNATIONS**☐ CONVENTION FACILITY☐ CIVIC CENTER/EVENT CENTER/ PUBLIC AUDITORIUM☐ GOLF CLUB☐ GUEST RANCH☐ RESORTTo Assist the Liquor Division with scheduling inspections: **OPERATIONAL STATUS**☒ FULL TIME (e.g. Jan through Dec)

(specify months of operation)

from Jan to Dec☐ SEASONAL/PART-TIME

DAYS OF WEEK (e.g. Mon through Sat)

from Mon to Sat☐ NON-OPERATIONAL/PARKED

HOURS OF OPERATION (e.g. 10a - 2a)

from 11am to 9pm

ALL APPLICANTS MUST COMPLETE QUESTIONS 1- 4

1. BUILDING OWNERSHIP: Does the applicant? W.S. 12-4-103(a)(iii)

- (a) OWN the licensed building? ☐ YES (own)
- (b) LEASE the licensed building? (Lease must be through the term of the liquor license) ☒ YES (lease)

If Yes, please submit a copy of the lease and indicate:

- (i) When the lease expires, located on page 1 paragraph 3 of lease.
- (ii) Where the Sales provision for alcoholic or malt beverages is located, on page 3 paragraph "B" of lease.  
(MUST contain a provision for SALE OF ALCOHOLIC or MALT BEVERAGES.)

2. To operate your liquor business, have you assigned, leased, transferred or contracted with any other person (entity) to operate and assert total or partial control of the license and the licensed building? W.S. 12-4-601(b)

☐ YES ☒ NO

3. Does any manufacturer, brewer, rectifier, wholesaler, or through a subsidiary affiliate, officer, director or member of any such firm: W.S. 12-5-401, 12-5-402, 12-5-403

- (a) Hold any interest in the license applied for? ☐ YES ☒ NO
- (b) Furnish by way of loan or any other money or financial assistance for purposes hereof in your business? ☐ YES ☒ NO
- (c) Furnish, give, rent or loan any equipment, fixtures, interior decorations or signs other than standard brewery or manufacturer's signs? ☐ YES ☒ NO
- (d) If you answered YES to any of the above, explain fully and submit any documents in connection there within:

4. Does the applicant have any interest or intent to acquire an interest in any other liquor license issued by this licensing authority? W.S. 12-4-103(b)

☐ YES ☒ NO

If "YES", explain:

5. BAR AND GRILL LICENSE OR RESTAURANT LICENSE:

Have you submitted a valid food service permit or application? W.S. 12-4-413(a)

☒ YES ☐ NO

6. RESORT LICENSE:

Does the resort complex:

- (a) Have an actual valuation of at least one million dollars, or have you committed or expended at least one million dollars (\$1,000,000.00) on the complex, excluding the value of the land? W.S. 12-4-401(b)(i) ☐ YES ☐ NO
- (b) Include a restaurant and a convention facility which will seat at least one hundred (100) persons? W.S. 12-4-401(b)(ii) ☐ YES ☐ NO
- (c) Include motel, hotel or privately owned condominium, town house or home accommodations approved for short term occupancy with at least one hundred (100) sleeping rooms? W.S. 12-4-401(b)(iii) ☐ YES ☐ NO
- (d) If no on question (c), have a ski resort facility open to the general public in which you have committed or expended not less than 10 million dollars (\$10,000,000.00)? W.S. 12-4-401(b)(iv) ☐ YES ☐ NO
- (e) Are you contracting/leasing the food and beverage services? W.S. 12-4-403(b)
1. If Yes, have you submitted a copy of the food and beverage contract/lease? ☐ YES ☐ NO

7. MICROBREWERY LICENSE:

Will the license be held in conjunction with another liquor license? W.S. 12-4-412(b)(iii)

☐ YES ☐ NO

- (a) If "YES", please specify type: ☐ RETAIL ☐ RESTAURANT ☐ RESORT
- ☐ BAR AND GRILL ☐ WINERY

(b) Do you self distribute your products? W.S. 12-2-201(a)  
(Requires wholesale malt beverage license with the Liquor Division)

☐ YES ☐ NO

8. WINERY LICENSE:

Will the license be held in conjunction with another liquor license? W.S. 12-4-412(b)(iii)

☐ YES ☐ NO

- (a) If "YES", please specify type: ☐ RETAIL ☐ RESTAURANT ☐ RESORT

☐ BAR AND GRILL ☐ MICROBREWERY



9. LIMITED RETAIL (CLUB) LICENSE:

FRATERNAL CLUBS W.S. 12-1-101(a)(iii)(B)

- (a) Has the fraternal organization been actively operating in at least thirty-six (36) states? ☐ YES ☐ NO
- (b) Has the fraternal organization been actively in existence for at least twenty (20) years? ☐ YES ☐ NO

10. LIMITED RETAIL (CLUB) LICENSE:

VETERANS CLUBS W.S. 12-1-101(a)(iii)(A):

- (a) Does the Veteran's organization hold a charter by the Congress of the United States? ☐ YES ☐ NO
- (b) Is the membership of the Veteran's organization comprised only of Veterans and its duly organized auxiliary? ☐ YES ☐ NO

11. LIMITED RETAIL (CLUB) LICENSE:

GOLF CLUBS W.S. 12-1-101(a)(iii)(D)/W.S. 12-4-301(e):

- (a) Do you have more than fifty (50) bona fide members? ☐ YES ☐ NO
- (b) Do you own, maintain, or operate a bona fide golf course together with clubhouse? ☐ YES ☐ NO
- (c) Are you a political subdivision of the state that owns, maintains, or operates a golf course? ☐ YES ☐ NO
1. Are you contracting/leasing the food and beverage services? W.S. 12-5-201(g) ☐ YES ☐ NO
2. If Yes, have you submitted a copy of the food and beverage contract/lease? ☐ YES ☐ NO

12. LIMITED RETAIL (CLUB) LICENSE:

SOCIAL CLUBS W.S. 12-1-101(a)(iii)(E)/W.S. 12-4-301(b):

- (a) Do you have more than one hundred (100) bona fide members who are residents of the county in which the club is located? ☐ YES ☐ NO
- (b) Is the club incorporated and operating solely as a nonprofit organization under the laws of this state? ☐ YES ☐ NO
- (c) Is the club qualified as a tax exempt organization under the Internal Revenue Service? ☐ YES ☐ NO
- (d) Has the club been in continuous operation for a period of not less than one (1) year? ☐ YES ☐ NO
- (e) Has the club received twenty-five dollars (\$25.00) from each bona fide member as Recorded by the secretary of the club and are club members at the time of this application in good standing by having paid at least one (1) full year in dues? ☐ YES ☐ NO
- (f) Does the club hold quarterly meetings and have an actively engaged membership carrying out the objectives of the club? ☐ YES ☐ NO
- (g) Have you filed a true copy of your bylaws with this application? ☐ YES ☐ NO
- (h) Has at least fifty one percent (51%) of the membership signed a petition indicating a desire to secure a Limited Retail Liquor License? (Petition Attached) ☐ YES ☐ NO

13. If applicant is filing as an Individual, Partnership or Club: W.S. 12-4-102(a)(ii) & (iii)

Each individual, partner or club officer must complete the box below.

True and Correct Name	Date of Birth	Residence Address No. & Street City, State & Zip <i>DO NOT LIST PO BOXES</i>	Residence Phone Number	Have you been a DOMICILED resident for at least 1 year and not claimed residence in any other state in the last year?	Have you been Convicted of a Felony Violation?	Have you been Convicted of a Violation Relating to Alcoholic Liquor or Malt Beverages?
				NO <input type="checkbox"/>	NO <input type="checkbox"/>	NO <input type="checkbox"/>
				YES <input type="checkbox"/>	YES <input type="checkbox"/>	YES <input type="checkbox"/>
				NO <input type="checkbox"/>	NO <input type="checkbox"/>	NO <input type="checkbox"/>
				YES <input type="checkbox"/>	YES <input type="checkbox"/>	YES <input type="checkbox"/>
				NO <input type="checkbox"/>	NO <input type="checkbox"/>	NO <input type="checkbox"/>

(If more information is required, list on a separate piece of paper and attach to this application.)



14. If the applicant is a Corporation, Limited Liability Company, Limited Liability Partnership or Limited Partnership: W.S. 12-4-102(a)(iv) & (v)

Each stockholder holding, either jointly or severally, ten percent (10%) or more of the outstanding and issued capital stock of the corporation, limited liability company, limited liability partnership, or limited partnership, **and every officer, and every director** must complete the box below.

True and Correct Name	Date of Birth	Residence Address No. & Street City, State & Zip  <i>DO NOT LIST PO BOXES</i>	Residence Phone Number	No. of Years in Corp or LLC	% of Corpora te Stock Held	Have you been Convicted of a Felony Violation?	Have you been Convicted of a Violation Relating to Alcoholic Liquor or Malt Beverages?
Seth Cozzers				7	30	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Zachary Barksdale				7	35	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Joseph Weaver				7	25	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
						YES <input type="checkbox"/> NO <input type="checkbox"/>	YES <input type="checkbox"/> NO <input type="checkbox"/>
						YES <input type="checkbox"/> NO <input type="checkbox"/>	YES <input type="checkbox"/> NO <input type="checkbox"/>
						YES <input type="checkbox"/> NO <input type="checkbox"/>	YES <input type="checkbox"/> NO <input type="checkbox"/>

(If more information is required, list on a separate piece of paper and attach to this application)

REQUIRED ATTACHMENTS:

- ☐ A statement indicating the financial condition and financial stability of the applicant W.S. 12-4-102(a)(vi).
- ☐ Attach any lease agreements (especially for resort/political subdivisions leasing out food & beverage services) W.S. 12-4-103 (a)(iii)/W.S. 12-4-403(b)/W.S. 12-4-301(e).
- ☐ If transferring a license from one ownership to another, a form of assignment from the current licensee to the new applicant authorizing the transfer W.S. 12-4-601(b).

OATH OR VERIFICATION

(Requires signatures by **ALL** Individuals, **ALL** Partners, **ONE (1)** LLC Member, or **TWO (2)** Corporate Officers or Directors except that if all the stock of the corporation is owned by **ONE (1)** individual then that individual may sign and verify the application upon his oath, or **TWO (2)** Club Officers.) W.S. 12-4-102(b)

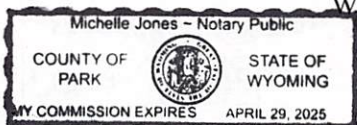
Under penalty of perjury, and the possible revocation or cancellation of the license,  
I swear the above stated facts, are true and accurate.

STATE OF WYOMING )  
COUNTY OF Park ) SS.

Signed and sworn to before me on this 19 day of Jan, 2023 that the facts alleged in the foregoing instrument are true by the following:

- |                                      |  |                           |
|--------------------------------------|--|---------------------------|
| 1) <u>[Signature]</u><br>(Signature) | <u>Zachary J Barksdale</u><br>(Printed Name) | <u>CEO</u><br>Title       |
| 2) <u>[Signature]</u><br>(Signature) | <u>Seth Cozzers</u><br>(Printed Name)        | <u>President</u><br>Title |
| 3) <u>[Signature]</u><br>(Signature) | <u>Joseph Weaver</u><br>(Printed Name)       | <u>COO</u><br>Title       |
| 4) _____<br>(Signature)              | _____<br>(Printed Name)                      | _____<br>Title            |
| 5) _____<br>(Signature)              | _____<br>(Printed Name)                      | _____<br>Title            |
| 6) _____<br>(Signature)              | _____<br>(Printed Name)                      | _____<br>Title            |

Witness my hand and official seal:



[Signature]  
Signature of Notary Public

My commission expires: 04/29/2025



Member  
FDIC

Date 12/30/22 Page 1  
Primary Account XXXXXXXXXXXX

LEGIONNAIRE ENTERPRISES LLC  
WYO DOUGH  
519 DATE ST  
CODY WY 82414-8411

\*\*\*\*\* CHECKING ACCOUNTS \*\*\*\*\*

Account Title: LEGIONNAIRE ENTERPRISES LLC  
WYO DOUGH

TOTALLY FREE BUSINESS CHECKING	Number of Enclosures	7
Account Number <span style="background-color: black; color: black;">XXXXXXXXXXXX</span>	Statement Dates	12/01/22 thru 12/31/22
Previous Balance <span style="background-color: black; color: black;">XXXXXXXXXX</span>	Days in the statement period	31
23 Deposits/Credits	Average Ledger	<span style="background-color: black; color: black;">XXXXXXXXXX</span>
3 Checks/Debits	Average Collected	<span style="background-color: black; color: black;">XXXXXXXXXX</span>
Service Charge		
Interest Paid		
Ending Balance		

----- ACTIVITY IN DATE ORDER -----				
Date	Description	Withdrawals	Deposits	Balance
12/02	Citizens NET SETLMT	.00		
	PPD			
	TST* WYO DOUGH			
	ST* WYO DOUGH BC			
12/05	Citizens NET SETLMT	.00		
	PPD			
	TST* WYO DOUGH			
	ST* WYO DOUGH BC			
12/05	Citizens NET SETLMT	.00		
	PPD			
	TST* WYO DOUGH			
	ST* WYO DOUGH BC			
12/06	DDA Regular Deposit	.00		
12/06	DDA Regular Deposit	.00		
12/08	Citizens NET SETLMT	.00		
	PPD			
	TST* WYO DOUGH			
	ST* WYO DOUGH BC			
12/09	DDA Regular Deposit	.00		
12/12	Citizens NET SETLMT	.00		
	PPD			
	TST* WYO DOUGH			

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT made and entered into this 26th day of September, 2022, by and between **Happy Trails, Inc., a Wyoming corporation**, hereinafter "LANDLORD," and **Zachary Barksdale, Seth Cozzens, and Joseph Weaver dba Legionnaire Enterprises, LLC**, hereinafter collectively referred to as "TENANT".

### **ARTICLE 1. GRANT.**

In consideration of the mutual promises, covenants and agreements herein contained, the adequacy of which consideration is by both parties acknowledged, LANDLORD leases to TENANT, and TENANT rents from LANDLORD, the demised premises (hereinafter referred to as the "Rental Property"), located at the address commonly known as **1244 Sheridan Avenue**, Cody, Park County, Wyoming 82414 and more particularly described as follows:

Lot 9, Block 29, Original Town (now City) of Cody, as located in Book "E" of plats, Page 58, according to the records of the County Clerk and Recorder of Park County, State of Wyoming;

### **ARTICLE 2. THREE YEAR RENTAL.**

TO HAVE AND TO HOLD the Rental Property unto Tenant for a three (3) year term commencing on the 26th day of September, 2022. All of these provisions are subject to LANDLORD's ongoing right to terminate the Lease pursuant to Article 11.

### **ARTICLE 3. RENT.**

During the first year of this Lease, TENANT shall pay the total sum of **\$ 2,900.00 per month** which is to be paid on or before the 1<sup>st</sup> day of each month, beginning October 1<sup>st</sup> 2022, and continuing the 1<sup>st</sup> day of each month thereafter. In October of 2023, rent shall increase to \$3,000.00 per month through the remainder of the term of the lease. The parties agree to discuss and attempt to negotiate a lease renewal in the Spring of 2024, and any adjusted lease terms to be included, before the current lease expires. TENANT shall pay a security deposit in the amount of \$1500.00 prior to taking possession. Said security deposit may be returned after a reasonable period of time 0.0.0.0.0.0.0. past the end of the lease agreement if: all rent is current, all utilities have been paid up to date; all of Tenant's items have been removed; no damage has been caused, and no additional cleaning needs to be done. Otherwise, all of such items would be deducted from the deposit amount.

### **ARTICLE 4. UTILITIES, INSURANCE, INDEMNIFICATION AND TAXES.**

TENANT shall BE REQUIRED to pay for all telephone, heat, air conditioning, water, sewer, electricity, internet services and other utilities used or consumed upon the Rental Property. TENANT shall be responsible for the taxes and insurance on TENANT's personal property.

TENANT shall maintain liability insurance coverage (comprehensive general liability or similar coverage) to cover liability associated with any third parties including employees, agents, customers, etc., and said policy shall have a minimum policy coverage amount of at least one million dollars (\$1,000,000.00) for damage, injury or death to any one person per accident. The LANDLORD shall be named as an additional insured. TENANT shall indemnify, and hold harmless, LANDLORD for any and all liability caused by TENANT. TENANT is responsible for any non-covered costs or amounts that exceed the liability insurance limits.

LANDLORD shall be responsible for the real property taxes on the Rental Property, the insurance on the real property and all other taxes, assessments or governmental charges on the Rental Property.

#### ARTICLE 5. MAINTENANCE OF THE RENTAL PROPERTY.

At the conclusion of this Lease, or any extension hereof, TENANT shall yield up the Rental Property in the same good order and repair as received, reasonable wear and tear excepted. Specifically, in the event TENANT fails to yield up the Rental Property in the same good order and repair as when received and in clean and orderly condition, ordinary wear and tear excepted, TENANT shall pay for the expenses to repair the same.

#### ARTICLE 6. ALTERATIONS AND MAINTENANCE.

TENANT shall make no alterations or improvements to the Rental Property without the LANDLORD'S prior written consent. All existing permanent fixtures, including the bar and all related physical components, are LANDLORD's property. All fixtures installed by TENANT in the future that are affixed to the Rental Property, after receiving approval from the LANDLORD to install, shall become the property of LANDLORD, unless the LANDLORD agrees otherwise in writing.

Any personal property items that remain owned by TENANT may be removed by TENANT upon the termination of this Lease, provided that any of the items removed may be removed only if TENANT shall repair any damage caused by such removal. If LANDLORD has to undertake to remove any items of personal property or fixtures of the TENANT which LANDLORD does not wish to maintain on the Rental Property, then LANDLORD shall assess the cost of such removal and repair to TENANT and TENANT covenants that it will pay LANDLORD for such costs.

TENANT shall be responsible for ordinary maintenance, repair of or damage to the Rental Property arising from the use by TENANT or its business invitees or guests.

TENANT shall not cause any liens or encumbrances to be filed on or against the LANDLORD or the Rental Property. Any such lien or encumbrance which occurs as a result of TENANT shall be immediately removed and released by TENANT. TENANT agrees to be responsible for all costs and attorney's fees incurred by LANDLORD in removing or releasing said lien or encumbrance from the Rental Property or LANDLORD.



TENANT agrees to maintain and operate the RENTAL PROPERTY pursuant to the following conditions:

- (a) TENANT shall make no unlawful use of the Rental Property and shall not keep or maintain any substance or material or conduct any business operation in a manner which may violate any local, state or federal law or regulation;
- (b) All portions of the Rental Property are "smoke free" zones and no smoking of any substance is permitted to occur inside the Rental Property. The sale of alcohol will be allowed on the premises.
- (c) TENANT shall be responsible for its own snow/debris removal of the sidewalk in front of and behind the Rental Property and otherwise comply with all City ordinances, including but not limited to, signage and required setbacks on the sidewalk areas;
- (d) TENANT shall abide by all local, state and federal laws in its operations conducted on the Rental Property;
- (e) TENANT shall comply with all safety and health regulations applicable to its operations and shall follow all rules and regulations pertaining to any licenses issued to TENANT; &
- (f) TENANT shall abide by the Party Wall Agreement and any other conditions or restrictions associated with the Rental Property.

#### ARTICLE 7. DESTRUCTION OF PREMISES.

TENANT shall not be relieved of the obligation to pay rent during the term of this Agreement. If the Rental Property becomes untenable or is destroyed by fire, explosion, wind, tornado, earthquake, flooding, other acts of God, or for any reason whatsoever including pandemics, TENANT is not relieved of obligation to pay rent. TENANT should obtain business interruption insurance in order to continue to meet its rent obligations during the term of the lease.

#### ARTICLE 8. ASSIGNMENT.

TENANT may not assign or sublet this Lease without the prior written consent of LANDLORD.

#### ARTICLE 9. ACCESS TO RENTAL PROPERTY.

LANDLORD, including its officers, agents, employees, representatives and contractors,



shall have the right to enter upon the Rental Property during regular business hours for the purpose of inspecting the same, making repairs and improvements or conducting any other lawful activity to the Rental Property. TENANT shall not interfere with the business operations of the LANDLORD since it plans extensive repairs to the building and will need regular access to complete said repairs.

#### ARTICLE 10. RELEASE.

TENANT waives all causes of action and rights of recovery against LANDLORD, its owners, managers, agents, representatives and employees, for any loss or damage occurring to the personal property and business assets of any and every kind located on or about the Rental Property.

TENANT, upon taking possession of the Rental Property, **accepts the Rental Property in its 'as is' condition** and waives any claims or liability regarding the condition of the Rental Property and improvements, and TENANT knows, understands and accepts the substandard condition of the Rental Property upon commencement of the Lease.

#### ARTICLE 11. DEFAULT.

If TENANT fails to pay any installment of rent or make any payment of additional rent within twenty (20) days after the obligation becomes due, or if TENANT fails to observe and perform any other provision, covenant or condition of this Lease required under this Lease to be observed and performed by TENANT, within ten (10) days after LANDLORD shall have given written notice to Tenant of the failure of TENANT to observe and perform the same; or if TENANT makes an assignment for the benefit of creditors or enters into a composition agreement with its creditors; or if the interest of TENANT in the Rental Property is encumbered, attached, levied upon, or seized by legal process; or if a bankruptcy or insolvency proceeding is filed by or against TENANT; then and in any such event, immediately or at any time thereafter, at the option of the LANDLORD, LANDLORD shall have the right, without legal process, to re-enter and take possession and enjoy the Rental Property as though this Lease had never been made. If the LANDLORD sells the Rental Property to a third party, then the Lease can be terminated after ninety (90) days notice from the LANDLORD.

Upon default and notice from LANDLORD, TENANT agrees to immediately remove itself and all personal property from the Rental Property. In the event of any default, LANDLORD shall be entitled to recover from TENANT any and all damages, unpaid utilities, unpaid rent, unpaid taxes and the legal and other expenses involved in gaining re-entry, including but not limited to reimbursement for the expenses of removal and/or storage of personal property items of TENANT, together with reasonable attorney's fees and costs.

ARTICLE 12. NOTICE.

Whenever under this Lease a provision is made for notice of any kind, written notice shall be addressed to TENANT or LANDLORD, as the case may be, at the addresses listed below, and sent by registered or certified mail with postage prepaid, return receipt requested. Notice shall be deemed received within seventy-two hours of when mailed. Any party may change its notice address by notice in the manner above set forth.

LANDLORD:

Happy Trails, Inc.  
1108 14th Street #421  
Cody, WY 82414

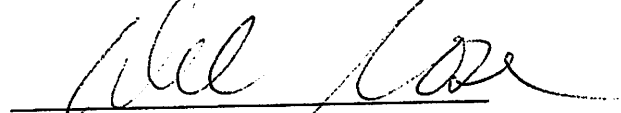
TENANT:

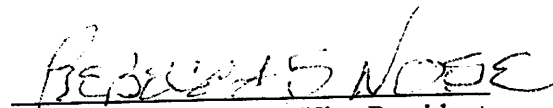
Zachary Barksdale  
Seth Cozzens  
Joseph Weaver  
Cody Wyoming  
82414

IN TESTIMONY WHEREOF, LANDLORD and Tenant have caused this Lease to be signed as of the day and year first above written.

**LANDLORD:**

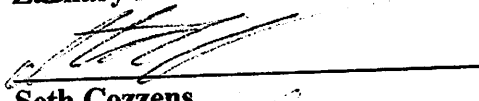
HAPPY TRAILS, INC., a Wyo. corporation


  
DELMAR G. NOSE, President

  
REBECCA S. NOSE, Vice President

**TENANT:**

  
Zachary Barksdale

  
Seth Cozzens

  
Joseph Weaver

Issued by:

**WYOMING DEPARTMENT OF AGRICULTURE  
CONSUMER HEALTH SERVICES  
2219 CAREY AVE  
CHEYENNE, WY 82002  
EQUAL OPPORTUNITY IN EMPLOYMENT AND SERVICES**

Retail Food

ACCOUNT # 12147

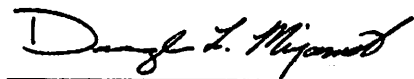
Whereas this party has made application for the licenses listed below in the State of Wyoming according to the law and agrees to comply with all laws, rules and regulations thereto, including the payment of all required fees, there is hereby issued to the applicant this license. This license is not transferable and, unless revoked, shall expire on the date indicated below.

Issued to:

**WYODOUGH DBA LEGIONNAIRE EN. LLC  
1244 SHERIDAN AVE  
CODY, WY82414**

**EXPIRATION DATE:  
11/17/2023**

**LEGIONNAIRE EN. LLC  
ZACHARY BARKSDALE  
1244 SHERIDAN AVE  
CODY, WY82414**



Director of Dept. of Ag

**THIS LICENSE MUST BE CURRENT  
AND POSTED CONSPICUOUSLY  
AT THE PHYSICAL LOCATION**

RESOLUTION 2022-25

A RESOLUTION OF THE CITY OF CODY, WYOMING UPDATING  
A FEES AND CHARGES SCHEDULE FOR VARIOUS MUNICIPAL  
SERVICES AND PRODUCTS AND ESTABLISHING AN EFFECTIVE  
DATE OF MARCH 1, 2023.

WITNESSETH

WHEREAS, the Governing Body for the City of Cody, Wyoming charges fees for certain permits, services, public documents, products, etc. that are not already set by Ordinance;

WHEREAS, the Governing Body of the City of Cody, Wyoming has set a policy stating that to the extent practical, the City shall set user fees based on cost recovery; and

WHEREAS, the Governing Body of the City of Cody, Wyoming finds that it is necessary to amend the fees and charges schedule to reflect current cost recovery levels.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CODY, WYOMING hereby adopts the following fee schedule effective as of October 1, 2022.

Public Records Fees	
Photo Copies & Printed Materials – black & white up to 11x17	\$1.00 for the first page
	\$0.50 for each subsequent page
Photo Copies & Printed Materials – color up to 11x17	\$1.50 for the first page
	\$0.75 for each subsequent page
Photo Copies & Printed Materials – black & white larger than 11x17	\$5.00 each page
Photo Copies & Printed Materials – color larger than 11x17	\$10.00 each page
Producing or constructing records, programming, and computer service	\$20.00 minimum up to 1 hour of staff time
	\$5.00 for each additional 15 minutes of staff time
Fax Sent Fee	\$2.00 per fax up to 5 pages
	\$.25 for each subsequent page
Digital Disk	\$5.00 per disk
Video Disk	\$10.00 per disk
Flash Drive	\$5.00 4GB
	\$5.00 8GB
	\$8.00 16GB
	\$10.00 32GB
	\$12.50 64GB
Printed Documents	
Budget Document	\$140.00 each
Audit Report	\$50.00 each
Financial Management Policy	\$50.00 each
Master Plan	\$40.00 each
Site Map or Lot Map with aerial	\$6.00 each
Zoning and Street Maps (Zoning, address, street, etc.)	36x48 Color: \$10.00 each
	42x60 Color: \$48.00 each
Scanning of Document on large scanner, up to 42" wide	\$7.50 each page
Lamination of Document	\$6.00 set up fee and \$2.00 per linear foot (24" wide) each
Whole Aerial & Utility Tiles w/Lot Lines (electronic)	\$36.00 each
½ Aerial & Utility Tiles w/Lot Lines (electronic)	\$18.00 each
¼ Aerial & Utility Tiles w/Lot Lines (electronic)	\$9.00 each
Other Fees	
Returned Payment Fee	\$30.00
Notary Signature	\$5.00 per document (city documents exempt from fee)
Alarm Reinstatement Fee	\$150.00
Police Patch	\$10.00 new
	\$5.00 used
Business Licenses & Permits	
Contractor License Fee	Initial Application Fee, or renewal of expired license \$200.00
	Application for additional or expanded license, \$100.00 for each category of licence added or modified (general, general-IRC, plumbing, plumbing-IRC, HVAC, HVAC-IRC, electrical, specialty)
	Annual Renewal \$150.00 per business (includes all licenses held by business)
	Renewal Late Fee \$30.00
Annual Short Term Rental/ Bed & Breakfast Registration per dwelling unit (non-transferrable)	\$100.00
Directional Wayfinding Signage Permit (Sheridan Ave. street signs)	\$60.00 per sign per calendar year
Right-of-Way Encroachment Permit	\$50.00 per each 45-day permit
	\$150.00 deposit (refundable) per permit if storing materials in City R-W or alley

Parks, Athletic Fields, and Shelter Fees	
Tennis Courts - Paul Stock, Dorse Miller, Glendale, and City park	\$25.00 per day per court
Specialy Park Areas - skate park, basketball courts, volleyball court, horseshoe pits, climbing wall, dog park, trails, or open space	\$25.00 per event
Soccer Facility - Dacken, Holm View, Mentock, and other soccer/multi purpose park areas	Practices: \$50.00 per week per field or \$10.00 per hour per field
	League games: \$25.00 per game
	Field prep: \$15.00 per hour plus materials
	per day
Baseball Facility - Hugh Smith, Legion Field, Babe Ruth, Pee Wee, and Little League	Practices: \$50.00 per week per field
	League Games: \$75.00 per game
	Youth League Games: \$50.00 per game
	Field prep: \$25.00 per hour plus materials
East Sheridan Fields (includes softball)	Practices: \$50.00 per week per field or \$10.00 per hour per field
	League games: \$50.00 per game
Tournament Concession Stand Use	\$25.00 per event
Tournament Play, Camps, Clinics, Etc	\$175.00 per event for one field
	\$50.00 per day per field for additional fields
Park Shelters - Hugh Smith, Mentock, Glendale, and City Park	\$25.00 per day
Picnic Shelters - Beck Lake Lions Club, Shoshone River Trail, and Paul Stock Trail	\$50.00 per day for events open to the public only
Canal Park Amphitheater	\$100.00 per event and \$50.00 per day for additional days
City Park Band Shell	\$150.00 per event and \$50.00 per day after first day
	\$450.00 per event per day for sound system
Race, Walk, and Fitness Permit	\$25.00 per day

Recreation Memberships	
Recreation Center Annual Memberships	Adult: \$315.00
	Senior: \$282.00
	Additioinal Adult: \$189.00
	Additional Senior: \$168.00
	Additional Youth (up to 4): \$63.00
	Additional Youth over 4: \$30.00
	Student (16 yrs - college): \$219.00
	Youth (5-15 yrs): \$156.00
	Golden Individual, 65+ years \$282.00
	Golden Couple, 65+ years \$450.00
Recreation Center Other Memberships	Corporate Family: \$507.00
	Corporate Individual: \$255.00
	Monthly: \$60.00
	6 Month Adult: \$202.00
	6 Month Additional Adult: \$121.00
	6 Month Youth: \$102.00
Recreation Center Daily Use Rate	6 Month Additional Youth: \$40.50
	6 Month Student: \$142.00
	Adult (16+yrs): \$10.00 Resident \$15.00 Non-Resident
	Student & Youth: \$7.00 Resident \$10.00 Non-Resident
Recreation Center Guest Passes - 10 pack	Military: \$6.00 Resident \$10.00 Non-Resident
	Last Two Hours: \$4.00 Resident & Non-Resident
	Adult Resident: \$90.00
	Student (16 yrs - college): \$63.00
	Youth (5-15 yrs): \$45.00
	Military: \$63.00

Aquatics Fees	
Competitive Swimming Fee	Base Rate: \$100.00 per hour for 6 lanes
	Lane Rate: \$17.00 per lane per hour
	Exclusive Use Fee: \$75.00 per hour
Group Reservations	\$5.50 per person
Aquatics Area Special Events	\$150.00 per hour plus \$1.00 per swimmer for 40 or more swimmers

City Facility Fees	
Auditorium	\$500.00 per event (1/2 day set up, event day, 1/2 day tear down)
	\$75.00 per each additional day
	\$50 per event surcharge if alcohol is served or consumed on the premises
Cody Club Room	\$150.00 per event (1/2 day set up, event day, 1/2 day tear down)
	\$75.00 per each additional day
	\$50 per event surcharge if alcohol is served or consumed on the premises
Cody Club Room Kitchen	\$150.00 per event (1/2 day set up , event day, 1/2 day tear down)
	\$75.00 per additional day
	\$50.00 event surcharge if alcohol is served or consumed on the premises
Cody Club Room four (4) hours or less event	\$75.00 per four (4) hour or less event
	\$50 per event surcharge if alcohol is served or consumed on the premises
Cody Club Room Kitchen four (4) hour or less event	\$75.00 per four (4) hour or less event
	\$50 per event surcharge if alcohol is served or consumed on the premises
Equipment and Fixtures	\$5.00 each table
	\$10.00 per dozen chairs
	\$75.00 per day bleachers plus \$25.00 deliver, \$25.00 pickup
	\$50.00 per day receptacle for outdoor electricity
	\$75.00 per hour manlift

City Facility Fees	
Recreation Center Conference Room A	\$100.00 per day Commercial & Non Members
	\$50.00 per day Non-Profit & Members
Recreation Center Conference Room B	\$100.00 per day Commercial & Non Members
	\$50.00 per day Non-Profit & Members
Recreation Center Gymnasium - one	\$300.00 per day Commercial & Non Members
	\$150.00 per day Non-Profit & Members
Recreation Center Gymnasium - two	\$600.00 per day Commercial & Non Members
	\$300.00 per day Non-Profit & Members
Recreation Center Gymnasiums - all	\$900.00 per day Commercial & Non Members
	\$450.00 per day Non-Profit & Members
Recreation Center Multi Purpose Room	\$200.00 per day Commercial & Non Members
	\$100.00 per day Non-Profit & Members
Recreation Center Raquetball Court	\$100.00 per day Commercial & Non Members
	\$50.00 per day Non-Profit & Members
Recreation Center Spectator Room	\$100.00 per day Commercial & Non Members
	\$50.00 per day Non-Profit & Members
Recreation Center Hallway	\$100.00 per day Commercial & Non Members
	\$50.00 per day Non-Profit & Members
Recreation Center Walking/Running Track	\$100.00 per day Commercial & Non Members
	\$50.00 per day Non-Profit & Members
Recreation Center Locker Rental	\$0.50 per day, small size (free for members)
	\$0.75 per day, medium size (free for members)
	\$45.00 for three months, large size
	\$90.00 for six months, large size
	\$10.00 each key replacement
Mini Golf Park	\$7.00 per person General Admission (all ages)
	Group Rate: \$20 up to 5, \$30 up to 10, \$3.00 per person over 10
Planning & Zoning Fees	
Commercial/Industrial Site Plan, Landscaping, Parking, and Architectural Reviews:	
Site Plan Review of new facility, and expansion of ≥ 20%.	\$0.75 per square foot of building (GFA), \$650.00 minimum
Site Plan Review for addition or expansion of < 20%.	\$300.00
Review of Landscape plan, Parking plan, or modification to Architecture of building.	\$50.00 for each type of review
Multi-family Residential Site Plan Review (all multi-family projects in commercial zones and projects of > 4 dwellings in residential zones.)	\$30.00 per dwelling unit
Sign Plans (attached wall, projecting, awning, inflatable, freestanding on existing supports)	\$40.00 (no fee if submitted and reviewed with a site plan review)
Sign Plans (freestanding requiring new base structure, electronic message boards)	\$50.00 for one sign, \$10.00 for each additional (no fee if submitted and reviewed with a site plan review)
Sign Plans (billboards)	\$200.00
Fence height waiver request	\$80.00
Special Exemption Application	Exemption from numerical standards \$300.00 plus advertising/mailing costs; Similar Use Determination \$400.00 plus advertising/mailing costs.
Conditional Use Permit	\$350.00 plus advertising/mailing costs.
Special Use Permit - Airport Overlay	\$350.00 plus advertising/mailing costs.
Nonconforming Expansions and Changes requiring review under City Code 10-13-06	\$350.00 plus advertising/mailing costs.
Zoning Variance	\$500.00
Appeal to Board of Adjustment	\$300.00
Petition for Rezone or Text Amendment to Zoning Ordinance (not initiated by City)	\$750.00 plus advertising/mailing costs
Minor Subdivision of 5 lots or less with each lot having direct access to a paved public street and no public infrastructure improvements other than electrical.	\$300.00 preliminary plat review; \$100 final plat review.
Infill Minor Subdivision not qualifying for category immediately above.	\$650.00 preliminary plat review; \$300 final plat review.
Major Subdivision (more than 5 lots, and 5 lots or fewer if public infrastructure other than electrical is required)	Conceptual Plat \$250.00 (Consult w/ City Planner to determine if necessary.)
	Preliminary Plat \$650.00 plus \$30.00 per lot
	Final Plat/Construction Plan Review \$1,100.00 plus \$30.00 per lot
	Phasing the acceptance of the subdivision improvements: \$500.00 for each phase of construction beyond initial phase.
	Request to accept performance bond, letter of credit, or cash deposit for remaining subdivision improvements, to obtain building permit(s) prior to City accepting subdivision infrastructure: \$500.00
Plat Amendment/Vacation	To a recorded Final Plat Minor Subdivision, with no additional lots: \$150.00 plus any advertising/mailing costs. If creating additional lots, use regular subdivision fee.
	To a recorded Final Plat Major Subdivision, with no additional lots: \$300.00 plus any advertising/mailing costs. If creating additional lots, use regular subdivision fee.
Planned Unit Development (PUD)	\$4,500.00 plus the subdivision plat review fees and advertising/mailing costs.
Boundary Line Adjustment	\$150.00 for the first two parcels, \$50 for each additional parcel involved.
Vacation of Land or Right-of-Way	\$500.00 plus advertising/mailing costs

Annexation or Deannexation (not initiated by City), including City zoning of property.	Applicant responsible for annexation survey and advertising/mailing costs
Mobile Home Park Permit (Chapter 9-06)	\$1,750.00 (up to 5 spaces) \$30.00 each additional space
Fee for P.W. review of engineering plans for public infrastructure not associated with a subdivision or PUD application	Actual Cost

**Building Permit & Inspection Fees (Items marked with "\*" are not applicable if a general building permit and resulting fee includes the work identified.)**

Building Permit Fee, unless listed otherwise.  (Fee shall be based on the total market value of the work, including materials and labor. Claimed valuation shall be no less than the national average per square foot, unless demonstrated otherwise to the building official.)	Building Permit Fee Table:
	Valuation:                      Fee:
	\$1 to \$500                      \$40
	\$501 to \$2,000              \$40 for the first \$500; plus \$3 for each additional \$100 or fraction thereof.
	\$2,001 to \$40,000          \$69 for the first \$2,000; plus \$11 for each additional \$1,000 or fraction thereof
	\$40,001 to \$100K          \$487 for first \$40,000; plus \$9 for each additional \$1,000 or fraction thereof
	\$100,001 to \$500K          \$1,027 for the first \$100K; plus \$7 for each additional \$1,000 or fraction thereof
	\$500,001 to \$1 million      \$3,827 for the first \$500K; plus \$5 for each additional \$1,000 or fraction thereof
	\$1,000,001 to \$5 million    \$6,327 for the first \$500K; plus \$3 for each additional \$1,000 or fraction thereof
Building Plan Review Fees	\$5,000,001 and over          \$18,327 for the first \$5 million; plus \$1 for each additional \$1,000 or fraction thereof
	Minor Residential Plan Review (e.g. addition, finish basement) \$50.00 per each 250 sq. ft. or portion thereof, or the fee for Residential Plan Review, whichever is less.
	Residential Plan Review (Single-family, duplex, townhouse, ADU) \$250.00 per dwelling unit
	Industrial/Commerical/Multi-Family Plan Review: 25% of building permit fee Fire District Review, Pass Through Fee: 10% of City's building permit fee, when Fire Review is required (industrial, commercial, multi-family).
Fee for work done without required permit(s), or commencing before permit issuance without building official permission	Additional 25% of permit fee, \$20.00 minimum
Fence Permit (Residential use)	\$50.00
Fence Permit (Commercial/Industrial use)	\$50.00
Pre-Fabricated Storage Building, without foundation (>120 SF only)	\$40.00
Demolition/Moving Permit (not placement)	\$40.00
Drywall/Plaster Permit (Residential)*	\$40.00
Insulation Permit (Residential)*	\$40.00
Fire Suppression/Sprinkler System Permit (Residential)*	\$40.00
Masonry/Concrete/Retaining Wall Permit (Residential)*	\$40.00
Window Glass/Glazing Permit*	\$40.00
Fireplace/Stove Installation Permit*	\$40.00
Siding/Stucco Permit (Residential)*	\$40.00
Re-Roof Permit (Residential)*	\$40.00
Ground Stabilization (Mud Jacking/Helitical pier) Permit	\$150.00
Sign Installation Permit*	Use "Building Permit Fee Table" for billboards, electronic message boards, freestanding signs on new bases or that enlarge the total sign face. No building permit fee for temporary signs and other signs not listed herein (covered by zoning sign plan review fee.)
Inspections Outside Normal Business Hours	\$60.00 per hour, minimum 2 hours
Reinspection Fees Assessed Under Building Code (3rd or more)	\$40.00
Additional Plan Review due to changes, additions or plan revisions	\$45.00 per hour minimum 1 hour

**Electrical Permit Fees**

Electrical Permit Fees	Service Upgrade, through 200 amp: \$100.00
	Service Disconnect or Reconnect \$40.00 (\$80 for both)
	Small Jobs/Modifications as determined by building official (e.g. adding or extending circuit) \$50.00
	Electrical Permit, if the valuation of the electrical work is included in the valuation of the general building permit: \$50.00
	Electrical Permit, if the valuation of the electrical work is not included in the valuation of the general building permit: Fee per "Building Permit Fee Table".
	Reinspection (3rd or more) \$50.00



Plumbing & HVAC Permit Fees (Items marked with "*" are not applicable if a general building permit and resulting fee includes the work identified.)	
Plumbing & HVAC Permit Fees	Plumbing/HVAC permit, if the valuation of the plumbing/HVAC work is included in the valuation of the general building permit: \$50.00
	Plumbing/HVAC permit, if the valuation of the plumbing/HVAC work is not included in the valuation of the general building permit: Fee per "Building Permit Fee Table".
Sewer Service Inspections*	\$40.00
Gas Piping Pressure Inspections (existing gas line)*	\$40.00
Furnace Replacement (Residential size or equivalent)* (per system)	\$40.00
Boiler Replacement (Residential size or equivalent)* (per system)	\$40.00
A/C Unit Replacement (Residential size or equivalent)* (per system)	\$40.00
Water Heater Replacement (Residential size or equivalent)* (per system)	\$40.00
Mini-Split Unit*	\$40.00
Other Small Jobs, as determined by Building Official	\$40.00

PASSED, APPROVED AND ADOPTED THIS 21<sup>st</sup> DAY OF FEBRUARY.

\_\_\_\_\_  
Mayor Matt Hall

Attest:

\_\_\_\_\_  
Cindy Baker, Administrative Services Officer



## ORDINANCE 2023-02

### AN ORDINANCE TO ENTER INTO A CABLE FRANCHISE AGREEMENT WITH SPECTRUM PACIFIC WEST, LLC, L/K/A CHARTER COMMUNICATIONS.

This Cable Franchise Agreement (“Franchise”) is between the City of Cody, Wyoming, a municipal corporation organized under the laws of the State of Wyoming (“City” or “Franchising Authority”), and Spectrum Pacific West, LLC, an indirect subsidiary of Charter Communications, Inc. (hereinafter “Grantee”).

WHEREAS, the City wishes to grant Grantee a renewal of its nonexclusive franchise to construct, install, maintain, extend and operate a Cable System in the Service Area as designated in this Franchise;

WHEREAS, the City is a "franchising authority" in accordance with the Cable Communications Policy Act of 1984, as amended (47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to applicable law;

WHEREAS, Grantee’s Cable System occupies the Public Rights-of-Way within the Service Area, and Grantee desires to use the Cable System to provide Cable Services and other services in the Service Area;

WHEREAS, the City has determined that Grantee is in material compliance with its existing franchise and applicable law and that its Cable System is adequate and feasible in a full public proceeding affording due process to all parties;

WHEREAS, the Grantee has represented to the City, and the City accepts Grantee to be, financially, technically and legally qualified to continue to operate the Cable System;

WHEREAS, the City has determined the grant of this nonexclusive franchise to Grantee is consistent with the public interest; and

WHEREAS, the City and Grantee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

#### **SECTION 1** **Definitions**

For the purpose of this Franchise, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below; provided that such terms shall be conformed as necessary to be consistent with the Cable Act. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

A. “Access Channel” means a downstream channel provided on the Cable System to transmit Access Programming to Subscribers.

B. “Access Programming” means noncommercial video programming produced by the City and its designees, including schools in the community, and transmitted over the Access Channel including, but not limited to:

1. “Educational Access” means Access Programming where schools are the primary users having editorial control over the programming. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

2. “Government Access” means Access Programming where governmental institutions or their designees are the primary users having editorial control over the programming.

C. “Affiliate” when used in relation to Grantee means another Person who owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.

D. “Basic Service” means the lowest tier of Cable Service that includes, at a minimum, the retransmission of local television broadcast signals and Access programming if required by applicable federal law.

E. “Cable Act” collectively means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and any amendments thereto.

F. “Cable Operator” means any Person or group of Persons who provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in a Cable System, or who otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System.

G. “Cable Service” means (1) the one-way transmission to Subscribers of (a) video programming service or, (b) other programming services and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

H. “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment designed to provide Cable Service, including video programming, and which is provided to multiple Subscribers within a community. Cable System does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that the facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent it is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of Title VI of the Communications Act of 1934; or (5) any facilities of any electric utility used solely for operating its electric utility system.

I. “City Council” means the City Council, the governing body of the City, or its successors.

J. “FCC” means the Federal Communications Commission, or successor governmental entity.

K. “Franchise” means this document, a contractual agreement, and any amendments and modifications thereto executed between the Franchising Authority and Grantee, containing the specific provisions of the authorization granted to operate a Cable System in the City.

L. “Gross Revenues” means all revenue in whatever form, from any source, directly received by the Grantee or Affiliate of the Grantee that would constitute a Cable Operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Services in any manner that requires use of the Public Rights-of-Way in the Service Area, as calculated in accordance with Generally Accepted Accounting Principles (GAAP), subject to the following exclusions.

Gross Revenues do not include any taxes which are imposed directly or indirectly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency. Gross Revenues do not include franchise fees pursuant to State law. Gross Revenues do not include revenue which cannot be collected by the Grantee and are identified as bad debt; provided that if revenue previously representing bad debt is collected, this revenue shall be included in Gross Revenues for the collection period. Gross Revenues also do

not include (i) refunds, rebates or discounts made to Subscribers or other third parties; (ii) any revenues classified as non-Cable Services revenue under federal or State law; (iii) revenues from the sale of capital assets or sales of surplus equipment or program launch fees, i.e., reimbursement by programmers to Grantee of marketing costs incurred by Grantee for the introduction of new programming; or (iv) directory or Internet advertising revenues including, but not limited to, Yellow Page, White Page and electronic publishing.

M. “Non-Discriminatory” means that the applicable law, code, ordinance, regulation, or procedure, both as it is written and as it is administered by the City, does not treat Grantee or Cable Operators differently than other similarly-situated users of the Right-of-Way, or as applicable, other businesses operating in the City.

N. “Normal Business Hours” means hours during which most similar businesses in the community are open to serve Subscribers. In all cases, Normal Business Hours shall include some evening hours at least one night per week or some weekend hours. The Grantee will notify its Subscribers and the Franchising Authority of its Normal Business Hours.

O. “Normal Operating Conditions” means service conditions which are within the control of the Grantee. Conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages of other companies, utility company work on poles, severing of cable system plant by third persons, labor strikes, vandalism, accidents and severe or unusual weather conditions.

P. “Person” means an individual, partnership, association, trust, corporation, governmental entity (but shall not mean the Franchising Authority) or other entity.

Q. “Public Right-of-Way” or “Right-of-Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, lane, drive, or circle, and including, but not limited to, public utility easements, dedicated utility strips or other rights-of-way dedicated for uses compatible with installing, operating, repairing or maintaining a Cable System.

R. “Service Area” means the present municipal boundaries of the City and includes any additions thereto by annexation or other legal means.

S. “Service Interruption” means the loss of picture or sound on one or more channels.

T. “Standard Installation” means installations to residences and buildings that are located up to 125 feet from the point of connection to Grantee’s existing distribution system.

U. “State” means the State of Wyoming.

V. “Subscriber” means a person who lawfully receives Cable Services from the Cable System with the Grantee’s express permission.

## **SECTION 2** **Grant of Franchise**

**2.1 Grant.** The Franchising Authority grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to make reasonable and lawful use of the Public Right-of-Way in the City to construct, operate, maintain, reconstruct, rebuild and upgrade a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise. Nothing in this Franchise shall be construed to preclude the Grantee from offering any service over its Cable System that is not prohibited by federal or State law.

A. Nothing in this Franchise shall be deemed to waive the lawful requirements of any Non-Discriminatory and generally applicable City ordinances or resolutions existing as of the effective date of this Franchise.

B. Each term, provision or condition herein is subject to the provisions of State law, federal law, and the lawful, Non-Discriminatory provisions of the City Code, and ordinances and

regulations. The lawful, Non-Discriminatory provisions of the City Code and all subsequent amendments are expressly incorporated in this Franchise. However, the Franchising Authority may not unilaterally alter the material rights and obligations of Grantee under this Franchise. Notwithstanding the foregoing, neither party waives its rights to avail itself of federal or State preemption regarding the provisions of this Franchise.

C. This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

D. The Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Service Area, or directly involved in the management or operation of the Cable System to provide Cable Service in the Service Area, will also comply with the terms and conditions of this Franchise.

E. This Franchise shall not include or be a substitute for:

1. Any permit required by the Franchising Authority for Public Right-of-Way users generally in connection with operations on or in the Public Right-of-Way or public property including, by way of example and not limitation, street cut or construction permits; or

2. Any permits or agreements for occupying any other property of the Franchising Authority or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

**2.2 Term.** The Franchise shall be for a term of ten years commencing on the effective date of the Franchise, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

**2.3 Police Powers / Other Laws.**

A. Grantee's rights are subject to the police powers of the Franchising Authority to adopt and enforce lawful and Non-Discriminatory laws, ordinances and regulations necessary to the safety, health and welfare of the public, and Grantee agrees to comply with all such laws, ordinances and regulations enacted, or hereafter enacted by the Franchising Authority, provided that such laws, ordinances and regulations shall be reasonable, do not have the effect of limiting the benefits and rights or expanding the obligations of the Grantee that are granted by this Franchise, and do not conflict with any federal or State laws that preempt such laws, ordinances or regulations. Grantee reserves the right to challenge provisions of any Franchising Authority law, ordinance or regulation that conflicts with its contractual rights under this Franchise or that is preempted by federal or State laws, either now or in the future.

B. Grantee and Franchising Authority shall comply with all federal and State laws, and the laws of any other legally constituted governmental unit having lawful jurisdiction over the subject matter of this Franchise, including any changes in such laws that occur subsequent to the effective date of this Franchise, provided that nothing in this Franchise shall preclude Grantee or Franchising Authority from challenging any such laws on any basis.

**2.4 Use of Public Right-of-Way.**

A. Subject to the Franchising Authority's supervision and control, Grantee may erect, install, construct, operate, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Right-of-Way within the City such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary or useful and appurtenant to the operation of a Cable System within the City for the origination and distribution of Cable Services. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the Franchising Authority's Public Right-of-Way in compliance with all lawful, Non-Discriminatory City construction codes and procedures. As trustee for the public, the Franchising Authority is entitled

to fair compensation to be paid for these valuable rights throughout the term of the Franchise, as outlined herein.

B. Grantee must follow Franchising Authority established requirements for placement of Cable System facilities in the Public Right-of-Way, including the specific location of facilities in the Public Right-of-Way. Within limits reasonably related to the Franchising Authority's role in protecting public health, safety and welfare, and so long as such requirements are lawful and Non-Discriminatory, the Franchising Authority may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Public Right-of-Way; may deny access if Grantee is not willing to comply with the Franchising Authority's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the Franchising Authority, or which is installed without prior Franchising Authority approval of the time, place or manner of installation, and charge Grantee for all the reasonable costs associated with removal; and may require Grantee to reasonably cooperate with others to minimize adverse impacts on the Public Right-of-Way through joint trenching and other arrangements.

C. Grantee agrees to use and be a participant in One Call of Wyoming-811 as required by State law.

**2.5 Franchise Nonexclusive.** This Franchise shall be nonexclusive. Any expansion of Grantee's Cable System in the Right-of-Way shall be subject to all prior rights, interests, easements, permits or licenses granted by the Franchising Authority to any Person to use such Right-of-Way for any purpose the Franchising Authority deems fit, including the same or similar purposes allowed Grantee hereunder. Subject to subsection 9.2, the Franchising Authority may at any time grant authorization to use the Public Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the Franchising Authority deems appropriate.

**2.6 Effect of Acceptance.** By accepting the Franchise, the Grantee:

A. Acknowledges and accepts the Franchising Authority's legal right to issue and enforce the Franchise; and

B. Accepts and agrees to comply with each provision of this Franchise subject to applicable law.

**2.7 Permits Required for Construction.** Prior to doing any work in the Public Right-of-Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the Franchising Authority. As part of the permitting process, the Franchising Authority may impose any lawful and Non-Discriminatory conditions and regulations as are necessary for the purpose of protecting any structures in such Public Right-of-Way, proper restoration of Public Right-of-Way and structures, the protection of the public, and the continuity of pedestrian and vehicular traffic. Such conditions may also include the providing of a construction schedule and maps showing the location of the facilities to be installed in the Public Right-of-Way. Grantee shall pay all lawful, Non-Discriminatory and generally applicable fees for the requisite Franchising Authority permits received by the Grantee.

**2.8 Maps Required.** Grantee shall at all times maintain a complete set of GIS, DWF or other format of maps utilized by Grantee from time to time showing the exact location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. Upon advance written notice to Grantee, the City's authorized representative(s) or agent(s) shall have the right to inspect such maps at Grantee's local office at a time mutually agreeable to the City and Grantee. Due to confidentiality and safety concerns, the City shall not be allowed to make copies of or take possession of any of Grantee's maps.

**2.9 Compliance with Applicable Codes.**

A. Franchising Authority Construction Codes. Grantee shall comply with all of the lawful, Non-Discriminatory and generally applicable provisions of the Franchising Authority construction codes, including, without limitation, building codes and zoning codes and regulations.

B. Tower Specifications. Antenna supporting towers shall be designed for the proper loading as specified by a licensed engineer in Wyoming. Antenna supporting towers shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and lawful, Non-Discriminatory and generally applicable local codes or regulations.

C. Safety Codes. Grantee shall comply with all federal, State and lawful, Non-Discriminatory and generally applicable provisions of local safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electrical Safety Code and Occupational Safety and Health Administration standards.

**2.10 Minimal Interference.** Work in the Public Right-of-Way, on other public property, or near public or private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents given the work being done. Grantee's Cable System shall be constructed and maintained in such a manner as not to unreasonably interfere with sewers, water pipes, or any other property of the Franchising Authority, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Public Right-of-Way by, or under, the City's authority. The Grantee's Cable System shall be located, erected and maintained so as not to unnecessarily hinder or obstruct the free use of the Public Right-of-Way or other public property, and shall not unreasonably interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not unreasonably obstruct or impede traffic.

**2.11 Joint Trench Opportunities.** To minimize disruption to the Public Right-of-Way, the City shall provide Grantee with advance written notice when it intends to open extended stretches of the Public Right-of-Way to enable Grantee to explore the placement of its facilities at such time.

### **SECTION 3** **Standards of Service**

**3.1 Construction Standards and Requirements.** The Cable System shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices performed by experienced maintenance and construction personnel.

**3.2 New Poles.** Grantee shall not construct or install any new poles in the Right-of-Way without the prior written consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned. The Franchising Authority's enforcement of this provision shall be Non-Discriminatory and generally applicable to other users of the Right-of-Way.

**3.3 Discontinuing Use.**

A. Whenever Grantee intends to abandon a material above-ground facility or portion of the Cable System within the Public Right-of-Way, Grantee shall submit for the City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility, and request that the City permit it to remain in place, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Right-of-Way, in the same manner and degree as if the facility were in active use,

and Grantee shall retain all liability for such facility. If Grantee is not willing to comply with the foregoing requirements, the City may remove the facility at issue and charge Grantee for all the reasonable costs and attorneys' fees associated with such removal.

B. Subsection 3.3 (A) shall not apply to Grantee unless it is a lawful, generally applicable and Non-Discriminatory requirement of the City for other similarly situated users of the Public Right-of-Way.

C. Notwithstanding anything to the contrary herein, Grantee has the right to abandon any underground property without notice or approval.

D. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access Programming purposes.

**3.4 Inspection of Construction and Facilities.** The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least 48 hours' notice, or, in case of an emergency, upon demand without prior notice. The City shall have the right to charge lawful, Non-Discriminatory and generally applicable inspection fees for necessary inspections.

**3.5 Work of Contractors and Subcontractors.** Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's lawful, Non-Discriminatory and generally applicable ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors.

**3.6 Restoration of Public Rights-of-Way.** If during the course of the Grantee's construction, operation or maintenance of the Cable System there occurs a disturbance of any Public Right-of-Way by the Grantee, it shall, at its expense, replace and restore the Public Right-of-Way to a condition reasonably comparable to the condition of the Public Right-of-Way existing immediately prior to such disturbance.

**3.7 Relocation at Request of the Franchising Authority.** Upon its receipt of reasonable advance notice, not to be less than 30 days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Right-of-Way, or remove from the Public Right-of-Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, highway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority. The Franchising Authority's enforcement of this provision shall be Non-Discriminatory in comparison to other similarly situated users of the Right-of-Way. If funds are generally made available to users of the Public Right-of-Way for such relocation, Grantee shall be entitled to its *pro rata* share of such funds.

**3.8 Relocation at Request of Third Party.** The Grantee shall, on the request of any Person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (A) the expense of temporary raising or lowering of wires is paid by the permit holder, including, if required by the Grantee, making a payment in advance; and (B) the Grantee is given not less than ten business days advance written notice to arrange for temporary wire changes. The Franchising Authority's enforcement of this provision shall be Non-Discriminatory in comparison to other similarly situated users of the Right-of-Way.

**3.9 Trimming of Trees and Shrubbery.** The Grantee may trim trees or other natural growth overhanging any of its Cable System in the Service Area to prevent branches from coming in contact with the Grantee's wires, cables or other equipment. The Grantee shall reasonably compensate the Franchising Authority for any material damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction or operation of the Cable System undertaken by the Grantee. Replacement with comparable trees and shrubs shall satisfy any and all obligations the Grantee may have to the Franchising Authority pursuant to the terms of this subsection. The Franchising

Authority's enforcement of this provision shall be Non-Discriminatory and generally applicable in comparison to other similarly situated users of the Right-of-Way.

**3.10 Safety Requirements.** Construction, installation and maintenance of the Cable System must be performed in an orderly and workmanlike manner. All work must be performed in accordance with applicable FCC or other federal, State and lawful, Non-Discriminatory and general applicable local regulations. The Cable System shall not endanger or interfere with the safety of Persons or property in the Service Area.

**3.11 Technical Standards.** The Grantee is responsible for ensuring that the Cable System is designed, installed and operated in a manner that fully complies with federal regulations as revised or amended from time to time. Upon written request, the Franchising Authority shall have the right to obtain a copy of test records or results of the Cable System's performance as required by FCC regulations.

**3.12 Aerial and Underground Construction.**

A. New Grantee Facilities. If Grantee is extending its Cable System into any portions of the Service Area currently unserved by Grantee where the existing transmission or distribution facilities (which, for purposes of clarity, does not include any traditionally ground-mounted appurtenances for such facilities, such as power supplies or pedestals) of the respective public utilities providing telephone communications and electric services and cable and other communications services plant are already underground, Grantee shall construct, operate, and maintain its new transmission and distribution facilities underground. In such areas where such transmission or distribution facilities of the respective public utilities providing telephone communications and electric services and cable and other communications services plant are both aerial and underground, Grantee and Franchising Authority shall mutually agree as to the placement of Grantee's transmission or distribution facilities, or any part, aerially or underground.

B. Existing Grantee Facilities. In the event that such transmission or distribution facilities of the respective public utilities providing telephone communications and electric services and cable and other communications services plant (excluding Grantee's Cable System) are placed underground after the effective date of this Franchise, the Grantee shall be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given not less than 120 days written notice to do so and access to trenches at the time such other facilities are placed underground. In the event that discussions between the City and any other company concerning placing facilities underground are to occur, the City shall promptly inform the Grantee of those discussions and invite the Grantee to participate in them.

C. New Developments. The Franchising Authority shall use reasonable diligence to provide the Grantee with written notice of the issuance of building or development permits for planned commercial or residential developments within the Service Area requiring undergrounding of cable facilities.

D. Local Improvement District. If an ordinance is passed creating a local improvement district which involves placing certain utilities or facilities underground including those of the Grantee which are located overhead, the Grantee will participate in the underground project after reasonable notice from the City and shall remove Grantee owned poles, cables and wires above the surface of the Public Rights-of-Way within the district and shall place its equipment underground in conformity with the requirements of the Franchising Authority and within a reasonable amount of time. The Grantee may include its costs of relocating facilities associated with the undergrounding project in a local improvement district if allowed under applicable law.

E. Nothing contained in this subsection 3.12 will require the Grantee to construct, operate, and maintain underground (i) any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals or other related equipment, or (ii) the Cable System in a manner that is not commercially or technologically feasible (i.e., in accordance with industry standards). All time requirements set forth in this subsection 3.12 are subject to subsection 8.7.

F. The Franchising Authority's enforcement of this subsection 3.12 shall be Non-Discriminatory in comparison to other similarly situated users of the Right-of-Way.



**3.13 Required Extensions of Service.** Unless Cable Service is already available from another Cable System Operator, Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least 25 residences per linear strand mile of aerial cable as measured from Grantee's closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of such request for service. The Cable Service will be provided at Grantee's published rate for standard installations if such residence is a Standard Installation. If, as a result of new construction, an area within the City meets the requirements of this subsection 3.13, Grantee shall provide Cable Service to such area within one year of receiving notice from the City that such requirements have been met.

**3.14 Subscriber Charges for Extensions of Service.** No potential Subscriber shall be refused Cable Service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate the cable drop underground, existence of more than 125 feet from distribution cable to connection of service to Subscribers, or a density of less than 25 residences per 5,280 cable-bearing strand feet of trunk or distribution cable, Cable Service may be made available at a charge as mutually agreed by Grantee and such potential Subscriber.

**3.15 Annexation.** The City shall promptly provide written notice to Grantee of its annexation of any territory which is being provided Cable Service by Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon 60 days' written notice from the City, subject to the conditions set forth below. The City shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall within 90 days after receipt of the annexation notice, pay the City franchise fees on Gross Revenues received from any area annexed by the City, if the City has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Grantee to add the addresses to its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees within 90 days after it receives the annexed addresses as set forth above. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this subsection.

**3.16 Service to Public Buildings.** The Grantee will provide one outlet of Basic Service (and, if necessary, the equipment required to receive Basic Service) to City Hall, located at 1338 Rumsey Avenue, Cody, WY, 82414, to be used for the City's internal, non-commercial and non-public use, at no charge to the City but on a voluntary basis. The Grantee will provide the Franchising Authority with at least 120 days' written notice in advance of any decision to alter or discontinue such complimentary service, provided that the Grantee will immediately discontinue such services to such location at such time that the Franchising Authority is not using such location for City purposes.

**3.17 Emergency Use.** In accordance with and at the time required by the provisions of federal and State laws and regulations, the Grantee shall install and maintain an Emergency Alert System ("EAS").

**3.18 Customer Service Standards.** The following Customer Service Standards shall only apply to the provision of Cable Service in the Service Area. In the event of a conflict between subsections (A) - (C) and 47 CFR § 76.309, as it may be amended, the latter shall control. In the event of a conflict between subsection (D) and 47 CFR § 76.1602, as it may be amended, the latter shall control. In the event of a conflict between subsection (E) and 47 CFR § 76.1603, as it may be amended, the latter shall control. In the event of a conflict between subsection (F) and 47 CFR § 76.1619, as it may be amended, the latter shall control.

A. Cable System Office Hours and Telephone Availability.

1. The Grantee will maintain a local or toll-free telephone access line which will be available to Subscribers 24 hours a day, seven days a week.

a. Trained representatives of the Grantee will be available to respond to Subscriber telephone inquiries during Normal Business Hours.

b. After Normal Business Hours, an access line will be available to be answered by a service or an automated response system, including a phone answering system. Inquiries received after Normal Business Hours must be responded to by a trained representative of the Grantee on the next business day.

2. Under Normal Operating Conditions, telephone answer time by a customer service representative, including wait time, will not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed 30 seconds. These standards will be met no less than 90% of the time under Normal Operating Conditions, as measured on a quarterly basis.

3. The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above unless a historical record of complaints indicates a clear failure to comply with the standards.

4. Under Normal Operating Conditions, the Subscriber will receive a busy signal less than 3% of the time.

5. Customer service center and bill payment locations, if any, will be open during Normal Business Hours and will be conveniently located.

B. Installations and Service Calls. Under Normal Operating Conditions, each of the following four standards will be met no less than 95% of the time, as measured on a quarterly basis:

1. Standard Installations will be performed within seven business days after an order has been placed unless scheduled at a later time by customer request.

2. Excluding conditions beyond its control, the Grantee will begin working on Service Interruptions promptly and in no event later than 24 hours after the interruption becomes known. The Grantee will begin actions to correct other service problems the next business day after notification of the service problem.

3. The Grantee will provide “appointment window” alternatives for installations, service calls and other installation activities, which will be either a specific time, or at a maximum, a four-hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of the customer.

4. The Grantee shall not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

If a representative of the Grantee is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

C. Communications between the Grantee and Subscribers.

1. Refund checks will be issued promptly, but no later than either (a) the Subscriber’s next billing cycle following resolution of the request or 30 days, whichever is earlier, or (b) the return of the equipment supplied by the Grantee if service is terminated.

2. Credits for service will be issued no later than the Subscriber’s next billing cycle following the determination that a credit is warranted.

D. Notifications to Subscribers. The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:

1. Cable Services offered;

2. Prices and options for Cable Service and conditions of subscription to Cable Service;
3. Installation and service maintenance policies;
4. Instructions on how to use the Cable Service;
5. Channel positions of programming carried on the Cable System; and
6. Billing and complaint procedures, including the address and telephone number of the local Franchising Authority's office.

E. Other Notifications to Subscribers. Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the Cable System or otherwise as required or permitted by the FCC. Notice will be given to Subscribers a minimum of 30 days in advance if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers 30 days in advance of any significant changes in the other information required by subsection (D) above.

F. Billing.

1. Bills will be clear, concise and understandable. Bills will be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly describe all activity during the billing period, including optional charges, rebates and credits.

2. In case of a billing dispute, the Grantee will respond to a written complaint from a Subscriber within 30 days from receipt of the complaint.

### 3.19 Access Channel(s).

A. Access Channels. The Grantee shall make available and maintain one Access Channel to be used for Access Programming. When first-run programming (not including graphics pages) on the first Access Channel occupies 50% of the hours between 11:00 a.m. and 11:00 p.m., for any 12 consecutive weeks, the Franchising Authority may request the use of one additional Access Channel for the same purpose. The additional Access Channel must maintain first-run programming (not including graphics pages) 25% of the hours between 11:00 a.m. and 11:00 p.m. for 12 consecutive weeks. If this level of programming is not maintained, that Access Channel will be returned to the Grantee for its use. The Grantee also reserves the right to program the designated Access Channels during the hours not used by the Franchising Authority or its designees.

B. Existing Return Line. As of the effective date of this Franchise, Grantee is transporting standard definition Access Programming that originates from the City Hall, located at 1338 Rumsey Avenue, Cody, WY 82414 to Grantee's Cable System headend using equipment and coaxial or fiber cable that belong to Grantee (the "Existing Return Line"). Grantee will continue to transport the standard definition Access Programming originating from such location using the Existing Return Line during the term of this Franchise; provided that such location continues to produce Access Programming, and further provided that the City is responsible for (a) all costs and equipment required to produce the Access Programming and maintain same in good working order; (b) any repair or replacement costs necessarily incurred by Grantee related to the Existing Return Line, including those necessary to maintain signal quality in accordance with FCC regulations; and (c) all costs related to modifying, upgrading or moving any Existing Return Line.

C. HD Upgrade. When all of the following conditions are satisfied, and upon written request by the City, Grantee shall convert the Access Channel(s) into high definition format ("HD") no more than six months following Grantee's receipt of such request from the City which shall include the City's written commitment to the conditions below. Any HD Access Channel provided under this subsection will replace the applicable existing Access Channel.

1. The City has the ability to produce substantially all of its Access Programming in HD, commits to produce, and upon the availability of an HD Access Channel does produce, at least five hours per week of Access Programming in HD for such Access Channel. The calculation of at least five hours per week may include an original showing of any Access Programming plus one repeat per week. All equipment necessary to produce and transmit any Access Programming in HD on the Cable System (including all equipment in City Hall and in Grantee's headend specifically required for such transmission, but excluding any equipment required for Grantee to operate the Cable System whether or not there is any Access Programming) shall be at the City's cost.

2. Grantee agrees to work cooperatively with the City to ensure the necessary equipment owned by the City and used to produce Access Programming complies with Grantee's Cable System requirements.

3. The City and Grantee enter into a commercial agreement with respect to the upgrade of the applicable Existing Return Line in order to transport the Access Programming in HD from Grantee's demarcation point at the origination location to Grantee's Cable System headend, for the maintenance of such upgraded return line, and for the transport of the Access Programming on such upgraded return line.

D. Access Channel Locations. Access Channels shall be placed on Basic Service if required by applicable law.

E. Relocation of the Access Channel(s). Grantee shall provide the City and all Subscribers with as much prior written notice of any relocation of the Access Channel(s) as reasonably possible, but in no event less than 30 days if such relocation is within the control of Grantee.

F. Access Programming Capital Grant. In the event that all other competing video providers in the City with facilities located wholly or partly in the Public Rights-of-Way and over whom the Franchising Authority has the regulatory authority to impose such an obligation are required to provide and do provide the same grant to the Franchising Authority, Grantee shall provide to the Franchising Authority a financial contribution for use in support of the production of Access Programming in the amount of up to \$0.15 per subscriber per month (the "Access Capital Grant"). The Franchising Authority shall provide at least 120 days advance written notice of the requirement to provide the Access Capital Grant, and shall provide Grantee with any documentation reasonably requested by Grantee with respect to such grant also being provided by such competing video providers. The Access Capital Grant shall be due and payable concurrently with the payment of franchise fees. The Access Capital Grant shall be used solely by the City for Access Programming capital costs, including, but not limited to, studio and portable production equipment, editing equipment, and program playback equipment, or for renovation or construction of Access Programming facilities. Upon written request, the Franchising Authority shall provide evidence to Grantee of the specific use of the Access Capital Grant. To the extent permitted by federal law, the Grantee shall be allowed to recover the cost of the Access Capital Grant from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill.

G. Technical Quality. Subject to 3.19(B) above, Grantee shall maintain the Access Channel(s) and Existing Return Line in compliance with FCC regulations regarding signal quality. With respect to signal quality, Grantee shall not be required to carry the Access Channel(s) in a higher quality signal format than that delivered to Grantee.

## **SECTION 4**

### **Regulation by the Franchising Authority**

**4.1 Franchise Fee.** As compensation for the use of valuable Public Rights-of-Way, Grantee shall pay the Franchising Authority a franchise fee of five percent (5%) of Grantee's Gross Revenues. If the Franchising Authority reduces the franchise fee percentage, the reduction shall be passed through to Subscribers.

**4.2 Payments.** The Grantee's franchise fee payments to the Franchising Authority shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30,

and December 31. Each quarterly payment shall be due and payable no later than 45 days after said dates.

**4.3 Acceptance of Payment and Recomputation.** No acceptance of any payment shall be construed as an accord and satisfaction by the Franchising Authority that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Franchising Authority may have for further or additional sums payable or for the performance of any other obligation of Grantee.

**4.4 Quarterly Franchise Fee Reports.** Each payment shall be accompanied by a written report to the Franchising Authority, verified by an authorized representative of the Grantee, containing an accurate statement in summarized form, as well as in reasonable and customary detail, of the Grantee's Gross Revenues and the computation of the payment amount.

**4.5 Audits.** On an annual basis, upon 30 days prior written notice, the Franchising Authority shall have the right to conduct an independent audit of the Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP, and conducted by an independent certified public accounting firm of national or regional reputation. The complete audit report, including the results of such audit, shall be shared with the Grantee promptly after the audit results are provided to the Franchising Authority (the "Audit Information") and the Grantee shall be provided with an opportunity to discuss the auditor's finding with the auditor and to dispute the audit results. Any undisputed amounts due to the Franchising Authority as a result of the audit shall be paid within 60 days following the later of the delivery of the written notice to the Grantee by the Franchising Authority, or the delivery to the Grantee of the Audit Information. If the audit shows that franchise fee payments have been underpaid by 5% or more, and subject to applicable law, Grantee shall pay the documented, itemized cost of the audit, such cost not to exceed \$10,000. The Franchising Authority's right to audit and the Grantee's obligation to retain records related to a franchise fee audit for any year shall expire three years after the end of that year.

**4.6 Late Payments.** In the event any payment due quarterly is not received within 45 days from the end of the calendar quarter, the Grantee shall pay, in addition to the amount due, interest on the amount due, at the rate of 1% per month, calculated from the date the payment was originally due until the date the Franchising Authority receives the payment. Notwithstanding anything herein to the contrary, the requirements of this subsection do not apply to amounts incorrectly omitted from an otherwise timely made payment, which were subsequently corrected and submitted to the Franchising Authority.

**4.7 Underpayments.** If a franchise fee underpayment is discovered as the result of an audit, Grantee shall pay, in addition to the amount due, interest on the amount due at the rate of 1% per month calculated from the date the underpayment was originally due until the date the Franchising Authority receives the payment.

**4.8 Equivalent Franchise Fee Obligation.** The City shall impose an equivalent franchise fee obligation (with respect to the percentage and definition of Gross Revenues) of the obligations contained in this Franchise, on all new and renewed providers of Cable Service in the City. In the event any new or renewed franchise agreement contains such franchise fee obligations that are lesser than such obligations imposed in this Franchise, Grantee's obligations under this Franchise shall thereafter be automatically modified to match such franchise fee obligations of such other provider of Cable Service.

**4.9 Tax Liability.** The franchise fee shall be in addition to any and all lawful and Non-Discriminatory taxes, levies, assessment, license fee, permit fee, or charge on the business, occupation, property or income of the Grantee which are now or will be required to be paid to the Franchising Authority, or under federal or State law, provided that such additional assessments do not violate Section 542 of the Cable Act.

**4.10 Financial Records.** The Grantee agrees to meet with a representative of the Franchising Authority upon request to review the Grantee's methodology of record-keeping, financial reporting, the computing of franchise fee obligations and other procedures, the understanding of

which is reasonably necessary for reviewing reports and records relevant to the enforcement of this Franchise.

**4.11 Filing on Termination.** If this Franchise terminates for any reason, the Grantee shall file with the Franchising Authority, within 90 calendar days of the date of the termination, a financial statement, verified by an authorized representative of the Grantee, showing the Gross Revenues received by the Grantee since the last quarterly payment through the date of termination.

**4.12 Enforcement by City.** The Franchising Authority shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable law, including the Cable Act, or to delegate that power and right, or any part thereof, to the extent permitted under law, to any agent in the sole discretion of the Franchising Authority.

**4.13 Rates and Charges.** All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the Franchising Authority to the full extent authorized by applicable federal and State laws.

**4.14 Renewal of Franchise.**

A. The Franchising Authority and Grantee agree that renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections have been preempted and superseded by the provisions of any subsequent provision of federal, state or local law.

B. In addition to the procedures set forth in Section 626(a) of the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of the Grantee under the current franchise term. The Franchising Authority further agrees that preliminary assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under the Cable Act and seek renewal of the Franchise prior to expiration of its term. Notwithstanding anything to the contrary set forth in this subsection, the Grantee and Franchising Authority agree that at any time during the term of the current Franchise, while affording the public adequate notice and opportunity to comment, the Franchising Authority and Grantee may agree to undertake and finalize informal negotiations regarding renewal of the Franchise and the Franchising Authority may grant a renewal thereof. The Grantee and Franchising Authority consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

**4.15 Conditions of Sale.** If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be pursuant to the provisions set forth in Section 627 of the Cable Act.

**4.16 Transfer of Cable System and Franchise.** The Grantee's right, title or interest in the Cable System and Franchise shall not be sold, transferred or assigned, other than to an entity controlling, controlled by or under common control with the Grantee, without the prior written consent of the Franchising Authority, such consent not to be unreasonably withheld, conditioned or delayed. However, no consent shall be required for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any right, title or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. The Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within 120 days after receiving such request and all required documents, consent shall be deemed granted by the Franchising Authority.

**SECTION 5**  
**Books and Records**

The Grantee agrees that the Franchising Authority, upon reasonable notice to the Grantee, may review Grantee's books and records at the Grantee's business office, during Normal Business

Hours and on a nondisruptive basis, to ensure compliance with the material terms of this Franchise. Grantee agrees to provide to the Franchising Authority, for its review of Grantee's books and records, adequate space within which to conduct said review in a nondisruptive, clean and reasonably comfortable location. Notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Records include, but are not limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth in this Franchise, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents that have a need to know, or in order to enforce the provisions hereof, subject to public disclosure requirements. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

## **SECTION 6**

### **Insurance and Indemnification**

#### **6.1 Insurance Requirements.**

A. Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

1. Commercial General Liability insurance with limits of no less than \$2,000,000 per occurrence and \$2,000,000 general aggregate. Such insurance shall name the City as an additional insured.
2. Commercial Automobile Liability insurance with minimum combined single limits of \$2,000,000 each occurrence with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System.
3. Umbrella liability insurance in the amount of \$5,000,000.

B. The Grantee shall provide a Certificate of Insurance designating the Franchising Authority as an additional insured. Such insurance shall be noncancellable except upon 30 days prior written notice to the Franchising Authority.

C. Deductibles / Endorsements

1. Any deductible of the policies shall not in any way limit Grantee's liability to the City.
2. Endorsements. All policies shall contain, or shall be endorsed so that:
  - a. Grantee's insurance coverage shall be primary insurance with respect to the City. Any insurance or self-insurance maintained by the City shall be in excess of Grantee's insurance and shall not contribute to it; and
  - b. Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.
3. Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VII."

**6.2 Indemnification.** Grantee shall indemnify, defend and hold the City, its officers, officials, City Council, boards, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees and expenses, arising from any injury, casualty or accident to any Person or property, arising out of, or by reason of, any negligent act or omission of Grantee (including without limitation by its contractors, subcontractors, agents or employees), including, without limitation, with respect to construction, excavation, operation, maintenance, reconstruction, relocation, repair, upgrade or

removal of the Cable System, provided that the City promptly tenders the defense of the claim or action to Grantee in writing with sufficient time to enable Grantee to retain counsel and prepare a timely response and provided further that such indemnification obligations will not apply with respect to (a) any action or omission of Grantee, its contractors, subcontractors, agents or employee acting (or refraining from acting) at the direction of the City, its employees or its agents, so long as Grantee, its contractors, subcontractors, agents or employees are not negligent or reckless with respect to their actions or omissions, (b) Access Programming or the Access Channel(s), or (c) any act or omission of the City, its employees or its agents. Grantee shall consult and cooperate with the City while conducting its defense of the City.

## **SECTION 7** **Performance Bond**

As a condition of the Franchise being awarded, and throughout the term of the Franchise, if Grantee fails to perform a material obligation of this Franchise and does not cure the non-performance within 30 days after written notice by the City, Grantee shall provide and maintain a performance bond in the amount of \$20,000. The performance bond may be drawn upon by the Franchising Authority to ensure the Grantee's faithful performance of each material term and condition of the Franchise. The Franchising Authority agrees to either return the original bond or sign the necessary documentation to release the bond promptly upon transfer of the Franchise.

## **SECTION 8** **Enforcement and Termination of Franchise**

**8.1 Notice of Violation.** In the event the Franchising Authority believes that Grantee has not complied with the material terms of the Franchise, the Franchising Authority and Grantee agree to attempt to informally resolve any issues first through verbal or written communication. If such discussions are not successful, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

**8.2 Grantee's Right to Cure or Respond.** The Grantee has 30 days from receipt of the notice described in subsection 8.1:

A. To respond to the Franchising Authority, contesting the assertion of noncompliance, or requesting further information to evaluate the alleged violation;

B. To cure such default; or

C. In the event the default cannot be cured within the 30 day period, initiate reasonable steps to remedy such default as expediently as reasonably possible and notify the Franchising Authority of the steps being taken and the projected date that the default will be cured.

**8.3 Public Hearing.** In the event that the Grantee fails to respond to the notice described in subsection 8.1 pursuant to the procedures set forth in subsection 8.2, or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to subsection 8.2 (C) above, the Franchising Authority shall schedule a public hearing to investigate the default if it desires to continue to pursue the matter. The Franchising Authority shall notify the Grantee in writing of the time and place of such hearing and provide the Grantee with an opportunity to be heard. Written notice will be provided at least 30 days in advance of the hearing. At the time of the public due process hearing, the Grantee may present evidence and information regarding the alleged breach of the Franchise and shall have the right to examine and cross-examine witnesses. If the situation has been resolved, or steps are being taken to resolve the situation, the Grantee may present such information at the hearing. The public hearing shall be on the record and a written transcript shall be promptly made available to the Grantee, and in no event later than thirty days after such hearing. The decision of the Franchising Authority shall be made in writing based on the evidence presented at the hearing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court.

**8.4 Enforcement/Alternative Remedies.** Subject to applicable federal, state and local law and after the public hearing described in subsection 8.3, the Franchising Authority determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may seek any of the following remedies:



A. Seek specific performance of any provision, which reasonably lends itself to that remedy, as an alternative to damages or seek other equitable relief;

B. Commence an action at law for monetary damages; or

C. For certain violations, assess liquidated damages, subject to subsection 8.5.

D. In the case of a substantial noncompliance with a material provision of the Franchise, declare the Franchise to be revoked, subject to subsection 8.6.

The exercise of one remedy by the Franchising Authority shall not foreclose use of another, provided that liquidated damages shall be an exclusive remedy for the time period in which they are assessed; further provided, however, that liquidated damages shall not be a substitute for any legal action the Franchising Authority may have the right to pursue once assessment of liquidated damages ceases. The Franchising Authority and Grantee reserve and may exercise any rights each may have under law or in equity with respect to such remedies.

**8.5 Assessment of Liquidated Damages.** If following the process in subsections 8.1-8.3, the Franchising Authority determines that the Grantee is in violation of any of the following requirements of this Franchise, the Franchising Authority may begin assessing liquidated damages against the Grantee following the notice set forth below.

A. \$50.00 per day for material departure from the FCC technical performance standards;

B. \$50.00 per day for failure to provide the Access Channel(s);

C. \$50.00 per day for each material violation of the Customer Service Standards that has been determined to have had a demonstrated, negative impact on Subscribers; and

D. \$50.00 per day for any material breaches or defaults not previously listed.

The Franchising Authority shall provide the Grantee with written notice that it intends to assess liquidated damages as a remedy. Liquidated damages may not be assessed until the Grantee has received such notice. With respect to liquidated damages, all similar violations or failures from the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or failure may only be assessed under any one material term. Nothing herein is intended to allow duplicative recovery from or payments by the Grantee or its surety.

To the extent that the Franchising Authority elects to assess liquidated damages as provided in this Franchise, such damages shall be the Franchising Authority's sole and exclusive remedy for such breach or violation for the time period assessed and shall not exceed a time period of 180 days or \$10,000 in the aggregate. Nothing in this subsection is intended to preclude the Franchising Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchising Authority stopped assessing liquidated damages for such breach.

The Grantee reserves and may exercise any rights it has under law or in equity with respect to the assessment against it of liquidated damages, including pursuing judicial relief before or after paying any liquidated damages. The Grantee's payment of any liquidated damages shall not be deemed an admission of a violation of the Franchise, an agreement by the Grantee that such assessments were justified, or a waiver of any of the Grantee's rights with respect to such assessment.

## **8.6 Revocation.**

A. If after the public hearing described in subsection 8.3 the Franchising Authority determines that there has been substantial noncompliance with a material provision of the Franchise and seeks to revoke the Franchise, the Franchising Authority shall give written notice to the Grantee of such intent. The notice shall set forth the exact nature of the noncompliance. The Grantee has 30 days from the notice to object in writing and to state its reasons for the objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee,

it may seek revocation of the Franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least 30 days prior to a public meeting, a written notice specifying the time and place of the meeting and stating its intent to request the revocation.

B. At the designated meeting, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, introduce evidence and examine and cross-examine witnesses, after which the Franchising Authority shall determine whether or not the Franchise shall be revoked. Revocation shall require a written and published decision which explains the reasons for revocation and adequately addresses the Grantee's defenses and reasons raised against revocation. The Grantee may appeal such determination to an appropriate court, which has the power to review the decision of the Franchising Authority as provided by law. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted. Nothing in this Franchise, including the enforcement provisions set forth in this Section 8, shall prevent Grantee from filing at any time a legal action in any permissible court or tribunal seeking a declaration or enforcement of Grantee's rights or obligations under the Franchise.

C. The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

**8.7 Force Majeure.** Notwithstanding any other provision of this Franchise, the Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement, damages or fines relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where noncompliance or alleged defaults occurred or were caused by pandemics, epidemics, strike, riot, war, earthquake, flood, unusually severe rain or snow storm, tornado or other catastrophic act of nature, labor disputes or other event that is reasonably beyond the Grantee's ability to anticipate and control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable and equipment are attached, as well as unavailability of materials or qualified labor to perform the work necessary that is reasonably beyond the Grantee's ability to anticipate and control.

**8.8 Technical Violations.** Notwithstanding any other provision of this Franchise, the parties agree that it is not the Franchising Authority's intention to subject the Grantee to enforcement, damages or fines relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), for so-called "technical" breaches or violations of the Franchise, which shall include, but are not limited to, the following:

A. In instances or for matters where a violation or a breach by the Grantee of the Franchise was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area; or

B. Where circumstances reasonably beyond the control of the Grantee precipitated a violation by the Grantee of the Franchise or prevented the Grantee from complying with a term or condition of the Franchise.

**8.9 False Statements.** Any false or misleading statement or representation in any report required by this Franchise, not including clerical errors or errors made in good faith, may be deemed a material breach of this Franchise and may subject the Grantee to all remedies, legal or equitable, which are available to the Franchising Authority under this Franchise.

## **SECTION 9** **Miscellaneous Provisions**

**9.1 Actions of Parties.** In any action by the Franchising Authority or Grantee that is mandated or permitted under the terms of this Franchise, the party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, approval or consent shall not be unreasonably withheld.

## **9.2     Similar Treatment.**

A.     If during the term of this Franchise or any extension thereof, the Franchising Authority grants or renews a franchise or right to another Cable Operator containing a term or terms more favorable or less burdensome than those granted to the Grantee in this Franchise, this Franchise shall be deemed modified to incorporate the more favorable or less burdensome terms at the written request of the Grantee.

B.     If during the term of this Franchise or any extension thereof, the Franchising Authority has the regulatory authority to grant rights to, and/or to impose an obligation that is required of Grantee under this Franchise on, a provider of commercial video services in the City, which provider has facilities located wholly or partly in the Public Rights-of-Way (without regard to the technology used to deliver such services) but which is not a “cable operator” as such term is defined in the Cable Act, and the Franchising Authority (1) grants more favorable rights to such video provider than Grantee, (2) does not impose such obligation on such video provider, or (3) imposes a less burdensome form of such obligation on such video provider, then this Franchise shall be deemed modified to incorporate such more favorable rights or less burdensome obligations at the written request of the Grantee. For clarification purposes, if the City does not have the regulatory authority to grant such more favorable rights to Grantee or impose a particular obligation on such provider of commercial video service, this Franchise shall not be modified with respect to such particular right or obligation.

**9.3     Notices.** Every notice or response required by this Franchise to be served upon the Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party when hand delivered or five business days after having been posted in a properly sealed and correctly addressed envelope when sent by certified or registered mail, postage prepaid.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Cody  
P.O. Box 2200  
1338 Rumsey Avenue  
Cody, Wyoming 82414  
Attention: City Administrator

The notices or responses to the Grantee shall be addressed as follows:

Spectrum Pacific West, LLC, l/k/a Charter Communications  
611 E. Carlson Street  
Cheyenne, WY 82009  
Attention: Government Affairs

With a copy to:

Charter Communications  
Attn: VP, Government Affairs & Franchising  
601 Massachusetts Ave., NW  
Suite 400W  
Washington, DC 20001

The Franchising Authority and the Grantee may designate another address or addresses from time to time by giving notice to the other.

**9.4     Descriptive Headings.** The headings to sections or subsections are intended solely to facilitate the reading thereof. They shall not affect the meaning or interpretation of the text herein.

**9.5     Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and Franchising Authority relating to the subject matter hereof and supersedes all prior oral and written negotiations between the parties.

**9.6     Amendments.** Any changes, modifications or amendments to this Franchise must be made in writing, signed by the City and Grantee.

**9.7     De Novo Review.** Any determination by the City regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

**9.8     No Third-Party Beneficiaries.** Nothing in this Franchise is intended to confer third-party beneficiary status on any person to enforce the terms of this Franchise.

**9.9     Severability.** If any section, subsection, sentence, paragraph or provision hereof is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph or provision hereof, all of which will remain in full force and effect.

**9.10    Publication Costs.** Grantee shall pay the City for the reasonable cost incurred by the City for publication or notice of this Franchise.

**9.11    Binding Effect.** This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

**9.12    No Joint Venture.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

**9.13    Waiver.** The failure of the City at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

**9.14    Venue and Governing Law.** Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise shall be in the District Court, Park County, Wyoming, or in the United States District Court for the District of Wyoming in Casper. This Franchise shall be governed, construed and enforced in accordance with State and federal law, and Non-Discriminatory local law in accordance with the terms of this Franchise.

**9.15    Wyoming Governmental Immunity.** The Franchising Authority does not waive its governmental immunity and its defenses as provided by the Wyoming Constitution and the Wyoming Governmental Claims Act.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CODY, WYOMING:

That this Franchise shall become effective upon final passage and publication in the Cody Enterprise and signature by the Mayor of the City of Cody.

PASSED ON FIRST READING: 2/7/2023\_\_\_\_\_

PASSED ON SECOND READING: \_\_\_\_\_2/14/2023\_\_\_\_\_

PASSED, ADOPTED AND APPROVED ON  
THIRD AND FINAL READING: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**IN WITNESS WHEREOF**, the parties hereto have entered into this Franchise on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF CODY

\_\_\_\_\_  
Mayor

(SEAL)

Attest:

\_\_\_\_\_  
City Clerk

SPECTRUM PACIFIC WEST, LLC  
By Charter Communications, Inc., Its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary

**ORDINANCE 2023-01**

**AN ORDINANCE AMENDING TITLE 10, CHAPTER 11 “SUPPLEMENTAL DEVELOPMENT STANDARDS FOR COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS” OF THE CITY OF CODY CODE**

**WHEREAS**, notice of the public hearing to consider the proposed ordinance was published in the Cody Enterprise on January 12, 2023, which notice advertised the public hearing to be held at the Council Meeting on February 7, 2023, and an additional opportunity to discuss the proposed amendments with the Planning and Zoning Board at their January 24, 2023 meeting;

**WHEREAS**, a public hearing was held on February 7, 2023, before the City Council, as advertised, at which meeting the City Council heard comments from all persons wishing to speak for or against the proposed ordinance, and considered the Planning and Zoning Board recommendation;

**WHEREAS**, the Planning and Zoning Board recommends approval of the amendments to the zoning ordinance as specified herein;

**WHEREAS**, the governing body of the City of Cody has reviewed the proposed ordinance and public comments and finds that it is in the best interest of the public to adopt the proposed ordinance.

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CODY, WYOMING:**

Title 10, Chapter 11 “Supplemental Development Standards for Commercial and Industrial Zoning Districts”, of the City of Cody Code is hereby amended to read as attached in Exhibit A.

Effective Date. This Ordinance shall become effective after final passage and publication in the Cody Enterprise.

PASSED ON FIRST READING: 2/7/2023

PASSED ON SECOND READING: \_\_\_\_\_

PASSED, ADOPTED AND APPROVED  
ON THIRD AND FINAL READING: \_\_\_\_\_

\_\_\_\_\_  
Matt Hall, Mayor

ATTEST:

\_\_\_\_\_  
Cynthia Baker, Administrative Services Officer

## EXHIBIT A

PROPOSED AMENDMENTS ARE SHOWN USING "TRACK CHANGES", IN BLUE

### CHAPTER 11 SUPPLEMENTAL DEVELOPMENT STANDARDS FOR COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS

#### 10-11-1: APPLICABILITY:

The land uses that are identified ~~herein, when located in a with an asterisk (\*) in the~~ Limited Business (D-1), General Business (D-2), Open Business/Light-Industrial (D-3), High Tech/Data Processing/Light Manufacturing (D-4), Industrial (E), ~~and/or~~ Heavy Industrial (HI) Zoning Districts, are subject to the corresponding regulations of this chapter, which regulations are in addition to other applicable sections of this title and any conditions that may be imposed pursuant to a conditional use permit review. The standards of this chapter shall apply unless waived or altered pursuant to the zoning variance process; provided, those standards identified herein with "(SE)", may be waived or altered pursuant to the special exemption process of section 10-14-2 of this title. In no case shall any of the following standards be waived or modified to the extent that the result is tantamount to a rezone or the use no longer meets the specified definition thereof. (Ord. 2017-10, 4-13-2017)

#### 10-11-2: SUPPLEMENTAL DEVELOPMENT STANDARDS:

The supplemental development standards are listed by use, in alphabetical order:

A. "A" Uses: Reserved. (Ord. 2017-10, 4-13-2017)

B. "B" Uses:

Bed and breakfast inn.

1. The bed and breakfast inn must meet the definition set forth in chapter 2 of this title.
2. The owner must be living on the property at the time the bed and breakfast is in operation.
3. Total guest occupancy of a bed and breakfast inn property is limited to no more than ten (10) persons. (Establishments exceeding 10 persons fall within the zoning classification of "hotel".) The Planning and Zoning Board may further limit total guest occupancy (e.g., beds and/or guest rooms) of a proposed bed and breakfast inn based on lack of parking and other neighborhood impacts identified in the review process.
4. Vehicle access must comply with the requirements of the International Fire Code, appendix D, or other established standard acceptable to the Fire Marshal.
5. Cooking facilities in guest rooms are not permitted.
6. The facility must pass a fire and life safety inspection before it may be used as a bed and breakfast inn, which inspection includes verification of the following.
  - a. ~~At a minimum, the bed and breakfast inn shall be equipped with functional s~~Smoke detectors located where required by code and operable;
  - b. ~~a~~A fire extinguisher (minimum rating 2A:10BC) located in a visible or clearly labeled location; ~~and~~
  - c. ~~a~~eCarbon monoxide alarm(s) where required by code and operable if applicable.
  - d. The address number is posted and visible using 4" tall or larger numbers on a contrasting background;



e. Access in/out of the facility complies with applicable codes (e.g. stairs, handrails);  
f. Proper access to the electrical panel is provided;  
g. No fire hazards are observed (e.g. combustibles are kept away from heat sources, extension cords and outlet strips are used in a compliant manner, dryer vent is free from obstruction, no exposed electrical wiring);  
h. Each sleeping room ~~is~~ shall be provided with Code-compliant means of egress an emergency escape and rescue opening that complies with sections R310.1, R310.2, R310.3, and R310.4 of the International Residential code, or corresponding provisions of the International Building Code if applicable; and,-

i. Emergency contact numbers are clearly posted (manager and 911).

7. The facility is to be inspected for the above items at least annually. Upon any change of ownership and on every third year after the initial inspection, the facility must be reinspected by the City and pass inspection. In the other years, the owner or manager is to perform the inspection. The authority having jurisdiction (i.e., Fire Marshal and/or building official) may have additional requirements pursuant to the adopted Fire and/or Building Code.

8. ~~7-~~ Individual guest occupancy is limited to temporary periods of less than one hundred twenty (120) consecutive days, and less than one hundred twenty (120) days in any one-year period.

9. ~~8-~~ Bed and breakfast inns shall not be used as "reception facilities" as defined in this title, unless such use is otherwise permitted in the zoning district in which the property is located and authorization for such has been granted by the reviewing official.

10. ~~9-~~ The bed and breakfast inn must maintain compliance with the WY Department of Revenue licensing requirements, including payment of Lodging Taxes.

11. ~~10-~~ All bed and breakfast inns must maintain compliance with the Wyoming Food Safety Rule (WY Department of Agriculture) and related licensing requirements.

12. ~~11-~~ Unless otherwise exempted or authorized by this title, one off-street guest parking space shall be provided for every two (2) lodging units or fraction thereof. The guest parking shall be in addition to the two (2) spaces required for the owners/manager. (SE)

13. ~~12-~~ Prior to initial operation and annually by May 1<sup>st</sup> thereafter, All bed and breakfast inns, whether existing or proposed, shall register with the City of Cody, pass the fire and life safety inspection, and provide evidence of compliance with the Wyoming Food Safety Rule. The Community Development Department is authorized to create application form(s) and procedures as necessary to manage and enforce these provisions, both for the initial authorization and for ongoing compliance. Payment of an application fee is required pursuant to the City's adopted fee schedule. A late fee, also as specified in the adopted fee schedule, may also be assessed to owners of bed and breakfast inns that fail to register before making the inn available for initial use, or that do not complete their annual renewal by May 1<sup>st</sup> of each year. Authorized bed and breakfast facilities shall post a certificate issued by the City of Cody identifying such authorization. The certificate shall expire at the end of May 1<sup>st</sup> following the year in which the certificate was issued. Authorized bed and breakfast inns shall post a document issued by the City identifying such authorization in a visible location. (Ord. 2018-04, 4-17-2018)

C. "C" Uses: Reserved.

D. "D" Uses: Reserved.

E. "E" Uses: Reserved.

F. "F" Uses: Reserved.

G. "G" Uses: Reserved.

Formatted: Tab stops: 0.25", Left

Formatted: Superscript

Formatted: Superscript

Formatted: Superscript

- H. "H" Uses: Reserved.
- I. "I" Uses: Reserved.
- J. "J" Uses: Reserved.
- K. "K" Uses: Reserved.
- L. "L" Uses: Reserved.
- M. "M" Uses: ~~Reserved.~~

Manufactured home.

In addition to any restriction of a specific zoning district, no more than two (2) manufactured homes shall be placed on a single lot, unless the property is developed in accordance with the mobile home park/manufactured home park standards of this Code. Manufactured homes shall also comply with the following requirements, except when displayed on a commercial sales lot, or stored in a commercial manufactured home production or storage facility. The manufactured home must;

1. Be placed and anchored per the manufacturer's installation instructions or per the design of a professional engineer or architect licensed in Wyoming;
2. Maintain a minimum crawl space of eighteen inches (18") under the entire unit, or twenty-four inches (24") if mechanical equipment is located or accessed in the crawl space;
3. Have the axle(s) removed;
4. Have skirting or sidewalls installed to enclose all areas between the lower edge of the outside walls and the ground; and,
5. Have steps or inclined ramps affixed to all entrances.
6. If the manufactured home is to be "attached" to the property so as to be taxed as real property (i.e., title elimination process pursuant to WY Statute 31-2-502), it shall be placed on a permanent foundation as defined by HUD. (See HUD publication "Permanent Foundations Guide for Manufactured Housing (4930.3G), and/or appendix "Manufactured Housing Used as Dwellings" of the IRC.").

Multi-family development. This section shall apply to all multi-family developments containing more than four (4) dwelling units that are located outside of the downtown architectural district. A multi-family development project that includes multiple lots shall be considered as one (1) property or development for purposes of implementing the standards set forth in this use.

1. Purpose:

- a. To create multi-family housing that is safe and convenient and that enhances the quality of life of its residents.
- b. To create quality buildings and designs for multi-family development that will enhance the visual character of the community.
- c. To create building and site design in multi-family development that is sensitive to, and well-integrated with, the surrounding neighborhoods.
- d. To create open space areas that contribute to the aesthetics of the community, provide an attractive setting for buildings, and provide safe, interesting outdoor spaces for residents.

2. Site Design:

- a. Multi-family housing developments shall be separated from any abutting single-family housing (attached or detached) that is located in a RR, R-1, R-2 or R-2MH zone by a six foot (6') tall fence, of traditional construction (e.g., vinyl, wood, block), that provides a solid visual barrier to a height of at least five feet (5'). Provided, the reviewing official may waive all or part

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

of the fence requirement when the design and characteristics of the multi-family housing development otherwise provide reasonable privacy for abutting single-family housing. (SE)

b. All waste storage facilities (e.g., dumpsters) shall be located in an area not readily visible from a public street, or shall be screened from view from a public street. (SE)

c. Provide a central mailbox, including provisions for parcel mail, which is located to provide safe pedestrian and/or vehicular access and complies with USPS standards.

d. A minimum of sixty (60) square feet of private, usable open space shall be provided for, and immediately adjacent to, each dwelling unit. This requirement can be satisfied through porches, patios, decks, and/or enclosed yards. Common open space, building entryways, stairs, and parking areas shall not count towards this requirement. (SE)

e. Multi-family developments with twenty (20) units or more shall provide the following:  
(1) A property management office; or signage indicating a phone number for the property manager.

(2) A directory and map of the development at an entrance or convenient location for those entering the development.

### 3. Common Open Space Requirements:

a. A minimum area of outdoor common open space shall be provided and maintained as follows:

(1) One hundred fifty (150) square feet per dwelling unit containing five hundred (500) square feet or less of living area. (SE)

(2) Two hundred (200) square feet per dwelling unit containing more than five hundred (500) square feet. (SE)

b. Common open space may be located in multiple areas; provided, each area shall be not less than three hundred (300) square feet in size and shall have minimum length and width dimensions of fifteen feet (15') at all points. (SE)

c. In phased developments, common open space shall be provided in each phase of the development consistent with the requirements for the size and number of dwelling units. (SE)

d. Common open space areas shall not be immediately adjacent to collector or arterial streets, unless separated from the street by a berm or constructed barrier at least four feet (4') in height. (SE)

### 4. Architectural Character:

a. All multi-family building elevations shall have a portion of the elevation devoted to architectural features designed to provide articulation and variety. These features shall include, but are not limited to: windows, bays, offsetting walls, and multiple siding finishes/materials.

b. Main entrances, which are the primary point(s) of entry where the majority of building users will enter and leave, shall be designed as an obvious entrance and focal point of the building through architectural treatment, lighting, and address identification.

c. Roof forms shall include variety and detail when viewed from the street and/or front elevation. Roofs shall have at least one (1) variation in the roof (e.g., gabled wing or overbuild, dormer, pitch break) for every four (4) units, or fraction thereof, in the building.

d. All roof mounted mechanical, electrical, communications, and service equipment should be screened from public view from the adjacent public streets and residential properties by the use of parapets, walls, enclosures, or other suitable means.

### 5. Landscaping:

a. All street-facing building elevations shall have landscaping along their foundation. The foundation landscaping shall meet the following minimum standards:

- (1) The landscaped area shall be at least three feet (3') wide.
- (2) For every six (6) linear feet of foundation, a shrub, perennial, or tree having a minimum mature height of twenty-four inches (24") shall be planted.
- (3) Ground cover (plants or decorative rock) shall cover the remainder of the landscaped area.

- N. "N" Uses: Reserved.
- O. "O" Uses: Reserved.
- P. "P" Uses: Reserved.
- Q. "Q" Uses: Reserved.
- R. "R" Uses: Reserved. (Ord. 2017-10, 4-13-2017)
- S. "S" Uses:

Short-term rental.

1. Within the commercial zoning districts, a short-term rental may be operated out of any form of a dwelling with a permanent foundation, except a multi-family dwelling. (Note: The conversion of a multi-family dwelling to a hotel/motel can be considered pursuant to the land use table and adopted building and fire codes. In such case, the following short-term rental standards would not be directly applicable.)
2. Short-term rental shall not be offered by a renter of the property - i.e., a sublet situation.
3. Occupancy of a dwelling used for short-term rental is limited based on the number of bedrooms available for guests as follows: rentals with one guest bedroom are limited to four (4) guests; rentals with two guest bedrooms are limited to six (6) guests; rentals with three guest bedrooms are limited to eight (8) guests, and rentals with four or more guest bedrooms are limited to ten (10) guests. Guests sleeping in a living room, family room, or sun room is not prohibited by this requirement (e.g. use of sofa bed or air mattress), so long as required emergency escape opening is provided, but guest occupancy is based on number of bedrooms only to the lesser of 2.6 guests per guest sleeping room (total rounded to nearest whole number) or a total of ten (10) guests. (Note: Facilities exceeding 10 guests are to be classified as hotels/motels and may be considered pursuant to that classification.)
4. Within the D-1 Zoning District, the following restrictions apply:
  - a. No more than four (4) short-term rentals may be located on any one property.
  - b. Each short-term rental may only be rented to one group at any one time (i.e., a single booking).
5. Within the D-2 and D-3 Zoning Districts, sleeping rooms may be rented individually when authorized for such through the short-term rental registration and inspection process; provided, in no case shall more than five (5) sleeping rooms be individually rented in a dwelling.
6. Each short-term rental that is rented to only one group at any time shall require one off-street guest parking space meeting the requirements of chapter 16, "Off Street Parking", ~~of this title for every two (2) guest sleeping rooms or fraction thereof,~~ unless otherwise exempted or authorized by this title (e.g., nonconforming provisions). If individual bedrooms are to be separately rented, one off-street space for every two guest sleeping rooms or fraction thereof, shall be provided, unless otherwise exempted or authorized by this title. (SE)
7. Prior to use of the dwelling as a short-term rental, the dwelling shall be inspected for fire and life safety items, which inspection includes verification of the following.
  - a. At a minimum, the short term rental shall be equipped with functional sSmoke detectors located where required by code and operable;-

b. ~~a~~ fire extinguisher (minimum rating 2A:10-BC) located in a clearly visible or labeled location; ~~and a~~

c. ~~e~~Carbon monoxide alarm(s) where required by code and operable; ~~if applicable.~~

d. The address number is posted and visible using 4" tall or larger numbers on a contrasting background;

e. Access in/out of the facility complies with applicable codes (e.g. stairs, handrails);

f. Proper access to the electrical panel is provided;

g. No fire hazards are observed (e.g. combustibles are kept away from heat sources, extension cords and outlet strips are used in a compliant manner, dryer vent is free from obstruction, no exposed electrical wiring);

h. Each sleeping room ~~is~~ shall be provided with ~~Code compliant means of egress~~ an emergency escape and rescue opening that complies with sections R310.1, R310.2, R310.3, and R310.4 of the International Residential code, or corresponding provisions of the International Building Code if applicable; and,

i. Emergency contact numbers are clearly posted (manager and 911). ~~The authority having jurisdiction (i.e., Fire Marshal and/or building official) may have additional requirements pursuant to the adopted Fire and/or Building Code. Notwithstanding the above, short-term rentals existing at the date of adoption of this provision shall have until June 30, 2018, to obtain their inspection and until December 31, 2018, to correct any fire and life safety items involving construction or remodeling; no short-term rental activity shall occur if the dwelling is not in compliance with these deadlines.~~

8. The facility is to be inspected for the above items at least annually. Upon any change of ownership and on every third year after the initial inspection, the facility must be reinspected by the City and pass inspection. In the other years, the owner or manager is to perform the inspection.

9. ~~8~~-Short-term rentals are classified as lodging facilities by the State. As such, the owner or manager of the short-term rental must register the lodging facility business with the WY Department of Revenue and pay Lodging Tax as required.

10. ~~9~~-Prior to initial operation and annually by May 1<sup>st</sup> thereafter, ~~A~~all short-term rental facilities, ~~whether existing or proposed,~~ shall register with the City of Cody, provide evidence of compliance with these provisions, and pass the fire ~~and life~~ safety inspection. The Community Development Department is authorized to create application form(s) and procedures as necessary to manage and enforce these provisions, both for the initial authorization and for ongoing compliance. Payment of an application fee is required pursuant to the City's adopted fee schedule. A late fee, also as specified in the adopted fee schedule, may also be assessed to owners of short-term rentals that fail to register before making the short-term rental available for initial use, or that do not complete their annual renewal by May 1<sup>st</sup> of each year that the rental is in operation. Authorized short-term rental facilities shall ~~have~~post a ~~certificated document~~ issued by the City ~~of Cody~~ identifying such authorization ~~posted within the unit in a visible location, and commencing May 1, 2023 and continuing thereafter, must include the City registration number for the unit in all online listing(s).~~ The certificate expires at the end of May 1<sup>st</sup> following the year in which the certificate was issued. (Ord. 2018-04, 4-17-2018)

T. "T" Uses: Reserved.

U. "U" Uses: Reserved.

V. "V" Uses: Reserved.

W. "W" Uses:

Formatted: Tab stops: 0.25", Left

Formatted: Tab stops: 0.25", Left

Formatted: Superscript

Formatted: Superscript

Wireless communication facilities.

1. Purpose/Intent:

a. The City of Cody recognizes the benefits of quality wireless communication services and the need to accommodate facilities that provide such services.

b. The City of Cody desires to protect the community's visual quality and safety while facilitating the reasonable and balanced provision of wireless communication services. More specifically, it is the City's goal to minimize the visual impact of wireless communication facilities on the community, particularly in rights-of-way and residential zones.

c. The quality and variety of the scenic viewsheds that are available to the residents and visitors to the area are irreplaceable and warrant protection from unnecessary visual pollution. The City of Cody encourages providers to maximize the use of options that conceal the components of wireless communication facilities (i.e., stealth design) wherever feasible.

d. The natural landforms within and around the City of Cody provide a unique opportunity for the location and design of wireless communication facilities, such that design engineers can utilize those natural features and topographic elevation differences in combination with the built environment to both minimize visual impacts and maximize coverage. Historically, almost all current providers in the area have relied on a primary tower on Carter Mountain (in the County), because such location provides coverage not only to the City, but to areas west of the mountain as well. Coverage and capacity is improved through smaller facilities dispersed throughout the Cody area, where fiber optic and power services are existing or readily available. With LTE and LTE-Advanced technology being implemented, more facilities, serving smaller service areas will be needed. The locations and designs of those facilities must be sensitive to the Cody community.

e. The size and configuration of the City of Cody is such that a network of tall towers is unnecessary to provide quality coverage to its residents and visitors. The City prefers that the local network system of wireless communication facilities be of a dispersed design - e.g., using two (2) or more smaller facilities instead of one (1) larger tower.

f. If modifications to these regulations are needed to accommodate the seemingly ever-changing provisions of FCC rules and regulations, the context of such consideration shall be as an amendment to this title, as opposed to a special exemption or variance.

g. The City desires to provide regulations which are specifically not intended to, and shall not be interpreted or applied to: 1) prohibit or effectively prohibit the provision of personal wireless services, 2) unreasonably discriminate among functionally equivalent service providers, or 3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

2. Applicability: Every wireless communication facility located within the City limits, whether upon private or public lands, is subject to the standards of this section, except that the following facilities are exempt from the standards:

a. Amateur Radio Station Operator/Receive-Only Antennas: Amateur radio station operator/receive- only antenna if owned and operated by a Federally licensed amateur radio station operator or used exclusively for a receive-only antenna;

b. Satellite Earth Stations, Dishes And/Or Antennas: Satellite earth stations, dishes and/or antennas used for private television reception not exceeding one meter (1 m) in diameter;

c. Existing Towers And Antennas: Any existing tower and antenna, provided a valid building permit was issued for the tower or antenna prior to adoption of this section;

d. Emergency Services: Wireless communication facilities used exclusively for emergency services including police, fire, and operation of the water utility, when not located on a new freestanding antenna support structure (e.g., tower or dedicated pole); and

e. Temporary, Commercial Wireless Communication Facilities: A temporary, commercial WCF installed for providing coverage of a special event such as news coverage or sporting event, subject to administrative approval by the City. The WCF shall be exempt from the provisions of this chapter for up to one (1) week before and after the duration of the special event.

### 3. Distributed Antenna Systems And Small Cells:

a. Distributed antenna systems and small cells which comply with the height limit of the zoning district and do not require installation of a new tower, utility support structure or building are allowed in all zones, provided the applicant complies with all Federal laws (such as the Americans With Disabilities Act), State laws, and applicable City development regulations.

b. Distributed antenna systems and small cells that do not meet the above requirements, and which are located in a residential zoning district, shall be subject to conditional use permit review. DAS and small cells that do not meet the above requirements and are located in a zone that is not residential, shall be subject to review pursuant to subsection 4 of this use.

c. The City encourages but it does not require the use of DAS and small cells. Each applicant will submit a statement that explains how it arrived at the structure and design being proposed.

4. Classification And Level Of Review: Within the Limited Business (D-1), General Business (D-2), Open Business/Light-Industrial (D-3), Industrial (E), and Heavy Industrial (HI) Zoning Districts, all wireless communication facilities, except collocation, as addressed herein, shall be subject to review by the Planning and Zoning Board for analysis of the site plan and applicable zoning standards and criteria. The level of review shall be based on the classification of the facility according to the following standards:

a. Permitted Uses In D-1, D-2, D-3, E, And HI Districts: Within the Limited Business (D-1), General Business (D-2), Open Business/Light- Industrial (D-3), Industrial (E), and Heavy Industrial (HI) Zoning Districts, the following wireless communication facilities are permitted uses:

(1) Distributed antenna systems and small cells that do not qualify for review under subsection 3 of this use, when not greater than thirty five feet (35') in total height above existing natural grade, and located no more than twenty feet (20') (SE) from an existing structure or tree that is at least twenty five feet (25') (SE) in total height.

(2) Monopole, when: only small cells or a distributed antenna system is attached; it is not greater than forty feet (40') in total height above existing natural grade, and located no more than twenty feet (20') (SE) from an existing structure or tree that is at least thirty feet (30') (SE) in total height. For purposes of this, monopole is a pole with one (1) or more antennas, on which the antenna panels are narrow and closely spaced with one another atop the pole and extend no more than one foot (1') beyond the circumference of the pole.

(3) Stealth design wireless communication facility, when architecturally integrated into an existing building or structure that was not originally constructed as an antenna support structure, and total height is not more than forty feet (40') or the height limit of the zoning district, whichever is less.

b. Permitted Uses In D-2, D-3, E, And HI Districts: Within the General Business (D-2), Open Business/Light-Industrial (D-3), Industrial (E), and Heavy Industrial (HI) Zoning Districts, the following wireless communication facilities are permitted uses:

(1) Roof-top installations on non-residential buildings, so long as they are completely enclosed within an architecturally-compatible approved housing, comply with the height limit of the zoning district in which they are located, and do not extend more than ten feet (10') above the roof or perimeter parapet wall if a parapet wall exists.

(2) Installations on public water tanks and similar structures (e.g., storage tanks) that do not extend more than twelve feet (12') above the tank.

c. Conditional Uses In D-2, D-3, E, And HI Districts: Within the General Business (D-2), Open Business/Light-Industrial (D-3), Industrial (E), and Heavy Industrial (HI) Zoning Districts, the following wireless communication facilities are conditional uses:

(1) Stealth design wireless communication facilities that do not meet the limitations of subsection 4a(3) of this use, and which do not exceed the height limit of the zoning district in which located.

(2) Roof-top installations on flat-roofed non- residential buildings, so long as they comply with the following requirements:

(A) Setback: Antennas shall be mounted at least ten feet (10') from the closest exterior or parapet wall of a building or structure. (SE)

(B) Height: The height shall be measured from the top of the antenna to the roofline of the building or structure, or to the top elevation of the closest perimeter parapet wall if a parapet wall exists. The maximum height of the antenna is equal to half ( $\frac{1}{2}$ ) the distance the antenna is set back from such exterior wall or parapet wall, up to a maximum allowable height of twelve feet (12').

(C) Roof Mounted Antennas: Roof mounted antennas shall be constructed and/or colored to either appear white, light grey, or match the color of the wall above which they are located. (SE)

(3) Distributed antenna systems and small cells that do not qualify for review under subsections 3 or 4a of this use.

d. Wireless Communication Facility Overlay Zone: Within the Wireless Communication Facility Overlay Zone, each of the above-listed options (subsections 4a, 4b, and 4c of this use) shall be classified as permitted uses, regardless of the underlying zoning. In addition, the following conditional uses are established within the Wireless Communication Facility Overlay Zone:

(1) Freestanding wireless communication facility that has a total height equal to or less than the height specified for the particular subarea of the overlay. The subarea overlay locations, maximum heights, and method of measuring height are established as follows:

Location	Maximum Height	Height Measured From
Beacon Hill Subarea	80 feet	Existing grade
Beck Lake Subarea	80 feet	Existing grade
Cottonwood Avenue Subarea	70 feet	Elevation of closest portion of Big Horn Avenue
Road 2AB Subarea	110 feet	Elevation of closest portion of Road 2AB
West Strip Subarea	70 feet	Elevation of closest portion of Highway 14-16-20

\* All heights are subject to compliance with title 7, chapter 3, article II, "Airport Obstruction Zoning", of this Code.



In addition to the standard conditional use criteria, the applicant must demonstrate that the proposed wireless communication facility is no taller than necessary to provide the desired coverage; provided, the Planning and Zoning Board may authorize a wireless communication facility taller than the minimum necessary when the facility is specifically designed and made available for collocation at market rates as evidenced by a sworn affidavit, and the additional height does not significantly increase the visual impacts of the facility. The board may require the applicant to provide visual simulations of the facility to assist them in determining visual impacts, and RF propagation maps to demonstrate coverage areas.

e. Downtown Architectural District: Notwithstanding any language that may be interpreted otherwise, within the Downtown Architectural District only stealth-design wireless communication facilities that are architecturally integrated with buildings and structures may be permitted.

f. Cell On Wheels: Temporary wireless communication facilities (e.g., cell on wheels) shall be subject to the same review procedures and requirements as permanent towers; provided, in the case of failure of an existing wireless communication facility, a temporary facility of the same height as the damaged facility may be erected for up to ninety (90) days at the site while repair/replacement activities are conducted, without the need for Planning and Zoning Board review. Unless otherwise permitted through a conditional use permit process, a temporary wireless communication facility is limited to eight (8) months in duration, during any five (5) year period. The temporary facility shall not be located on the property except during the authorized period.

#### 5. Tower Locations:

a. Preferred Tower Locations: All new towers proposed to be located in any zoning district are permitted only after application of the following siting priorities, ordered from most-preferred (1) to least-preferred (9):

- (1) City-owned or operated property and facilities not in the Downtown Architectural District or residential zones, and not including right-of-way;
- (2) The Wireless Communication Facility Overlay Zone;
- (3) Industrial Zones (HI, E);
- (4) Commercial Zones (D-3, D-2, D-1 and D-4);
- (5) Other non-residential zones;
- (6) Parcels of land in residential zones that contain non-residential uses (e.g., schools and churches);
- (7) Residential properties in residential zones;
- (8) Designated historic structures or districts;
- (9) City rights-of-way.

b. Gap In Coverage Or Capacity: Upon request by the City, the applicant shall demonstrate the following with a tower application:

- (1) A significant gap in the coverage, capacity, or technologies of the service network exists such that users are frequently unable to connect to the service network, or are regularly unable to maintain a connection, or are unable to achieve reliable wireless coverage within a building;
- (2) The gap can only be filled through an exception to one (1) or more of the standards herein; and
- (3) The exception is narrowly tailored to fill the service gap such that the wireless communication facility conforms to the standards of this section to the greatest extent possible.

c. Least Intrusive Means: For a new tower, the applicant, upon request by the City, must also demonstrate that the manner in which it proposes to fill the significant gap in coverage, capacity, or technologies of the service network is the least intrusive means on the values that these regulations seek to protect.

d. Alternative Sites Analysis: For new towers, the applicant must address the City's preferred tower locations with a detailed explanation justifying why a site of higher priority was not selected. When requested, the City's tower location preferences must be addressed in a clear and complete written alternative sites analysis that shows at least three (3) higher ranked, alternative sites considered that are in the geographic range of the service coverage objectives of the applicant, together with a factually detailed and meaningful comparative analysis between each alternative candidate and the proposed site that explains the substantive reasons why the applicant rejected the alternative candidate location(s). Alternative site analysis is not limited to locations within the City limits.

6. General Standards: The following regulations apply to all wireless communication facilities in all zones and overlays, unless otherwise stated:

a. Color: WCFs shall be placed and colored to blend into the architectural detail and coloring of the host structure. Support towers shall be painted a color that best allows it to blend into the surroundings.

b. Building Codes; Safety Standards: To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable State or Local building codes and the applicable industry standards for towers, as amended from time to time.

c. Notice: For purposes of this chapter, any conditional use permit shall require notice to all property owners within a radius of the subject property equal to five (5) times the total height of the facility above existing grade, in addition to any notice otherwise required by this Code.

d. Landscaping, Screening And Fencing: Applicant shall provide a landscaping, screening and fencing plan that shall meet with the approval of the reviewing official.

e. Setbacks:

(1) A freestanding wireless communication facility shall be set back a minimum of one hundred feet (100') from the property line of a residential zone or the height of the tower, whichever is greater (SE), except when the facility is located in the Wireless Communication Facility Overlay Zone. New freestanding wireless communication facilities located in public utility substations shall be exempt from the above residential setback requirement if the wireless communication tower is no taller than the existing substation structures.

(2) Except as stated in subsection 6e(1) of this use, freestanding wireless communication facilities shall conform with the setback requirements of the zone in which located. (SE)

f. Public Utility: When mounted on a transmission or sub-transmission line structure, the antenna shall not extend more than six feet (6') above the top of the existing pole, subject to the applicable maximum height limitation of the zoning district, and any equipment cabinet(s) mounted on the structure shall be not more than three feet (3') by four feet (4') by eighteen inches (18") deep, with a minimum clearance of ten feet (10') above grade and a maximum height of twenty feet (20').

g. Lighting And Signage: Only security lighting or lighting required by a State and/or Federal agency is allowed, and provided the location of the lighting fixture together with its cut-off angle shall be such that it does not shine directly on any public right-of-way or any residential premises. The only signage that is permitted is that which is required by State or Federal law.

h. Abandonment: All wireless communication facilities which are not in use for six (6) consecutive months shall be removed by the wireless communication facility owner. This removal shall take place within one hundred twenty (120) days of the end of such six-month period. Upon removal, the site shall be revegetated or otherwise surfaced to blend with the existing surrounding area. If there is no vegetation on a wireless communication facility site, the site shall be returned to its preconstruction condition. The facility owner shall notify the City when removal of the facility occurs. Failure to remove an abandoned WCF within one hundred twenty (120) days shall be grounds to remove the WCF at the owner's expense, including all costs and attorneys' fees. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

i. Interference: Every wireless communication facility shall meet the regulations of the Federal Communications Commission regarding physical and RF interference.

j. Health Issues: Every wireless communication facility shall meet health and safety standards for RF emissions as established by the Federal Communications Commission. Certification by a qualified Wyoming licensed engineer shall be submitted to verify such.

7. Collocation: It is the policy of the City to minimize the number of wireless communication support towers and to encourage the collocation of antennas of more than one (1) wireless communication service provider on a single support tower.

Collocations are encouraged, but shall be done in the least visibly-intrusive manner, considering available technology and coverage needs. Collocations may be approved by the City Planner in conjunction with the building permit process and as noted in subsection 14 of this use; provided if the Planner is not clearly convinced that the "least visibly-intrusive manner" criterion is met, the matter may be referred to the Planning and Zoning Board for a determination on such.

8. Non-Conforming Wireless Communication Facilities: Non-conforming wireless communication facilities have the rights and restrictions outlined in chapter 13 of this title; provided, such facilities are subject to the six-month abandonment provision noted above; any expansion is limited to the definition of a "collocation" as set forth in this Code; and, consideration of any expansion is based on the size of the facility as it existed on April 17, 2017.

9. Application Requirements:

a. The Community Development Department is authorized to create application form(s) and procedures as necessary to manage and enforce the provisions of this section.

b. All applications shall include documentation establishing that the installer has permission from the structure owner and property owner to install the wireless communication antenna(s) and any associated buildings, cabinets or equipment at the site.

10. Independent Technical And Legal Review: The City may retain the services of independent experts of its choice to provide technical and legal evaluation of permit applications for WCFs, including administrative and conditional use permits. The applicant shall pay the cost for any independent consultant fees, along with applicable overhead recovery, through a deposit, estimated by the City, which is to be paid within ten (10) days of the City's written request.

11. Application Fees: In connection with the filing of an application, the applicant shall pay all applicable application fees as required by the City.

12. Indemnification: Each permit issued shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the City and its officers, agents, employees, consultants, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, erection,

location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the WCF.

### 13. Eligible Facilities Request:

a. Purpose: This section implements section 6409(a) of the Spectrum Act, 47 USC section 1455(a) as interpreted by the FCC in its Report and Order No. 14153, which requires a State or Local government to approve any eligible facilities request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Eligible facilities requests shall be governed solely by the provisions in this section and Federal law.

#### b. Application Review:

(1) Upon receipt of a complete application for an eligible facilities request pursuant to this section, the City will review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

(2) Within sixty (60) days of the date on which an applicant submits a complete application seeking approval of an eligible facilities request under this section, the City will review and act upon the application, subject to the tolling provisions below.

(3) The sixty (60) day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness. Following a supplemental submission, the City will notify the applicant within ten (10) days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(4) In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted provided the applicant notifies the City in writing after the review period has expired.

### 14. Collocation Applications:

a. Purpose: This section implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14153.

#### b. Application Review:

(1) Upon receipt of a complete application for a collocation request pursuant to this section, the City will review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

(2) Within ninety (90) days of the date on which an applicant submits a complete application seeking approval of a collocation request under this section, the City will review and act upon the application, subject to the tolling provisions below.

(3) The ninety (90) day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness. Following a supplemental submission, the City will notify the applicant within ten (10) days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(4) In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

#### 15. New Site Or Tower Applications:

a. Purpose: This section also implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 14153.

##### b. Application Review:

(1) Upon receipt of a complete application for a request for a new site or tower pursuant to this section, the City will review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

(2) Within one hundred fifty (150) days of the date on which an applicant submits a complete application seeking approval of a request for a new site or tower under this section, the City will review and act upon the application, subject to the tolling provisions below.

(3) The one hundred fifty (150) day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application. The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness. Following a supplemental submission, the City will notify the applicant within ten (10) days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling), the applicant shall be entitled to pursue all remedies under applicable law.

X. "X" Uses: Reserved.

Y. "Y" Uses: Reserved.

Z. "Z" Uses: Reserved. (Ord. 2017-10, 4-13-2017)

Formatted: Space After: 0 pt, Line spacing: single



## City of Cody Agenda Request Form



In order to fully prepare the Council for their meetings, individuals wishing to appear before the Council are asked to complete the following information prior to placement on the agenda. You will be notified of the date you have been scheduled to appear. You may also be contacted by City staff prior to the meeting to address concerns or provide additional information. Some requests may not require appearing before the Council for approval.

Please provide the following detailed information relating to your concern or request. **This form (and any relevant attachments) should be submitted in a timely manner, preferably at least 14 days prior to allow sufficient time for internal review. Untimely submission may result in the inability to be considered for approval.** Council packets are prepared in advance prior to Tuesday meetings. Meetings are held the first and third Tuesday of each month. Please complete the following information in full and return to City of Cody PO Box 2200 Cody, WY 82414 (Fax 307-527-6532),

\*\*\*\*\*

Name of person to appear before the Council Aaron Buck

Organization Represented Yellowstone Regional Airport

Date you wish to appear before the Council 2/21/2023

Email Address aaronb@flyyra.com Telephone \_\_\_\_\_

Names of all individuals who will speak on this topic Aaron Buck

Event Title (if applicable) AIP 45

Date(s) of Event (if applicable) \_\_\_\_\_

Location of Event (if applicable) \_\_\_\_\_

**Full description** of topic to be discussed (include all relevant information including any street closures, times of event, any special requirements or request etc., attach additional sheet if necessary and map showing location of event where applicable) \_\_\_\_\_

The airport is currently working on a terminal remodel project. The project is funded by three different grants. AIP 45 will provide \$2,053,458.00 for that project.

---

---

---

---

---

---

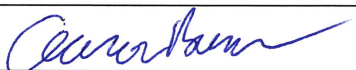
---

---

---

---

Which City employee(s) have you spoken to about this issue? \_\_\_\_\_

Signature  Date 2/13/2023



U.S. Department  
of Transportation  
Federal Aviation  
Administration

Airports Division  
Northwest Mountain Region  
Colorado, Utah, Wyoming

Denver Airports District Office  
26805 E 68th Ave, Ste 224  
Denver, CO 80249-6339

{{DateTime\_es\_:signer1:calc(now()):format(date," mmmm d, yyyy")}}

The Honorable Matt Hall, Mayor  
City of Cody  
1338 Rumsey Avenue  
Cody, WY 82414

Mr. Doug Johnston, Chairman  
Yellowstone Regional Airport Board  
2101 Roger Sedam Drive, Suite 1  
Cody, WY 82414

Dear Mayor Hall and Mr. Johnston:

The Grant Offer for the Bipartisan Infrastructure Law (BIL) - Airport Infrastructure Grant (AIG) Project No. 3-56-0006-045-2023 at the Yellowstone Regional Airport is attached for execution. This letter outlines the steps you must take to properly enter into this agreement and provides other useful information. Please read the conditions, special conditions, and assurances that comprise the grant offer carefully.

**You may not make any modification to the text, terms or conditions of the grant offer.**

***Steps You Must Take to Enter Into Agreement.***

To properly enter into this agreement, you must do the following:

1. The governing body must give authority to execute the grant to the individual(s) signing the grant, i.e., the person signing the document must be the sponsor's authorized representative(s) (hereinafter "authorized representative").
2. The authorized representative must execute the grant by adding their electronic signature to the appropriate certificate at the end of the agreement.
3. Once the authorized representative has electronically signed the grant, the sponsor's attorney(s) will automatically receive an email notification.
4. On the **same day or after** the authorized representative has signed the grant, the sponsor's attorney(s) will add their electronic signature to the appropriate certificate at the end of the agreement.
5. If there are co-sponsors, the authorized representative(s) and sponsor's attorney(s) must follow the above procedures to fully execute the grant and finalize the process. Signatures must be obtained and finalized no later than **XXX XX, 2023**.
6. The fully executed grant will then be automatically sent to all parties as an email attachment.

**Payment.** Subject to the requirements in 2 CFR § 200.305 (Federal Payment), each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

**Project Timing.** The terms and conditions of this agreement require you to complete the project without undue delay and no later than the Period of Performance end date (1,460 days from the grant execution date). We will be monitoring your progress to ensure proper stewardship of these Federal funds. We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress. Your grant may be placed in “inactive” status if you do not make draws on a regular basis, which will affect your ability to receive future grant offers. Costs incurred after the Period of Performance ends are generally not allowable and will be rejected unless authorized by the FAA in advance.

**Reporting.** Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- For all grants, you must submit by December 31st of each year this grant is open:
  1. A signed/dated SF-270 (Request for Advance or Reimbursement for non-construction projects) or SF-271 or equivalent (Outlay Report and Request for Reimbursement for Construction Programs), and
  2. An SF-425 (Federal Financial Report).
- For non-construction projects, you must submit [FAA Form 5100-140, Performance Report](#) within 30 days of the end of the Federal fiscal year.
- For construction projects, you must submit [FAA Form 5370-1, Construction Progress and Inspection Report](#), within 30 days of the end of each Federal fiscal quarter.

**Audit Requirements.** As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to ensure your organization will comply with applicable audit requirements and standards.

**Closeout.** Once the project(s) is completed and all costs are determined, we ask that you work with your FAA contact indicated below to close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

**FAA Contact Information.** Rebecca Wersal, (303) 342-1257, rebecca.wersal@faa.gov is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein.

We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,

{Sig\_es\_:signer1: signature}}

John P. Bauer  
Manager, Denver Airports District office





U.S. Department  
of Transportation  
Federal Aviation  
Administration

## AIRPORT INFRASTRUCTURE GRANT

### GRANT AGREEMENT

#### Part I - Offer

Federal Award Offer Date	<b>{{DateTime_es_:_signer1:calc(now()):format(date," mmmm d, yyyy")}}</b>	
Airport/Planning Area	Yellowstone Regional Airport	
Airport Infrastructure Grant Number	3-56-0006-045-2023	[Contract No. DOT-FA23NM-10XX]
Unique Entity Identifier	N9EVR9EDJ9C4	
TO:	City of Cody, Wyoming and the Yellowstone Regional Airport Board (herein called the "Sponsor") (For Co-Sponsors, list all Co-Sponsor names. The word "Sponsor" in this Grant Agreement also applies to a Co-Sponsor.)	
FROM:	<b>The United States of America</b> (acting through the Federal Aviation Administration, herein called the "FAA")	

**WHEREAS**, the Sponsor has submitted to the FAA a Project Application dated July 20, 2022, for a grant of Federal funds for a project at or associated with the Yellowstone Regional Airport, which is included as part of this Grant Agreement; and

**WHEREAS**, the FAA has approved a project for the Yellowstone Regional Airport (herein called the "Project") consisting of the following:

#### **Rehabilitate and Expand Terminal Building (Phase III)**

which is more fully described in the Project Application.

**NOW THEREFORE**, Pursuant to and for the purpose of carrying out the Infrastructure Investment and Jobs Act (Public Law 117-58) of 2021 referred to as the Bipartisan Infrastructure Law (BIL); and the representations contained in the Project Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances attached hereto; (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

**THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay ninety-five (95) % of the allowable costs incurred accomplishing the Project as the United States share of the Project.**

**Assistance Listings Number (Formerly CFDA Number): 20.106**

**This Offer is made on and SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

### **CONDITIONS**

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$XXXXXXX.

The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

\$ 0 for planning

\$ XXXXXXX airport development or noise program implementation; and,

\$ 0 for land acquisition.

2. **Grant Performance.** This Grant Agreement is subject to the following Federal award requirements:

- a. Period of Performance:

1. Shall start on the date the Sponsor formally accepts this Agreement and is the date signed by the last Sponsor signatory to the Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions or budget periods. (2 Code of Federal Regulations (CFR) § 200.1).

- b. Budget Period:

1. For this Grant is 4 years (1,460 calendar days) and follows the same start and end date as the period of performance provided in paragraph (2)(a)(1) Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.
2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to 2 CFR § 200.308.

- c. Close Out and Termination

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the grant within one year of the period of performance end date with the information available at the end of 120 days. (2 CFR § 200.344).

2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary, and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, BIL (Public Law 117-58), and the regulations, and the Secretary of Transportation's ("Secretary's") policies and procedures. Per 2 CFR § 200.308, the Sponsor agrees to report and request prior FAA approval for any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before XXX XX, 2023, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.

**11. System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**

- a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR § 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
- b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/SAM/pages/public/index.jsf>.

**12. Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

**13. Informal Letter Amendment of BIL Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.

The FAA can, subject to the availability of Federal funds, issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1, Maximum Obligation.

The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.

An informal letter amendment has the same force and effect as a formal grant amendment.

**14. Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.

**15. Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

**16. Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.

**17. Build America, Buy American.** The sponsor must comply with the requirements under the Build America, Buy America Act (Public Law 117-58).

18. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1, Maximum Obligation, of this Grant Offer:
- a. May not be increased for a planning project;
  - b. May be increased by not more than 15 percent for development projects if funds are available;
  - c. May be increased by not more than the greater of the following for a land project, if funds are available:
    1. 15 percent; or
    2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

If the sponsor requests an increase, any eligible increase in funding will be subject to the United States Government share as provided in BIL (Public Law 117-58), or other superseding legislation if applicable, for the fiscal year appropriation with which the increase is funded. The FAA is not responsible for the same Federal share provided herein for any amount increased over the initial grant amount. The FAA may adjust the Federal share as applicable through an informal letter of amendment.

19. **Audits for Sponsors.**

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA. Sponsors that expend less than \$750,000 in Federal awards and are exempt from Federal audit requirements must make records available for review or audit by the appropriate Federal agency officials, State, and Government Accountability Office. The FAA and other appropriate Federal agencies may request additional information to meet all Federal audit requirements.

20. **Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
  1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
  2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or
  3. Adding a clause or condition to covered transactions attesting the individual or firm are not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g., sub-contracts).
- c. Immediately disclose in writing to the FAA whenever (1) the Sponsor learns they have entered into a covered transaction with an ineligible entity or (2) the Public Sponsor suspends or debars a contractor, person, or entity.

**21. Ban on Texting While Driving.**

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
  - 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
  - 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
    - i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
    - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.

**22. Trafficking in Persons.**

- a. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not:
  - 1. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
  - 2. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
  - 3. Use forced labor in the performance of the Grant or any subgrants under this Grant.
- b. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity:
  - 1. Is determined to have violated a prohibition in paragraph (a) of this condition; or
  - 2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph (a) of this Condition through conduct that is either –
    - i. Associated with performance under this Grant; or
    - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement), as implemented by our agency at 2 CFR Part 1200.
- c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (a) of this Condition.
- d. Our right to terminate unilaterally that is described in paragraph (a) of this Condition:
  - 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and

2. Is in addition to all other remedies for noncompliance that are available to us under this Grant Agreement.
23. **BIL Funded Work Included in a PFC Application.** Within 120 days of acceptance of this Grant Agreement, the Sponsor must submit to the FAA an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this Grant Agreement as described in the project application. The airport sponsor may not make any expenditure under this Grant Agreement until project work addressed under this Grant Agreement is removed from an approved PFC application by amendment.
24. **Exhibit "A" Property Map.** The Exhibit "A" Property Map dated May 2020, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.
25. **Employee Protection from Reprisal.**
  - a. Prohibition of Reprisals
    1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2) below, information that the employee reasonably believes is evidence of:
      - i. Gross mismanagement of a Federal grant;
      - ii. Gross waste of Federal funds;
      - iii. An abuse of authority relating to implementation or use of Federal funds;
      - iv. A substantial and specific danger to public health or safety; or
      - v. A violation of law, rule, or regulation related to a Federal grant.
    2. Persons and bodies covered - The persons and bodies to which a disclosure by an employee is covered are as follows:
      - i. A member of Congress or a representative of a committee of Congress;
      - ii. An Inspector General;
      - iii. The Government Accountability Office;
      - iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
      - v. A court or grand jury;
      - vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
      - vii. An authorized official of the Department of Justice or other law enforcement agency.
    3. Submission of Complaint. A person who believes that they have been subjected to a reprisal prohibited by paragraph (a) of this Condition may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
    4. Time Limitation for Submittal of a Complaint. A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
    5. Required Actions of the Inspector General. Actions, limitations, and exceptions of the OIG's office are established under 41 U.S.C. § 4712(b).
    6. Assumption of Rights to Civil Remedy. Upon receipt of an explanation of a decision not to conduct or continue an investigation by the OIG, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c)(2).

26. **Co-Sponsor.** The Co-Sponsors understand and agree that they jointly and severally adopt and ratify the representations and assurances contained therein and that the word "Sponsor" as used in the application and other assurances is deemed to include all Co-Sponsors.
27. **Prohibited Telecommunications.** Sponsor agrees to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)] and 2 CFR § 200.216.

### **SPECIAL CONDITIONS**

28. **Agency Agreement.** The FAA, in tendering this Offer on behalf of the United States, recognizes the existence of an Agency relationship between the Sponsor, as principal, and the Wyoming Department of Transportation, Division of Aeronautics, as agent. The Sponsor agrees that it will not amend, modify, or terminate said Agency Agreement without prior written approval of the FAA or its designated representative.
29. **Final Project Documentation.** The Sponsor understands and agrees that in accordance with 49 USC 47111, and with the Airport District Office's (ADO) concurrence, that no payments totaling more than 90.0 percent of United States Government's share of the project's estimated allowable cost may be made before the project is determined to be substantially complete. Substantially complete means the following: (1) The project results in a complete, usable unit of work as defined in the grant agreement and (2) The sponsor submits necessary documents showing that the project is substantially complete per the contract requirements, or has a plan (that FAA agrees with) that addresses all elements contained on the punch list. Furthermore, no payments totaling more than 97.5 percent of the United States Government's share of the project's estimated allowable cost may be made until: (1) The sponsor submits all necessary closeout documentation and (2) The sponsor receives final payment notification from the ADO.
30. **Airports Geographic Information System (AGIS) Requirements.** AGIS requirements, as specified in Advisory Circular 150/5300-18, apply to the project included in this grant offer. Final construction as-built information or planning deliverables must be collected according to these specifications and submitted to the FAA. The submittal must be reviewed and accepted by the FAA before the grant can be administratively closed.
31. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.
32. **Solid Waste Recycling Plan.** The Sponsor certifies that it has a solid waste recycling plan as part of an existing Airport Master Plan, as described by 49 U.S.C. § 47106(a)(6).
33. **Airport Layout Plan.** The Sponsor understands and agrees to update the Airport Layout Plan to reflect the construction to standards satisfactory to the FAA and submit it in final form to the FAA as described by 49 U.S.C. § 47107(a)(16). It is further mutually agreed that the reasonable cost of developing said Airport Layout Plan Map is an allowable cost within the scope of this project, if applicable.
34. **Building BIL Proration.** For purposes of computing the United States' share of the allowable project costs of the project, the allowable cost of the terminal building included in the project must not exceed 43.71 percent of the actual cost of the entire building.



35. **Useable Unit of Work for Companion Grants.** This grant funds a portion (34.8%) of the project. The sponsor agrees that it will accept two companion grant offers, 3-56-0006-043-2020 and 3-56-0006-044-2022, to fund the remaining portion (65.2%) of the project. The sponsor further agrees that the companion grants will result in a complete, safe, useful, and useable unit of work per the project description. The FAA makes no commitment of funding beyond the Sponsor's available allocated funds pursuant to law. If the sponsor does not accept the companion grant, the FAA has the option to close this grant and recover the funds.

DRAFT

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the Grant Assurances, terms, and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>1</sup>

**UNITED STATES OF AMERICA  
FEDERAL AVIATION ADMINISTRATION**

**{{Sig\_es\_:signer1:signature:dimension(height=12mm, width=70mm)}}**

*(Signature)*

**{{N\_es\_:signer1:fullname }}**

*(Typed Name)*

**{{\*Ttl\_es\_:signer1:title }}**

*(Title of FAA Official)*

---

<sup>1</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

## Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>2</sup>

Dated {{DateTime\_es\_:signer2:calc(now()):format(date," mmmm d, yyyy")}}

**CITY OF CODY, WYOMING**

*(Name of Sponsor)*

{{Sig\_es\_:signer2:signature:dimension(height=12mm, width=70mm)}}

*(Signature of Sponsor's Authorized Official)*

**By: {{N\_es\_:signer2:fullname }}**

*(Typed Name of Sponsor's Authorized Official)*

**Title: {{\*Ttl\_es\_:signer2:title }}**

*(Title of Sponsor's Authorized Official)*

<sup>2</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

## CERTIFICATE OF SPONSOR'S ATTORNEY

I, **{{N\_es :signer3: fullname}}**, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Wyoming. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State; the Infrastructure Investment and Jobs Act (Public Law 117-58) of 2021 referred to as the Bipartisan Infrastructure Law (BIL), Division J, Title VIII; and the representations contained in the Project Application. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>3</sup>

Dated at **{{DateTime\_es :signer3:calc(now()):format(date," mmmm d, yyyy")}}**

By: **{{Sig\_es :signer3:signature:dimension(height=12mm, width=70mm)}}**

*(Signature of Sponsor's Attorney)*

---

<sup>3</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

---

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>4</sup>

Dated {{DateTime\_es\_:signer4:calc(now()):format(date," mmmm d, yyyy")}}

**YELLOWSTONE REGIONAL AIRPORT BOARD**

*(Name of Sponsor)*

{{Sig\_es\_:signer4:signature:dimension(height=12mm, width=70mm)}}

*(Signature of Sponsor's Authorized Official)*

By: {{N\_es\_:signer4:fullname }}

*(Typed Name of Sponsor's Authorized Official)*

Title: {{\*Ttl\_es\_:signer4:title }}

*(Title of Sponsor's Authorized Official)*

---

<sup>4</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

## CERTIFICATE OF SPONSOR'S ATTORNEY

I, **{{N\_es :signer5: fullname}}**, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Wyoming. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State; and Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; FAA Reauthorization Act of 2018 (Public Law Number 115-254); the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L); the Extending Government Funding and Delivering Emergency Assistance Act (Public Law 117-43); the Consolidated Appropriations Act, 2022 (Public Law 117-103); and the representations contained in the Project Application. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>5</sup>

Dated at **{{DateTime\_es :signer5:calc(now()):format(date," mmmm d, yyyy")}}**

By: **{{Sig\_es :signer5:signature:dimension(height=12mm, width=70mm)}}**

*(Signature of Sponsor's Attorney)*

---

<sup>5</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

## **ASSURANCES**

### **AIRPORT SPONSORS**

---

#### **A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Public Law 117-58, Division J, Title VIII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this Grant Agreement.

#### **B. Duration and Applicability.**

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this Grant Agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph (1) also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this Grant Agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 23, 25, 30, 32, 33, 34, and 37 in Section C apply to planning projects. The terms, conditions, and assurances of this Grant Agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

#### **C. Sponsor Certification.**

The sponsor hereby assures and certifies, with respect to this grant that:

## 1. General Federal Requirements

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including but not limited to the following:

### FEDERAL LEGISLATION

---

- a. 49, U.S.C. subtitle VII, as amended.
- b. Davis-Bacon Act, as amended — 40 U.S.C. §§ 3141-3144, 3146, and 3147, et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. § 201, et seq.
- d. Hatch Act – 5 U.S.C. § 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq.<sup>1, 2</sup>
- f. National Historic Preservation Act of 1966 – Section 106 - 54 U.S.C. § 306108.1.<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. § 312501, et seq.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. § 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended - 42 U.S.C. § 7401, et seq.
- j. Coastal Zone Management Act, P.L. 92-583, as amended - 16 U.S.C. § 1451, et seq.
- k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. § 4012a.<sup>1</sup>
- l. 49 U.S.C. § 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. § 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.) (prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. § 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968, as amended - 42 U.S.C. § 4151, et seq.<sup>1</sup>
- s. Powerplant and Industrial Fuel Use Act of 1978 – Section 403 - 42 U.S.C. § 8373.<sup>1</sup>
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701, et seq.<sup>1</sup>
- u. Copeland Anti-kickback Act - 18 U.S.C. § 874.<sup>1</sup>
- v. National Environmental Policy Act of 1969 - 42 U.S.C. § 4321, et seq.<sup>1</sup>
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271, et seq.
- x. Single Audit Act of 1984 - 31 U.S.C. § 7501, et seq.<sup>2</sup>
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. §§ 8101 through 8105.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).



- aa. Civil Rights Restoration Act of 1987, P.L. 100-259.
- bb. Build America, Buy America Act, P.L. 117-58, Title IX.

#### **EXECUTIVE ORDERS**

---

- a. Executive Order 11246 – Equal Employment Opportunity<sup>1</sup>
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency
- h. Executive Order 13985 – Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 13988 – Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- j. Executive Order 14005 – Ensuring the Future is Made in all of America by All of America’s Workers
- k. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

#### **FEDERAL REGULATIONS**

---

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.<sup>4, 5</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures.
- e. 14 CFR Part 16 – Rules of Practice for Federally-Assisted Airport Enforcement Proceedings.
- f. 14 CFR Part 150 – Airport Noise Compatibility Planning.
- g. 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.
- h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964.
- i. 29 CFR Part 1 – Procedures for Predetermination of Wage Rates.<sup>1</sup>
- j. 29 CFR Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.<sup>1</sup>

- k. 29 CFR Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted contracting requirements).<sup>1</sup>
- m. 49 CFR Part 20 – New Restrictions on Lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.<sup>1, 2</sup>
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.<sup>1</sup>
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.
- t. 49 CFR Part 30 – Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 38 – Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.
- x. 49 CFR Part 41 – Seismic Safety.

#### **FOOTNOTES TO ASSURANCE (C)(1)**

---

- <sup>1</sup> These laws do not apply to airport planning sponsors.
- <sup>2</sup> These laws do not apply to private sponsors.
- <sup>3</sup> 2 CFR Part 200 contains requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation shall apply where applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- <sup>4</sup> Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- <sup>5</sup> Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

#### **SPECIFIC ASSURANCES**

---

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this Grant Agreement.

## **2. Responsibility and Authority of the Sponsor.**

### **a. Public Agency Sponsor:**

It has legal authority to apply for this Grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

### **b. Private Sponsor:**

It has legal authority to apply for this Grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

## **3. Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this Grant Agreement which it will own or control.

## **4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

## **5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this Grant Agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this Grant Agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or

document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this Grant Agreement.

- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this Grant Agreement and shall ensure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of 49 U.S.C. § 47107(s) and the sponsor assurances.

#### **6. Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

#### **7. Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

#### **8. Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

## **9. Public Hearings.**

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

## **10. Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

## **11. Pavement Preventive Maintenance.**

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

## **12. Terminal Development Prerequisites.**

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under 49 U.S.C. § 44706, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

## **13. Accounting System, Audit, and Record Keeping Requirements.**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the project in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United

States not later than six (6) months following the close of the fiscal year for which the audit was made.

**14. Minimum Wage Rates.**

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor under 40 U.S.C. §§ 3141-3144, 3146, and 3147, Public Building, Property, and Works), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

**15. Veteran's Preference.**

It shall include in all contracts for work on any project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in 49 U.S.C. § 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

**16. Conformity to Plans and Specifications.**

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this Grant Agreement, and, upon approval of the Secretary, shall be incorporated into this Grant Agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this Grant Agreement.

**17. Construction Inspection and Approval.**

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

**18. Planning Projects.**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

#### **19. Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:
  - 1. Operating the airport's aeronautical facilities whenever required;
  - 2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
  - 3. Promptly notifying aviators of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

#### **20. Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

**21. Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

**22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:
  1. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  2. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.



- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

### **23. Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

### **24. Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a Grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

### **25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
  - 1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the

revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at 49 U.S.C. § 47102), if the FAA determines the airport sponsor meets the requirements set forth in Section 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

## **26. Reports and Inspections.**

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this Grant Agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

**27. Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

**28. Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

**29. Airport Layout Plan.**

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
  1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
  2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
  3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
  4. all proposed and existing access points used to taxi aircraft across the airport's property boundary.

Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and

which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary:
  1. eliminate such adverse effect in a manner approved by the Secretary; or
  2. bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

### **30. Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, color, and national origin (including limited English proficiency) in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4); creed and sex (including sexual orientation and gender identity) per 49 U.S.C. § 47123 and related requirements; age per the Age Discrimination Act of 1975 and related requirements; or disability per the Americans with Disabilities Act of 1990 and related requirements, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program and activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in 49 CFR §§ 21.23(b) and 21.23(e), the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
  1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
  2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
  3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.
- c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or

structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
  2. So long as the sponsor retains ownership or possession of the property.
- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this Grant Agreement and in all proposals for agreements, including airport concessions, regardless of funding source:
- “The **City of Cody, Wyoming and the Yellowstone Regional Airport Board**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.”
- e. Required Contract Provisions.
1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation (DOT), and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
  2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
  3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
  4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
    - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
    - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

### **31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:
  1. Reinvestment in an approved noise compatibility project;
  2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
  3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. § 47114, 47115, or 47117, or under Public Law 117-58, Division J, Title VIII; or
  4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.

If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:
  1. Reinvestment in an approved noise compatibility project;
  2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
  3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117, or under Public Law 117-58, Division J, Title VIII; or
  4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-

sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

- d. Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

### **32. Engineering and Design Services.**

If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., or Public Law 117-58, Division J, Title VIII it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U.S.C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

### **33. Foreign Market Restrictions.**

It will not allow funds provided under this Grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

### **34. Policies, Standards, and Specifications.**

It will carry out any project funded under an Airport Infrastructure Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars (<https://www.faa.gov/airports/aip/media/aip-pfc-checklist.pdf>) for AIG projects as of July 20, 2022.

### **35. Relocation and Real Property Acquisition.**

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C of 49 CFR Part 24 and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

### **36. Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

**37. Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin, sex, in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3809, 3812).

**38. Hangar Construction.**

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

**39. Competitive Access.**

- a. If the airport owner or operator of a medium or large hub airport (as defined in 49 U.S.C. § 47102) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:
  1. Describes the requests;
  2. Provides an explanation as to why the requests could not be accommodated; and
  3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.