

LOAN AGREEMENT

THIS LOAN AGREEMENT is made and entered on _____, by and between the **CITY OF BILLINGS**, a Municipal City, whose address is 316 N. 26th Street, Billings, MT 59101 (“**Borrower**”) and the **BIG SKY ECONOMIC DEVELOPMENT CORPORATION**, a Montana nonprofit corporation, whose mailing address is 201 N. Broadway, Billings, MT 59101 (“**Lender**”).

RECITALS

WHEREAS, the **Lender** operates a lending program for the purpose of creating job opportunities and economic development for the residents of Yellowstone County, Montana; and

WHEREAS, the **Borrower** wishes to borrow the total sum of **EIGHTY FOUR THOUSAND EIGHT HUNDRED FORTY EIGHT** (\$84,848.00) from **Lender** under the U.S. Environmental Protection Agency Brownfields Revolving Loan Fund for the purpose of property remediation / environmental cleanup (“**Project**”).

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein, the parties agree as follows:

1. **INCORPORATION OF RECITALS**: All the foregoing recitals are true and correct and are incorporated by reference in this paragraph.
2. **AMOUNT AND REPAYMENT OF LOAN**: The **Lender** agrees, under the terms and conditions of this Loan Agreement, to make a loan to **Borrower** for the Project as set forth below in Paragraph 4. The total principal amount of such loan shall be **EIGHTY FOUR THOUSAND EIGHT HUNDRED FORTY EIGHT** dollars (\$84,848.00). The loan shall be repaid by **Borrower** in the following manner:
 - a. The sum of \$84,848.00 shall be evidenced by a Promissory Note executed by **Borrower**. The Promissory Note shall be made payable to **Lender** in form and content the same as Exhibit “A” attached hereto and shall accrue interest from the date of the Loan at the rate of **ZERO** percent (0.00%) per annum.
 - b. The Note shall be amortized over **THIRTY SIX** (36) months. **Borrower** shall make a single principal payment in the amount of **EIGHTY FOUR THOUSAND EIGHT HUNDRED FORTY EIGHT** dollars (\$84,848.00) on _____. Any unpaid accrued interest shall be capitalized and added to principal as accrued.
 - c. The Note may be renewed or extended by the Lender for a period of up to twelve (12) months beyond the original maturity date, at the request of the borrower, or at the Lender’s discretion. The request for extension will not be unreasonably withheld if the redevelopment project is not completed within the original term.
 - d. All payments will be made promptly to **Lender** at its address specified at the beginning of this Loan Agreement, or at such other address as it may designate in writing. **Borrower** agrees to pay a late charge of five percent (5%) of the scheduled payments described above for any such payment not made by the 10th day after its scheduled due date. All payments shall be first applied to penalties, then to interest and thereafter to principal. **Borrower** shall have the right to prepay all or any part of the Note without penalty of any kind.
3. **CONDITIONS OF LOAN**: **Lender’s** obligation to make the loan contemplated hereby is contingent on each and all the following:

- a. **Upon request, Borrower** will submit to **Lender** annual financial statements within 120 days of the end of **Borrower's** fiscal year, which shall be prepared to meet the requirements of **Borrower's** bank or lending institution. In addition, **Borrower** will submit to **Lender** copies of **Borrower's** income tax returns within 120 days after the date on which such returns are due. Written status reports on project performance at the request of, and in the format prescribed by **Lender**, will be provided by **Borrower** to **Lender**.
- b. Upon receipt of reasonable advance notice, **Borrower** will permit, during normal business hours, representatives of **Lender** to inspect **Borrower's** facilities and records which are the subject of this Loan.
- c. **Borrower's** interest in this Loan Agreement is non-assignable except upon the written consent of **Lender**. A request for consent to assignment must include a statement justifying the request and the certified financial statement of the proposed assignee. This statement must be current to within 120 days of the request. **Lender** reserves the right to deny requests for assignment and to modify rates and terms of this Loan Agreement and its exhibits as conditions of an assignment. Nothing herein will prevent **Borrower** from assigning said loan to a separate entity controlled by **Borrower**.
- d. It is expressly understood that the proceeds of this Loan are designated solely for those purposes (i.e., the Project) set forth in this Loan Agreement and may not be used for any prohibited or illegal purposes. It is further expressly understood that **Lender** shall have the right to change the loan fund for this Loan and/or assign this loan among its various loan funds at its sole and complete discretion without notice or approval of **Borrower**.
- e. **Borrower** waives all claims and recourse against **Lender**, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to this Loan Agreement. Further, **Borrower** will indemnify, hold harmless, and defend **Lender** against all claims, demands, damages, costs, expenses or liability arising out of the performance of this Loan Agreement by **Borrower**.
- f. **Borrower** shall have secured all necessary approvals or consents, if required, of all governmental bodies having jurisdiction with respect to any construction contemplated in accordance with the use of proceeds.
- g. **Lender** shall have received the Opinion of Counsel to **Borrower** that the representations and warranties are true and accurate on and as of the closing date and the conditions of the Loan have been duly satisfied as of the closing date.
- h. **Lender** shall have received verification that **Borrower** has adequate insurance in place on all Collateral. Said insurance policy shall provide that **Lender** is an additional insured and that the insurance policy may not be canceled without first providing notice of said cancellation to **Lender** at least thirty (30) days prior to cancellation. "Collateral" means all property and assets granted as collateral security for the loan being made under this Loan Agreement, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.
- i. **Borrower** certifies they have not been suspended, debarred, or otherwise excluded from receiving Federal funds.
- j. **Borrower** shall certify they are not currently, nor have they been, subject to any penalties resulting from environmental noncompliance at the site subject to the loan or subgrant.

- k. **Borrower** shall certify they are not potentially liable under CERCLA §107 for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower must state the basis for that assertion. When using cooperative agreement funds for petroleum-contaminated brownfield sites, Borrower shall certify they are not a viable responsible party or potentially liable for the petroleum contamination at the site.
4. **SECURITY:** For the Loan contemplated herein, **Borrower** will provide and grant to **Lender** adequate security for payment and performance of this Loan Agreement and the above described Promissory Note, to initially consist of the following:

- a. **CITY OF BILLINGS** will pledge to the **Lender** (Real Property Information with Legal Description):

Lot One (1), in Block Three (3), of Rickman Subdivision, in the City of Billings,
according to the official plat on file in the office of the Clerk and Recorder of
Yellowstone County, Montana, under Document No. 345049.

Property is commonly known as 802 Yellowstone Avenue, Billings, MT 59101.

CITY OF BILLINGS agrees to execute a Montana Trust Indenture in form and content the same as Exhibit “B” attached hereto and by this reference made a part hereof. Should **Borrower** default in repayment of the Loan, **Lender** may resort to the above-described property and pursue all remedies allowable by the laws of the State of Montana.

- b. Six months from the date hereof and at the end of each succeeding one (1) year period, **Lender** and its designated agents may review, re-evaluate, and examine the property pledged as security for repayment of this Loan. Should **Lender** determine in its reasonable judgment that such security is inadequate in value to fully secure the balance of the Loan unpaid on the date of such review, **Lender** may require that **Borrower** pledge, by whatever means or documents **Lender** deems to be appropriate, such additional property or other collateral as **Lender** deems necessary to fully secure repayment of the remaining balance of the Loan.
- c. **Borrower** will not without the prior written consent of **Lender**, sell, pledge, transfer, assign, hypothecate or otherwise dispose of **Borrower’s** assets in the Project. In the event of any such transfer, sale, pledge, assignment, hypothecation or disposal of assets in the Project, **Lender** may, at its sole discretion, accelerate the unpaid balance of the Loan then due and owing.
- d. If Borrower sells all the real property described in the Trust Indenture for fair market value in a bona fide arm’s length sale and purchase transaction (such sale, a “Sale”), all proceeds from the Sale (the “Proceeds”) shall be applied to the obligations secured by the Trust Indenture (the “Obligations”), including but not limited to the outstanding balance of the Promissory Note. If the Proceeds are insufficient to satisfy the Obligations in full (the amount of any such shortfall, the “Shortfall”), then so long as Borrower is not in default under this Loan Agreement, the Promissory Note, the Trust Indenture, or any other agreements between Borrower and Lender, the Lender will forgive the Shortfall.
- e. If the Borrower retains ownership of the Property for governmental, non-profit, or other public use and does not sell or transfer it to any third party, the Loan shall be forgiven in its entirety, and the Borrower shall have no further repayment obligations. The determination of governmental, non-profit, or public use shall be subject to verification and approval by the Lender.

- f. If the Borrower sells the property at below fair market value to achieve a specific public benefit (i.e. workforce housing or a neighborhood grocery store), and the proceeds are insufficient to satisfy the Obligations in full (the amount of any such shortfall, the "Shortfall"), then so long as Borrower is not in default under this Loan Agreement, the Promissory Note, the Trust Indenture, or any other agreements between Borrower and Lender, the Lender will forgive the Shortfall.
5. **REPRESENTATIONS AND WARRANTIES:** Borrower hereby represents, warrants, and covenants as follows:
- a. The making and performance by **Borrower** of this Loan Agreement, and the execution and delivery of the Related Document, will not violate any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect having applicability to **Borrower** or result in a breach of or constitute a default under any indenture or bank loan or credit agreement or any other agreement or instrument to which **Borrower** is a party or by which **Borrower** or **Borrower's** property may be bound or affected. "Related Documents" means all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the loan being made under this Loan Agreement.
 - b. When this Loan Agreement is executed by **Borrower** and **Lender**, and when the Related Documents are executed and delivered by **Borrower** for value, each such instrument shall constitute a legal, valid, and binding obligation of **Borrower** in accordance with its terms. Any security agreements and instruments, financing statements, and other liens on chattel or real estate shall constitute legal, valid and binding liens.
 - c. There are no legal actions, suits, or proceedings pending or, to the knowledge of **Borrower**, threatened against **Borrower** before any court or administrative agency, which, if determined adversely to **Borrower**, would have a material adverse effect on the financial condition or business of **Borrower**.
 - d. No authorization, consent, or approval, or any formal exemption of any governmental body, regulatory authority (federal, state or local), mortgagee, creditor or third party is or was necessary prior to the valid execution and delivery by **Borrower** of the Loan Agreement, Related Documents, or financing statements.
 - e. **Borrower** is not in default of any obligation, covenant, or condition contained in any bond, debenture, note, or other evidence of indebtedness or any mortgage or collateral instrument securing the same.
 - f. **Borrower** has filed all tax returns which are required and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments levied against **Borrower** or its personal or real property by any taxing agency whether federal, state or local. No tax liability has been asserted by the Internal Revenue Service or other taxing agency, whether federal, state or local, for taxes materially in excess of those already provided for and **Borrower** knows of no basis for any such deficiency assessment.
 - g. **Borrower** certifies that there has been no adverse change since the date of loan application in the financial condition, organization, operation, business prospects, fixed properties, or personnel of **Borrower**.
6. **AFFIRMATIVE COVENANTS OF BORROWER:** Borrower agrees to comply with the following covenants from the date hereof until **Lender** has been fully repaid with interest, unless **Lender** or its assigns shall otherwise consent in writing:

- a. **Borrower** agrees to pay punctually the principal and interest on the Note according to its terms and conditions and to pay punctually any other amounts that may become due and payable to **Lender** under or pursuant to the terms of this Loan Agreement and Note.

In the event Lender or its agent or assignee accepts a late payment after the tenth day of the month in which such payment is due, **Borrower** agrees to pay a late payment charge equal to five percent (5%) of the late amount, as compensation for additional collection efforts.

- b. **Borrower** agrees to pay punctually the principal and interest due on any other indebtedness now or hereafter at any time owing by **Borrower** to **Lender** or any other lender.
- c. **Borrower** agrees to duly pay and discharge all taxes, assessments, and governmental charges upon it or against its' properties prior to the date on which the penalties attach thereto, except that **Borrower** shall not be required to pay any such tax, assessment, or governmental charge which is being contested by it in good faith and by appropriate proceedings.
- d. **Borrower** agrees to maintain adequate records and books of account, in which complete entries will be made reflecting all of **Borrower's** business and financial transactions, such entries to be made in accordance with generally accepted principles of good accounting practice consistently applied in the case of financial transactions.

In addition, **Borrower** agrees to deliver to **Lender, upon request**, annual financial statements prepared to meet the requirements of **Borrower's** bank or lending institution within 120 days of the close of **Borrower's** fiscal year; and provided further that **Lender** or its assign shall have the right to conduct an audit of **Borrower** at its discretion.

Borrower further agrees to provide written notice to the **Lender** of any public hearing or meeting before any administrative or other public agency which may, in any manner, affect this Loan.

- e. **Borrower** agrees to grant **Lender**, until the Note has been fully repaid with interest, the right at all reasonable hours to inspect the property used to secure the Loan; and **Borrower** further agrees to provide **Lender** free access to **Borrower's** premises for the purpose of such inspection to determine the condition of the real estate.
- f. **Borrower** agrees that in the event any provision of this Loan Agreement or any Related Documents or any other instrument executed at closing or the application thereof to any person or circumstances shall be declared null and void, invalid, or held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of such agreement shall nevertheless remain in full force and effect, and to this end, the provisions of all covenants, conditions, and agreements described herein are deemed separate.
- g. **Borrower** agrees to indemnify and save **Lender** or **Lender's** assigns harmless against all liability with respect to or resulting from any delay in discharging any obligation of **Borrower**.
- h. **Borrower** certifies and warrants that, to the best of **Borrower's** knowledge, all contamination present on the real property that has been pledged by **Borrower** as Collateral to secure this Loan Agreement and the Note has been disclosed to **Lender**. **Borrower** further always agrees that during **Borrower's** operations on the property that **Borrower** will comply with all local, state, and federal environmental laws. **Borrower** agrees to indemnify **Lender** from any liability that **Lender** incurs due to contaminants that have been deposited on the property during the course of **Borrower's** use of the property or any environmental clean-up costs and expenses which arise as a result of **Borrower's** failure to abide by the above-referenced indemnification agreement.
- i. **Borrower** agrees to pay before they become delinquent, all state and federal income, sales and property taxes and assessments (except those as are being contested in good faith and against which a Borrower maintains an adequate reserve for payment).

- j. **Borrower** hereby specifically agrees that the loan contemplated hereunder may be declared immediately fully due and payable by **Lender** if any of the following events occur:
- 1) **Borrower** sells all or substantially all its business assets, including any of the Collateral granted herein, without the prior written consent of the **Lender**;
 - 2) **Borrower** closes its business or relocates its business to a location outside of Yellowstone County, MT; or
 - 3) **Borrower** fails to maintain insurance on any of the Collateral pledged herein. However, in the alternative to declaring the loan immediately due and payable, **Lender** shall have the right, but not the obligation, to place insurance on the Collateral and add the expense for said insurance (plus interest at the rate of ten percent (10%) per annum) to the loan balance.
- k. **Borrower** agrees to comply with all federal and/or state of Montana reporting required for the use of federal and/or state funds.
- l. **Borrower** agrees to comply with Federal statutes, regulations, and the terms and conditions of the Federal award and take prompt action when instances of noncompliance are identified in accordance.
- m. **Borrower** shall use funds only for eligible activities and in compliance with the requirements of CERCLA §104(k) and applicable federal and state laws and regulations, including 2 CFR Parts 200 and 1500.
- n. **Borrower** shall ensure the cleanup protects human health and the environment.
- o. **Borrower** shall document how funds are used.
- p. **Borrower** shall maintain records for a minimum of three (3) years following completion of the cleanup financed all or in part with loan funds. Borrower shall obtain written approval from **Lender** prior to disposing of records, so that **Lender** can maintain the records, if necessary, for complying with Lender's obligations under 2 CFR §200.334. **Lender** shall also require **Borrower** provide access to loan records and information to authorized representatives of the federal government.
- q. **Borrower** shall conduct cleanup activities as required by **Lender** and in accordance with the Cleanup Scope as noted in **Exhibit A**.
- r. **Borrower** shall clearly reference EPA investments in the project during all phases of community outreach, prior to, during, and after the cleanup.
- s. **Borrower** acknowledges that **Lender** may change scope of cleanup activities as necessary based on comments from the public or new information acquired.
- t. **Borrower** agrees to share information regarding leveraged funds, additional financing or private investment, job creation, and site redevelopment after the cleanup is complete and loan is repaid.
- u. **Borrower** agrees to comply with the Davis-Bacon Prevailing Wage Act as regulated by the U.S. Department of Labor.
- v. **Borrower** agrees to comply with the General Terms and Conditions for the Buy America Sourcing requirements under the Build America, Buy America (BABA) provisions of the Infrastructure Investment and Jobs Act.

7. **NEGATIVE COVENANTS OF BORROWER:** **Borrower** covenants and agrees that from the date hereof until payment in full of the Note, unless **Lender** or its assigns shall otherwise consent in writing, **Borrower** will not enter into any agreement or other commitment, the performance of which would constitute a breach of any of the covenants contained in this Loan Agreement, including but not limited to the following covenants:
- a. **Borrower** will neither create nor suffer to exist any mortgage, pledge, lien, charge, or encumbrance, including liens arising from judgments on **Borrower's** assets except as authorized by **Lender**.
 - b. **Borrower** will not sell, convey, or suffer to be conveyed, lease, assign, transfer, or otherwise dispose of any of the Collateral unless approved in writing by **Lender**.
 - c. **Borrower** will neither permit, nor suffer to exist without prior written consent of **Lender**, any material changes in the Project's plans and/or specifications submitted to **Lender**. Material change shall include any significant variance in the accepted plans and specifications, increases in contract prices, and/or additional financial obligations with respect to the construction and acquisition of **Borrower's** assets.
 - d. **Borrower** will not incur additional debt or equity financing, excluding trade or vendor credit incurred in the ordinary course of business, without prior written consent of **Lender**, which consent shall not be unreasonably withheld.
 - e. **Borrower** shall not use loan funds for the following activities:
 - a. Pre-cleanup Phase I and Phase II environmental site assessment activities with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
 - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
 - c. Construction, demolition, and site development activities that are not cleanup actions (e.g. activities or products created specifically to attract buyers or investors), construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use;
 - d. Job training activities unrelated to performing a specific cleanup at a site covered by this loan;
 - e. To pay for a penalty or fine;
 - f. To pay a federal cost share requirement unless there is a specific statutory authority;
 - g. To pay for a response cost at a brownfield site for which the Borrower is potentially liable under CERCLA §107;
 - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
 - i. Un allowable costs (e.g. lobbying and purchases of alcoholic beverages) under 2 CFR Part 200, Subpart E.
 - f. Throughout the term of this Loan Agreement, and until the Loan and all obligations evidenced thereby have been fully and finally paid, **Borrower** agrees that, without the prior written consent of **Lender** having been first obtained as it relates to the Project, **Borrower** will not:
 - 1) Invest in, make, or grant any loan or advance to any person, employee, or other person, firm, or corporation or individual.
 - 2) Permit withdrawals of cash from the project for any purpose.
 - 3) Make any substantial transfer of the project assets.

- 4) Make any extraordinary withdrawals for salaries, bonuses or benefits from the project to **Borrower** at any time.

It is understood and agreed that **Lender's** consent will not be arbitrarily withheld; however, such consent will not be deemed a recommendation if given, and failure to so consent shall afford no basis for liability on **Lender's** part, and Borrower's sole remedy for such withholding of consent shall be refinancing in full of the Loan, and the consequent freedom from the restriction thereof.

8. **DISBURSEMENT PROVISIONS:** **Lender** will disburse funds to **Borrower** by means of 'actual expense'. **Borrower** will submit documentation of contractor invoices and/or expenses to **Lender** along with a signed Loan Draw Authorization form authorizing **Lender** to pay contractor directly. **Lender** will review submittals to confirm they meet all eligible cleanup activity requirements and issue payment to contractor directly.
9. **EVENTS OF DEFAULT:** The entire unpaid principal balance of the Note, and the interest then accrued thereon, shall become and be immediately due and payable upon the written demand of **Lender** or its assigns, without any other notice or demand of any kind or any presentation or protest, if any one of the following events (hereafter an "Event of Default") shall occur and be continuing at the time of such demand, whether voluntarily or involuntarily, or without limitation, occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative governmental body, provided, however, that such sum shall not be payable if **Borrower's** payments have been waived or the time for making **Borrower's** payments has been extended by **Lender**. If any of the following events occur, **Lender** may, in its sole discretion, declare an Event of Default under this Loan Agreement:
- a. Any representation or warranty made by **Borrower** in this Loan Agreement or in any request or certificate or other information furnished to **Lender** hereunder proves to have been incorrect in any material respect.
 - b. **Borrower** fails in any material respect to carry out its obligations under their proposal to **Lender** for the Loan provided hereunder, or **Borrower's** default in its payment and performance obligations, or failure to satisfy any covenant or condition set forth in this Loan Agreement or any Related Documents.
 - c. **Borrower** fails to pay any indebtedness owed by **Borrower** under any agreement or instrument relating to any other indebtedness it may incur during the term of this Loan.
 - d. **Borrower** defaults in the payment of any indebtedness for any money borrowed, for which **Borrower** is liable as principal obligor or become liable as guarantor.
 - e. **Borrower** applies for or consent to the appointment of a receiver, trustee or liquidator; admits in writing to its inability to pay its debts as they become due; makes a general assignment for the benefit of creditors; or invokes any relief under any chapter of the United States Bankruptcy Code.
 - f. **Borrower** fails to provide adequate collateral for the subject loan in accordance with paragraph 4, above.

- g. **Borrower** fails to pay all state and local real and personal property taxes specific to the Project funded by the proceeds of this Loan.
- h. **Borrower** fails to execute any documents necessary to make **Lender** secure in its financial position as stated in this Loan Agreement.
- i. **Borrower** fails to inform **Lender** and receive **Lender's** written approval in advance for any substantial changes to **Borrower's** financial projections and business plan that could affect **Borrower's** ability to meet the conditions of this Loan Agreement.
- j. **Borrower** sells, transfers, pledges, or hypothecates all or any part of its assets to render **Lender** insecure in its position of having the Loan repaid.
- k. **Borrower** defaults in payment or performance of this Loan Agreement, or of the above-described Promissory Note, or security instruments securing such Note.

In any of the foregoing events, **Lender** may declare **Borrower** to be in default and give **Borrower** written notice setting forth the action or inaction which constitutes the default and granting **Borrower** thirty (30) days in which to cure the default. In the event that **Borrower** fails to cure the default within thirty (30) days of receipt of such notice, **Lender** may, without further notice, declare all sums immediately due and payable and may pursue any and all remedies available to it under Montana law.

It is agreed by the parties hereto that the provisions of this Loan Agreement provide for reasonable and sufficient notice to be given to **Borrower** in case of **Borrower's** failure to perform any of its covenants and is sufficient for **Borrower** to rectify its actions or inactions of default.

In the event that **Borrower** commits any default hereunder and **Lender** gives notice of default as herein provided, then as a condition to remedy such default, **Borrower** shall pay to **Lender**, in addition to all other amounts due and conditions to be performed, the further sum of Two Hundred Dollars (\$200) which is hereby agreed to be the reasonable cost to **Lender** of preparing and serving such notice of default.

In the event that **Borrower** commits any default hereunder and **Lender** gives notice of default as herein provided, **Borrower** hereby gives **Lender** permission to access real property to secure the site to ensure public safety and inform EPA and the State of Montana.

Any waiver by **Lender** of any default by **Borrower** does not constitute a waiver of a continuing breach or a waiver of a subsequent breach. Any agreement contrary to this Loan Agreement is not binding upon either party hereto unless it is in writing and signed by both parties hereto.

10. **CIVIL RIGHTS ACT OF 1964**: **Borrower** will abide by the provisions of Title VI of the Civil Rights Act of 1964 which states that no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

11. **SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974:** In the performance of this Loan Agreement, **Borrower** will obey the following provision:
- "No person in the United States may on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available under this title. Any prohibition against discrimination based on age under the Age Discrimination Act of 1974 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity."
12. **ADDITIONAL ASSURANCES:** **Borrower** will remain fully obligated under the provisions of this Loan Agreement notwithstanding its designation of any third party or parties, with the written approval of **Lender**, for the undertaking of all or any part of the program with respect to which assistance is being provided or the Loan contemplated under this Loan Agreement. **Borrower** will comply with all applicable laws, rules and regulations of **YELLOWSTONE COUNTY**, the State of Montana, and the United States Government and with all lawful requirements of **Lender** so as to insure that this Loan Agreement is carried out in accordance with the obligations and responsibilities of **Lender**, **YELLOWSTONE COUNTY**, the State of Montana, and the U.S. Government.
13. **INSURANCE:** **Borrower** agrees to keep the improvements upon its business premises and all Collateral pledged to secure this Loan Agreement and the Note insured against loss by fire in the sum of the cost of replacing the improvements and Collateral (full replacement cost), with loss payable to **Lender** as its interest from time-to-time appears. With written approval from **Lender**, **Borrower** may apply the insurance proceeds received by **Lender** towards the payment of the Loan or use the proceeds to rebuild or replace the improvements and Collateral. If **Borrower** chooses this latter option, **Lender** will hold the insurance proceeds and pay them to materialmen, contractors, suppliers, and laborers for services rendered and materials furnished and delivered in the rebuilding and replacing of the improvements. It is understood that it is **Borrower's** duty to see that no liens are filed upon the premises by reason of any such rebuilding. **Borrower** will place copies of such insurance policy or policies with **Lender** within thirty (30) days. During the term of this Loan Agreement, when **Borrower** renews such insurance policy or policies by payment of renewal premium, **Borrower** will provide proof of payment of one full year premium in advance to **Lender** so as to keep **Lender** advised at all times that the property is insured. Failure to so notify **Lender** is deemed an event of default under this Loan Agreement. **Borrower** will also maintain liability insurance, flood insurance and such other insurance as is usual in the industry with respect to its properties and operations in form, amounts, coverages and with insurance companies reasonably acceptable to **Lender**.
14. **SURVIVAL OF REPRESENTATIONS AND WARRANTIES:** All agreements, representations, and warranties made by **Borrower** herein or any other document or certificate delivered to **Lender** in connection with the transactions contemplated by this Loan Agreement shall survive the execution and

delivery of this Loan Agreement, the Note and the Security Agreements hereunder, and shall continue in full force and effect so long as the Note is outstanding.

15. **FEES AND COSTS:** In the event of default by either party, the aggrieved party shall be entitled to recover from the defaulting party reasonable attorney fees, as well as all other costs and expenses incurred by reason of such default, whether the same are incurred with or without suit.
16. **AVOIDANCE OF CONFLICT OF INTEREST:** **Borrower** covenants that no officer, shareholder, member, agent or employee of **Lender** who participates in the administration of this Loan Agreement in other than a purely ministerial capacity will have any personal interest, real or apparent, in the proceeds of the Loan provided hereby. For purposes of this covenant, an impermissible conflict of interest exists if the officer, shareholder, member, agent or employee; any member of his or her immediate family; his or her partner; or an organization which employs, or is about to employ, any of the foregoing, has a financial or other interest in the proceeds hereof during his or her tenure or for one year thereafter. **Borrower** shall incorporate, or cause to be incorporated, in all contracts or subcontracts, a provision prohibiting such interest pursuant to the purposes of this section.
17. **NOTICE:** Any notice required or permitted to be given under this Loan Agreement or under any instrument or document referred to herein shall be given in writing to the party for whom intended and shall either be delivered to such party, or its designated representative, in person or mailed in certified mail, return receipt requested, with postage prepaid thereon, addressed to the party for whom intended at the following address:

If to **Lender:**

Big Sky Economic Development Corporation
Attn: Finance Director
201 N. Broadway
Billings, MT 59101

If to **Borrower:**

City of Billings
316 N. 26th Street
Billings, MT 59101

Either party may at any time change the address to which any such notice is to be directed by so advising the other party in writing.

18. **CONSTRUCTION AND VENUE:** This Loan Agreement and the Related Documents will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Montana without regard to its conflicts of law provisions. This Loan Agreement has been accepted by Lender in the State of Montana. In the event of litigation concerning this Loan Agreement or the Related Documents, venue is in the Thirteenth Judicial District Court, Yellowstone County, Montana.

19. **AMENDMENTS:** No amendment of this Loan Agreement or any Related Documents will be effective unless it is in writing and signed by the parties. This Loan Agreement and the Related Documents constitutes the entire understanding between the parties regarding the subject matter of this Loan Agreement and the Related Documents and supersede all other agreements, whether written or oral, between the parties.
20. **NO WAIVER BY LENDER:** Lender shall not be deemed to have waived any rights under this Loan Agreement or any Related Documents unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Loan Agreement or any Related Document shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Loan Agreement or Related Document. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any party granting Collateral, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Loan Agreement or any Related Document, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.
21. **COUNTERPARTS AND FACSIMILE COPIES:** This Loan Agreement may be executed in one or more counterparts, each of which shall constitute one and the same instrument. A facsimile or other electronic copy of this document bearing the signature of the parties hereto may be used as an original for all purposes.
22. **APPROVAL:** The undersigned hereby indicate their approval of the terms and conditions of this Loan Agreement.
- [Signatures on following page]**

BORROWER:
CITY OF BILLINGS,
A Municipal City,

By: _____
William A. Cole, Mayor

ATTEST:

By: _____
Name:

LENDER:
BIG SKY ECONOMIC DEVELOPMENT
CORPORATION

ATTEST:

By: _____
Nina Philpott, Assistant Secretary

By: _____
Paul Green, Executive Director