

# **SIED LOAN AGREEMENT**

## **SIED Contract No YC-RLR-22**

### **I. PARTIES**

#### **BORROWER:**

ALL AMERICAN INVESTMENT GROUP, L.L.C., a Washington limited liability company whose address is:

2318 South First Street  
Yakima, Washington 98903

#### **LENDER:**

CITY OF YAKIMA, a Washington municipal corporation and first class city, whose address is:

129 North Second Street  
Yakima, Washington 98901

### **II. PURPOSE**

- A. The purpose of this Agreement is to provide for the construction of certain infrastructure improvements at the intersection of South 1<sup>st</sup> Street and Russell Lane in Yakima, Washington (hereinafter referred to as the "PROJECT") utilizing in part loan and grant funds received from the Supporting Investments In Economic Diversification ("SIED") program administered by Yakima County, Washington. The PROJECT includes re-constructing approximately 380 lineal feet of Russell Lane to the proposed development site at the corner of South 1st Street and Russell Lane. Construction will include realigning the northern end of Russell Lane to align the public road with the existing traffic signal at South 1st Street. The realignment will require revisions to the traffic signal in the form of constructing an additional leg and constructing Russell Lane to City of Yakima Standards. The PROJECT will also include the necessary re-striping of South 1st Street. The newly constructed utilities within right-of-way will be owned and maintained by the CITY. Borrower assisted in the preparation of the SIED Application and provided information regarding job creation and project development.
- B. The CITY has received proceeds from the SIED program for design and construction of the PROJECT. The proceeds include two (2) separate components: (i) a grant in the sum of Four Hundred Sixteen Thousand Dollars (\$416,000.00); and (ii) a loan in the principal sum of Four Hundred Sixteen Thousand Dollars (\$416,000.00). The proceeds will be deposited in an interest-bearing account and shall be applied to project costs as determined appropriate by CITY.

- C. The purpose of this agreement is to confirm responsibility and terms for construction of the PROJECT, cash portion due, and repayment of loan principal and interest.

### **III. BACKGROUND**

The Borrower, All American Investment Group, L.L.C., is the owner of certain real property within the city limits of the City of Yakima upon which it wishes to improve infrastructure to its property, specifically the intersection of South First Street and Russell Lane. Currently there is a three-legged signalized intersection servicing the Home Depot entrance off South 1st Street that prevents direct access to the proposed development. Adding a fourth leg to the signal, creating a signalized entrance into the restaurant was investigated. However, the south edge of the signal is also only 50 feet from the north edge of Russell Lane, which creates a traffic safety concern with the overlapping turn pockets. Therefore, the northern portion of Russell Lane will be relocated to align the public road with the existing traffic signal. The realignment will require revisions to the traffic signal for an additional leg and constructing Russell Lane to City of Yakima Standards.

The property currently encompasses one 1.11-acre parcel that was previously a used car lot. The development will bring new retail restaurant establishments to the City of Yakima, including the development of a 24-seat, 2,600 square foot Popeye's quick service restaurant with an eating patio, drive-thru, and 37 parking spaces. The property is served by South 1st Street, a principal arterial to the East, and Russell Lane, a local access road to the South. The property needs the proposed improvements listed above to be developed.

The CITY and Borrower have reviewed alternatives and found the proposed Russell Road realignment to be optimal and the most cost-effective solution. The proposed signal and Russell Lane improvements will rectify the existing traffic safety concerns, provide the ability to redevelop an existing vacant commercial lot and allow much needed economic development opportunity in this undeveloped area.

### **IV. AGREEMENT**

The parties of this Agreement acknowledge the mutual covenants and commitments contained herein and agree as follows:

- A. The PROJECT shall be constructed as a public facility improvement by the CITY in accordance with applicable law, rules, and regulations. Anticipated work to be done and estimated costs are attached hereto as Exhibit A, which is information that was provided as part of the SIED grant application.
- B. Amount and Terms of the Loan

1. The City agrees on the terms and conditions herein set forth to make a loan (the "Loan") to the Borrower on the date of this Loan Agreement in the principal amount of Four Hundred Sixteen Thousand and 00/100ths dollars (\$416,000.00).
2. The Borrower shall pay interest to the Lender on the outstanding and unpaid principal amount of the Loan made under this Loan Agreement at a rate per annum equal to the interest rate charged under the Yakima County SIED Agreement (5.81%). Any change in the interest rate resulting from a change in the rate charged under the Yakima County SIED Agreement shall become effective as of the opening of business on the day on which such change in the Yakima County SIED Agreement interest rate shall become effective. Interest shall be calculated in a manner consistent with the terms of the Yakima County SIED Agreement.
3. Any principal amount not paid when due (at maturity, by acceleration, or otherwise) shall bear interest thereafter until paid in full, payable on demand, at the highest rate allowed by law, as of the day immediately after the payment due date.
4. The Borrower's obligation to repay the Loan shall be evidenced by its promissory note (the "Note") in substantially the form of Exhibit B attached hereto with blanks appropriately filled in where necessary and payable to the order of the Lender. The Note shall be dated the date of this Loan Agreement and the principal of the Loan shall be repaid in ten (10) equal, consecutive annual installments, with the first installment due on June 1, 2025, with nine (9) subsequent installments due on the same day of each year thereafter to and including June 1, 2034, provided, however, that the last such installment shall be the amount necessary to repay in full the unpaid amount of the Loan.
5. The Borrower may prepay the Note in whole or in part with accrued interest to the date of such prepayment on the amount prepaid, provided that each partial prepayment shall be in a principal amount of not less than the next due annual payment and shall be applied to the principal installments of the Note in the inverse order of their maturities.
6. The Borrower shall make each payment under this Loan Agreement and under the Note on the date when due in lawful money of the United States to the Lender at its Principal Office in immediately available funds. Whenever any payment to be made under this Loan Agreement or under the Note shall be stated to be due on a day other than a business day, such payment shall be made on the next succeeding business day, and such extension of time shall in such case be included in the computation of payment of interest.
7. The proceeds of the Loan hereunder shall be used by the Borrower to improve infrastructure of its property, as outlined in Section 2 (Purpose) and Section 3

(Background), above. The Borrower will not, directly or indirectly, use any part of such proceeds for any purpose not consistent with said infrastructure improvements.

8. In the event the cost of the improvements exceeds Eight Hundred Thirty-Two Thousand and 00/100ths dollars (\$832,000.00), Borrower agrees to pay the excess amount, and such excess amount shall become part of this Loan Agreement. Borrower agrees to execute an additional Promissory Note and Deed of Trust for the excess amount within ten (10) business days of notice from the Lender that the costs exceeded the amount of SIED loan and grant.
  9. In the event the project is not completed by the City, the City will return the property deeded by All American Investment Group to the City for the project via Quit Claim Deed.
- B. Borrower, per the SIED application, predicts the total number of permanent, full-time employment positions created and/or retained with respect to this public facility and infrastructure project and attendant development will be approximately 23 first year employment positions – and 30 employment positions created by year three.
- C. Borrower, or Borrower's designee, shall provide to CITY such employment and investment data as may be requested by Yakima County SIED Board.
- D. Private and/or public contributions to this public facility improvement project also include, but are not limited to, the following:
1. Private contribution of public right-of-way for public facility improvements including construction of Russell Lane by Borrower.
  2. Private cash contribution required for completion of the public facility improvement project by Borrower.
  3. Repayment of loan component from SIED funding in accordance with terms and conditions more particularly set forth in loan documents by Borrower.
- F. CITY and Borrower agrees to cooperate in good faith in the performance of obligations hereunder for the purpose of constructing the public facility improvement project and developing the proposed project site.

## **V. CONDITIONS PRECEDENT**

The obligation of the Lender to make the Loan to Borrower is subject to the conditions precedent that the Lender shall have received on or before the day of such Loan each of the following, in form and substance satisfactory to the Lender and its counsel:

- A. The Note duly executed by the Borrower.
- B. A Deed of Trust in substantially the form of Exhibit C attached hereto with blanks appropriately filled in, granting the Lender a second position security interest in the Borrower's real estate described therein. Borrower shall provide title insurance documenting said second position. Until the SIED loan is repaid, Lender shall never be in a position worse than second position.
- C. The Lender shall have received such other approvals, opinions, or documents as the Lender may reasonably request.

## **VI. REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Lender that:

- A. This Loan Agreement, the Note and the Deed of Trust, and any other necessary documents hereunder, when delivered under this Loan Agreement will be legal, valid, and binding obligations of Borrower and be enforceable against the Borrower in accordance with their respective terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, and other similar law affecting creditors' rights generally.
- B. There is no pending or threatened action or proceeding against or affecting the Borrower before any court, governmental agency, or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties, or business of the Borrower or the ability of the Borrower to perform their obligations under the loan documents to which they are a party.
- C. Borrower has title to all assets assigned or pledged to Lender as security for repayment of the Note.
- D. Borrower agrees that as partial consideration for the City making SIED loan resources available to it for infrastructure improvements serving Borrower's property, Borrower agrees to develop the property pursuant to the Yakima Municipal Code standards. All applicable City of Yakima development standards shall be included on Borrower's submitted site development plans and also incorporated in Borrower's construction designs and specifications for all development proposals submitted for City review for Borrower's project site, including but not limited to City of Yakima Municipal Code Title 12: Development Standards.
- E. Borrower has duly complied with, and its businesses, operations, assets, equipment, property, leaseholds, or other facilities are in compliance with, the provisions of all federal, state, and local environmental, health, and safety laws, codes and ordinances, and all rules and regulations promulgated thereunder.

Borrower has not received notice of, nor know of, or suspect, facts which might constitute any violations of any federal, state, or local environmental, health, or safety laws, codes or ordinances, and any rules or regulations promulgated thereunder with respect to its businesses, operations, assets, equipment, property, leaseholds, or other facilities.

Borrower has no indebtedness, obligation, or liability, absolute or contingent, matured or not matured, with respect to the storage, treatment, cleanup, or disposal of any solid wastes, hazardous wastes, or other toxic or hazardous substances (including without limitation any such indebtedness, obligation, or liability with respect to any current regulation, law, or statute regarding such storage, treatment, cleanup or disposal) which is not disclosed herein.

## **VII. AFFIRMATIVE COVENANTS**

So long as the Note shall remain unpaid, the Borrower will:

- A. Preserve and maintain its company existence and good standing in Washington state.
- B. Keep adequate records and books of account reflecting all financial transactions of the Borrower.
- C. Maintain, keep, and preserve all of its properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.
- D. Continue to engage in an efficient and economical manner in a business of the same general type as not conducted by it on the date of this Loan Agreement.
- E. Comply in all respects with all applicable laws, rules, regulations, and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments, and governmental charges imposed upon them or upon their property.
- F. Be and remain in compliance with all provisions of all federal, state, and local environmental, health, and safety laws, codes and ordinances, and all rules and regulations issued thereunder; notify the Lender immediately of any notice of a hazardous discharge or environmental complaint received from any governmental agency or any other party; notify the Lender immediately of any hazardous discharge from or affecting their premises; immediately contain and remove the same, in compliance with all applicable laws; promptly pay any fine or penalty assessed in connection therewith; permit the Lender to inspect the premises, to conduct tests thereon, and to inspect all books, correspondence, and records pertaining thereto; and at the Lender's request, and at the Borrower's expense, provide a report of a qualified environmental engineer or expert, satisfactory in

scope, form, and content to the Lender, and such other and further assurances reasonably satisfactory to the Lender that the condition has been corrected.

## **VIII. NO LIENS**

So long as the Note shall remain unpaid, the Borrower shall not create, incur, assume, or suffer to exist any Lien upon or with respect to any of its assets assigned or pledged to Lender to secure payment under the Note and performance of all obligations under this Loan Agreement, now or hereafter acquired.

## **IX. EVENTS OF DEFAULT**

A. Borrower shall be in default if any of the following events shall occur:

1. The Borrower should fail to pay the principal of, or interest on, the Note, or any fee, as and when due and payable.
2. Any representation or warranty made or deemed made by the Borrower in this Loan Agreement, the Deed of Trust, or the Note shall prove to have been incorrect, incomplete, or misleading in any material respect on or as of the date made or deemed made.
3. The Borrower shall fail to perform or observe any term, covenant, or agreement contained in this Loan Agreement.
4. The Borrower (a) shall generally not pay, or shall be unable to pay, or shall admit in writing their inability to pay their debts as such debts become due; or (b) shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; or (c) shall commence any proceeding under bankruptcy, reorganization under bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (d) shall have had any such petition or application filed or any such proceedings commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of one hundred and eighty (180) days or more; or (e) shall take any action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties; or (f) shall suffer any such custodianship, receivership, or trusteeship to continue undischarged for a period of one hundred and eighty (180) days or more.
5. The Lender otherwise deems itself unsecure.

- B. Upon the occurrence of any event of default, the Lender may, by notice to the Borrower, declare the Note, all interest thereon, and all other amounts payable under this Loan Agreement to be forthwith due and payable, whereupon the Note, all such interest, and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by the Borrower.

## **X. MISCELLANEOUS**

- A. All notices and other communications provided for under this Loan Agreement and under the other loan documents to which the Borrower is a party shall be in writing and mailed, certified mail return receipt requested, or delivered,

If to Borrower All American Investment Group, L.L.C., at its address at:

All American Investment Group, L.L.C.  
2318 South First Street  
Yakima, Washington 98903

If to Lender, at its address at:

City of Yakima  
Attention: Bill Preston  
129 North Second Street  
Yakima, WA 98901

Or, as to each party, at such other address as shall be designated by such party, in a written notice to the other party complying as to delivery with the terms of this section.

Except as otherwise provided in this Loan Agreement, all such notices and communications shall be effective three business days after the date the notice is deposited in the mail or the date the notice is delivered, except that notices to the Lender under Section IV(B) shall not be effective until received by the Lender.

- B. Borrower may not assign any interest in this Loan Agreement and shall not transfer any interest in this Loan Agreement (whether by assignment, notation, or execution) without prior written consent of the Lender which may be withheld for any reason deemed reasonable or appropriate by Lender in the exercise of its sole discretion. Written notice of any proposed assignment or transfer shall be furnished to Lender not less than sixty (60) days prior to commencement of any undertakings or operations under this Loan Agreement. This Loan Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and assigns authorized by Lender.



- C. The failure or delay of either party to insist upon strict performance of any provision of this Loan Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Loan Agreement. The rights and remedies provided herein are cumulative, and are not exclusive of any other rights, powers, privileges, or remedies, now or hereafter existing, at law or in equity or otherwise.
- D. It is mutually agreed and understood that no amendment, modification, or waiver of any clause or condition of this Loan Agreement is binding upon either party unless such amendment, modification, or waiver is in writing and executed by Lender and Borrowers.
- F. This Loan Agreement and the loan documents (the Note and Deed of Trust) contain all terms and conditions agreed to by Lender and Borrowers as they relate to the subject matter hereof and supersede all oral statement(s) and prior writing(s) with respect thereto.
- G. The Borrower agrees to release, indemnify, defend and hold harmless the City of Yakima, its elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers from all liabilities, losses, damages, and expenses related to all claims, suits, arbitration actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this Loan Agreement or the acts, failures to act, errors or omissions of the Borrower, or any of the Borrower's agents or subcontractors, in performance of this Loan Agreement, except for claims caused by the sole negligence of the City of Yakima. This indemnity shall survive termination of this Loan Agreement.
- H. All questions of the validity, construction, and application of this Agreement shall be governed by the laws of the State of Washington. Venue for any suit between the parties arising out of this Agreement shall be the Superior Court of Yakima County, Washington.
- I. Any provision of any loan document (this Loan Agreement, the Note, or the Deed of Trust) is held invalid or unenforceable by a court, such invalidity shall not affect the validity or operation of any other term or provision of the loan document, and such invalid term or provision shall be deemed to have been severed from the loan document.
- J. Final adoption of this Agreement is subject to review and approval by the Yakima City Council.

**DISCLOSURE**

**ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCEING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

IN WITNESS WHEREOF, the parties have caused this Loan Agreement to be executed by their respective officers thereunto duly authorized.

DATED this 2 day of May, 2023.

**BORROWER:**

ALL AMERICAN INVESTMENT GROUP, L.L.C.



By: Nasser Awad  
Title: Member

ALL AMERICAN INVESTMENT GROUP, L.L.C.



By: Mohammad Taha  
Title: Member

**LENDER:**

CITY OF YAKIMA

ATTEST:

By: Robert Harrison  
City Manager

Sonya Claar Tee  
City Clerk

STATE OF WASHINGTON )  
 ) ss.  
County of Yakima )

I certify that I know or have satisfactory evidence that Nasser Awad and Mohammad Taha are the persons who appeared before me, and said persons acknowledged that they are the members of ALL AMERICAN INVESTMENT GROUP, L.L.C., have authority to sign this document on its behalf, and signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in this instrument.

DATED this 2<sup>nd</sup> day of MAY, 2023.



[Signature]  
Notary Public in and for the State of  
Washington, residing at Yakima  
My commission expires: 03-23-2026


STATE OF WASHINGTON )  
 ) ss.  
County of Yakima )

I certify that I know or have satisfactory evidence that Bob Harrison is the person who appeared before me, and said person acknowledged that they are the City Manager of the City of Yakima and have authority to sign this document on its behalf, and signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in this instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Exhibit A

<p align="center"><b>Popeyes Road Improvements Russell Lane and Signal Public Project</b></p> <p align="center">Civil Cost Estimate - June 7, 2022 HLA Project No.</p>						
ITEM NO.	ITEM	UNIT	APPROX. QUANTITY	UNIT PRICE DOLLARS	OVERALL COST	
<b>SITE &amp; ROAD PREPARATION</b>						
1	Mobilization (10%)	LS	1	\$51,600.00	\$51,600.00	
2	Maintenance & Protection of Traffic	LS	1	\$15,000.00	\$15,000.00	
3	SPCC Plan	LS	1	\$2,000.00	\$2,000.00	
4	Erosion / Water Pollution Plan	LS	1	\$5,000.00	\$5,000.00	
5	Clearing & Grubbing	LS	1	\$3,000.00	\$3,000.00	
6	Unclassified Ex. Including Haul	CY	1,000	\$50.00	\$50,000.00	
7	HMA CL. 1/2" PG 64-28 (Heavy 4" Thick)	TON	500	\$130.00	\$65,000.00	
8	Crushed Surfacing Base Course (Heavy 8" Thick)	TON	800	\$45.00	\$36,000.00	
9	Cement Concrete Curb & Gutter	LF	800	\$34.00	\$27,200.00	
10	Cement Concrete Sidewalk - 4" Thick	SY	900	\$70.00	\$63,000.00	
11	Cement Concrete Handicap Curb Ramp	EA	6	\$3,000.00	\$18,000.00	
12	Commercial Road Approach	ES	2	\$6,500.00	\$13,000.00	
<b>STORM DRAIN SYSTEM</b>						
13	Catch Basin Type 1 / 1L	EA	4	\$2,500.00	\$10,000.00	
14	Catch Basin Type 2	EA	1	\$5,000.00	\$5,000.00	
15	PVC Drain Pipe, 12" Dia	LF	200	\$55.00	\$11,000.00	
16	Underground Infiltration Trenches	LF	100	\$150.00	\$15,000.00	
<b>ELECTRICAL,</b>						
17	Signal Pole Complete	LF	1	\$150,000.00	\$150,000.00	
18	(2) Schedule 40 PVC Electrical Conduit, 2" Dia. (Electrical)	LF	380	\$40.00	\$15,200.00	
19	Electrical Transformer Box	EA	1	\$3,000.00	\$3,000.00	
20	Junction Box	EA	2	\$400.00	\$800.00	
21	Illumination	EA	2	\$4,500.00	\$9,000.00	
Subtotal . . . .					\$567,800.00	
Contingency (15%) . . . .					\$85,200.00	
Total . . . .					\$653,000.00	
Estimate prepared by:						
Civil PS&E (15%) . . . .					\$98,000.00	
Construction Administration (15%) . . . .					\$98,000.00	
Right-Of-Way Acquisition . . . .					\$150,000.00	
<b>PROJECT TOTAL . . . .</b>					<b>\$1,000,000.00</b>	
Private Developer Match Requirement (20%) . . . .					\$200,000.00	
Right-of-Way Contribution . . . .						
Square-Foot      Price/SF						
9,886              \$15.17              \$150,000.00						
<b>Cash Contribution . . . .</b>					<b>\$50,000.00</b>	
<b>SIED Loan Request . . . .</b>					<b>\$800,000.00</b>	
<b>50% SIED LOAN PROJECT TOTAL . . . .</b>					<b>\$400,000.00</b>	
<b>DEVELOPER PROJECT TOTAL . . . .</b>					<b>\$450,000.00</b>	