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**LARAMIE COUNTY CLERK
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM PROCESSING FORM**

1. DATE OF PROPOSED ACTION: May 1, 2012

2. AGENDA ITEM: Appointments Bids/Purchases Claims

~~Contracts/agreements/leases~~ Grants Land Use: Variances/Board App/Plats

Proclamations Public Hearings/Rules & Reg's Reports & Public Petitions

Resolutions Other

3. DEPARTMENT: Grants

APPLICANT: Sandra Newland

AGENT: Sandra Newland

4. DESCRIPTION: Consideration of an Governor's Data Center Recruitment Funds Agreement between the State of Wyoming Office of the Governor and Laramie County for Microsoft Corporation in the amount of \$5,000,000.

5. DOCUMENTATION: 2 originals and (4) four copies

RECEIVED AND APPROVED AS
TO FORM ONLY BY THE
LARAMIE COUNTY ATTORNEY

Clerks Use Only:

Commissioner

Signatures

Woodhouse _____

Co Attny _____

Thompson _____

Assist Co Attny _____

Humphrey _____

Grants Manager _____

Action _____

Outside Agency _____

Postponed/Tabled _____

Danisha Signature 5-3-12

120501-17

2012 MAY 15 P 3:53

1. **Parties.** The parties to this Agreement are the State of Wyoming, by and through the Office of the Governor ("State"), whose address is 200 West 24th Street, Cheyenne, Wyoming 82002, and Laramie County, a political subdivision of the State of Wyoming ("Grantee"), whose address is 310 West 19th Street, Cheyenne, WY 82001.
2. **Purpose of Agreement.** The State shall provide Governor's Data Center Recruitment Fund ("DCRF") funds to Grantee in the amount set forth in Section 4, and Grantee shall undertake and complete materials, projects and/or services (collectively, the "Project") described in Attachments A, B, C attached hereto. Performance by Grantee of the requirements of this Agreement and compliance with all DCRF statutes (2011 Wyoming Session Laws, Chapter 88, Section 343 and 2012 Wyoming Session Laws, Chapter 26, Section 322) is a condition to Grantee's receipt of monies hereunder.
3. **Term of Agreement and Required Approvals.** This Agreement shall commence upon the date the last signature is affixed hereto. All construction services shall be completed by December 31, 2014, unless an extension is approved by the State. This Agreement shall terminate on June 30, 2017, unless otherwise amended or terminated in accordance with the terms and conditions specifically provided herein. This Agreement may be extended when, in the sole discretion of the State, circumstances require an extension. Any extension shall be done by written amendment.
4. **Payment.** The State agrees to grant monies to Grantee for performance of the Project, as invoices are submitted for work done in connection with the Project, completed in accordance with the requirements of this Agreement and the DCRF. The total payment to Grantee under this Agreement shall not exceed five million dollars (\$5,000,000) ("Grant"). Payment will be made following Grantee's delivery to the State of invoices detailing services performed in connection with the Project in a form satisfactory to the State. Payment shall be made from the DCRF budget pursuant to the schedule shown on Attachment B hereto. No payment shall be made for any services performed in connection with the Project prior to the date upon which the last signature is affixed to this Agreement.
5. **Responsibilities of Grantee Regarding the Project.** The Project to be undertaken is described in Attachment A and C which are attached and made a part of this Agreement. DCRF is referred to as Governor's Data Center Program in Attachment C.
6. **Responsibilities of the State.** The State will, at its discretion, assist in providing Grantee access to information, including and without limitation providing Grantee with information concerning DCRF requirements and statutes referred to herein, and will cooperate with Grantee whenever possible. The State shall have no obligations, other than those specifically set forth

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COPY OF RECORD

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herein, regarding the Project or its performance.

7. **Special Provisions.**

A. **Budget Transfer Limitation.** Grantee agrees it will not exceed any of the line item totals listed in Attachment B by more than twenty percent (20%) without prior approval from the State. Such changes will not result in any change in the total Project costs, or a change in the Grant amount.

B. **Default and Remedies.** In the event Grantee or any subgrantee of Grantee under this Agreement defaults or is deficient in the performance of any term of this Agreement or any requirements of the DCRF statutes, then the State shall have the right to exercise all remedies provided by law or in equity, including without limitation:

(i) Immediately terminating this Agreement without further liability or obligation of the State;

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

(iii) Recommending, or requesting Grantee to submit proposals for corrective actions, including the correction or removal of the causes of the deficiency;

(iv) Advising Grantee to suspend disbursement of funds for the deficient activity;

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

(vi) Changing the method of payment to Grantee; and/or

(vii) Reducing, withdrawing, or adjusting the amount of the Grant.

C. **Extension of Construction.** The State may, at its discretion, extend the construction services date if Grantee provides written justification for the extension and that the completion of construction services will not exceed six (6) months from the construction services date established herein. A construction services date extension of six (6) months or less will not change the termination date established herein. Any such extension shall be done by written amendment to this Agreement.

D. **Monitor Activities.** The State shall have the right to monitor all Project related activities of the Grantee. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe personnel in every phase of performance of the Project.

E. No Finder's Fees. No finder's fee, employment agency fee, broker fee or other such fee related to this Agreement shall be paid by either party.

F. Non-Supplanting Certification. Grantee hereby affirms that the DCRF funds will be used to supplement existing funds and will not replace (supplant) funds that have been appropriated for the same purpose.

G. Publicity. Any publicity given to the Project or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee, shall identify the Governor's DCRF as the funding source.

H. Reporting. Within 15 calendar days at the conclusion of each calendar quarter during the Term of this Agreement, Grantee shall furnish the State with a progress report. Each progress report shall set forth, in narrative form, the Project work accomplished under the Grant during the quarter or any other information requested by the State. At the end of the Term, Grantee shall furnish the State with a comprehensive report of the Project and accomplishments pursuant to the Grant. Grantee shall likewise furnish the State with a cumulative financial statement, reflecting total expenditures pursuant to this Agreement upon completion of construction services.

I. Retention of Records. Grantee agrees to retain all records related to the Project which are required to be retained pursuant to this Agreement or the DCRF statutes for ten (10) years following the State's date of notice to Grantee of closeout of the Grant, provided all audit requirements have been fulfilled.

8. General Provisions

A. Amendments. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon in writing by the parties hereto shall be incorporated by written instrument, signed by all parties to this Agreement.

B. Americans with Disabilities Act. The Grantee shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, et seq., and/or any properly promulgated rules and regulations related thereto.

C. Applicable Law/Venue. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and venue for any action shall be in the First Judicial District, Laramie County, Wyoming.

D. Assignment. Neither party shall assign or otherwise transfer any of the rights or

delegate any of the duties set forth in this Agreement without the prior written consent of the other party except as specifically set forth below. Grantee shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the State.

(i) Certain duties and responsibilities of the Grantee may be delegated to Cheyenne Laramie County Corporation for Economic Development (LEADS) whose address is 121 West 15th Street, Suite 304, Cheyenne, WY 82001, pursuant to the Memorandum of Understanding shown in Attachment C. Those duties include, but are not limited to construction and property management of the Project funded by this Grant. Any delegation to LEADS as permitted by this paragraph will not relieve Grantee of its responsibility to perform or cause to be performed all duties under this Grant; and

(ii) Certain duties and responsibilities of the State will be delegated to the Wyoming Business Council (WBC) whose address is 214 West 15th Street, Cheyenne, WY 82002. Those duties include, but are not limited to, grant administration, grant monitoring and compliance processes, and reviewing and processing payments to the Grantee.

E. Assumption of Risk. The Grantee shall assume the risk of any loss of state funding, due to the Grantee's failure to comply with state requirements. The State shall notify the Grantee of any state determination of noncompliance.

F. Audit/Access to Records. The State and any of its representatives shall have access to any books, documents, papers, and records of the Grantee that are pertinent to this Agreement.

G. Availability of Funds. Each payment obligation of the State is conditioned upon the availability of government funds that are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Grantee, the Grant may be terminated by the State at the end of the period for which the funds are available. The State shall notify the Grantee at the earliest possible time of the services that will or may be affected by a shortage of funds. No penalty shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the State to terminate this Agreement to acquire similar services from another party.

H. Award of Related Agreements. The State may undertake or award supplemental or successor Agreements for work related to this Agreement. The Grantee shall cooperate fully with other grantees and the State in all such cases.

I. Compliance with Laws. The Grantee shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.

J. Entirety of Agreement. This Agreement consisting of eight (8) pages, Grant Agreement Between the State of Wyoming Office of the Governor and Laramie County Microsoft Governor's Data Center Recruitment Fund Project

Attachment A, consisting of one (1) page, Attachment B, consisting of one (1) page, and Attachment C, consisting of six (6) pages, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

K. Extensions. Nothing in this Agreement shall be interpreted or deemed to create an expectation that this Agreement will be extended beyond the term described herein. This Agreement may be renewed by agreement of both parties in writing, provided that there is no right or expectation of renewal or extension beyond the Term, and any renewal or extension will be determined at the discretion of the State and subject to any necessary State approval. Any agreement to extend this Agreement shall include, but shall not be limited to: an unambiguous identification of the Agreement being extended; the term of the extension; a statement that all terms and conditions of the original Agreement shall, unless explicitly delineated in the exception, remain as they were in the original Agreement; and, if the duties of either party will be different during the extension than they were under the original Agreement, a detailed description of those duties.

L. Indemnification. The Grantee shall indemnify, defend, and hold harmless the State of Wyoming, the Office of the Governor, the Wyoming Business Council, and their officers, agents, employees, successors, and assignees from any and all claims, lawsuits, losses, and liability arising out of Grantee's failure to perform any of Grantee's duties and obligations hereunder or in connection with the negligent performance of Grantee's duties or obligations, including but not limited to any claims, lawsuits, losses, or liability arising out of Grantee's malpractice.

M. Independent Contractor. Grantee shall function as an independent contractor for the purposes of this Agreement, and shall not be considered an employee of the State of Wyoming for any purpose. Grantee shall assume sole responsibility for any debts or liabilities that may be incurred by the Grantee in fulfilling the terms of this Agreement, and shall be solely responsible for the payment of all federal, state and local taxes, which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing Grantee or its agents and/or employees to act as an agent or representative for or on behalf of the State, or to incur any obligation of any kind on the behalf of the State. Grantee agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to employees of the State of Wyoming will inure to the benefit of Grantee or Grantee's agents and/or employees as a result of this Agreement.

N. Kickbacks. The Grantee certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Grantee breaches or violates this warranty, the State may, at its discretion, terminate this Agreement without liability to the State, or deduct from the Agreement or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

O. Notices. All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular U.S. mail or delivery in person. Delivery shall be deemed to have occurred 3 days following deposit in the U.S. mail or upon delivery in person.

P. Ownership of Documents/Work Product/Materials. All documents, records, field notes, data samples, specimens, and materials of any kind resulting from performance of this Agreement are at all times the property of the State.

Q. Prior Approval. This Agreement shall not be binding upon either party, no services shall be performed under the terms of this Agreement, and the Wyoming State Auditor shall not draw warrants for payment on this Agreement, until this Agreement has been reduced to writing and approved as to form by the Office of the Attorney General.

R. Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

S. Sovereign Immunity. The State of Wyoming and the State do not waive sovereign immunity by entering into this Agreement and the Grantee does not waive governmental immunity, and each specifically retains all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. § 1-39-101, et seq., and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

T. Taxes. Grantee shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to social security taxes, workers' compensation, unemployment insurance and sales taxes in connection with performance of the Project and this Agreement.

U. Termination of Agreement. This Agreement may be terminated, without cause, by either party upon thirty (30) days written notice. The State may terminate this Agreement immediately for cause if the Grantee fails to perform in accordance with the terms and conditions of this Agreement. Should the Grantee fail to perform in a manner consistent with the terms and conditions set forth in this Agreement, payment under this Agreement may be withheld until such time as the Grantee performs its duties and responsibilities.

V. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to

assist the parties in determining and performing their obligations under this Agreement.

W. Time is of the Essence. Time is of the essence in the performance by Grantee of all provisions of the Agreement.

X. Titles Not Controlling. Titles of sections are for reference only and shall not be used to construe the language in this Agreement.

Y. Unused/Misused Funds. The State shall be entitled to recover from the Grantee any full or partial payment made under this Agreement for: 1) any payments used for purposes not authorized, or performed outside this Agreement, 2) any payments for services the Grantee is unable to provide, 3) any payments for services the Grantee did not provide but was required to provide under the terms of this Agreement.

Z. Waiver. The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach.

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

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

STATE OF WYOMING OFFICE OF THE GOVERNOR



Matthew H. Mead, Governor

5-10-12
Date

LARAMIE COUNTY


Gay Woodhouse, Chairman
Laramie County Commissioners

5/2/12
Date

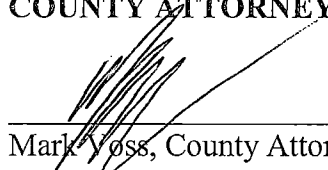
ATTESTED BY 

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

S. Jane Caton #86539
S. Jane Caton
Senior Assistant Attorney General

4-24-12
Date

COUNTY ATTORNEY APPROVAL AS TO FORM


Mark Yoss, County Attorney
Laramie County

4/24/12
Date

**ATTACHMENT A TO
GOVERNOR'S DATA CENTER RECRUITMENT FUNDS
AGREEMENT BETWEEN THE STATE OF WYOMING OFFICE OF THE
GOVERNOR AND LARAMIE COUNTY**

Grantee will receive the sum of \$5,000,000 of the Governor's Data Center Recruitment Funds. Grantee will, in turn, use the funds for phase one construction of infrastructure to make the site "shovel ready" for Microsoft inclusive of soil testing, site preparation and grading, access road, water and sewer work, and fiber installation.

Microsoft Project Summit will be broken out in phases. In phase one, more than \$78,000,000 will be invested in new construction and over \$2,000,000 annually will be invested in operations. During phase one, Microsoft will create 17 new jobs with a median wage of \$39.32. Microsoft plans to invest more than \$112,000,000 in its proposed facility over the next 10 years. For both phases, this project is projected to have a 6% to 19% return on the state's investment.

Project Summit is more particularly described in the application received by the State of Wyoming, by and through the Wyoming Business Council, on February 29, 2012, and the Contingency and Development Agreement dated April 9, 2012 between the Grantee, Microsoft, and Cheyenne LEADS.

Grantee will be required to provide information as requested by the State of Wyoming, by and through the Wyoming Business Council, about lease arrangements, job creation, wage data, revenue recapture, additional investments, marketing, business recruitment, and business development efforts.

**ATTACHMENT B TO
GOVERNOR'S DATA CENTER RECRUITMENT FUNDS
AGREEMENT BETWEEN THE STATE OF WYOMING OFFICE OF THE
GOVERNOR AND LARAMIE COUNTY**

Projected Grant Expenditure Schedule for Laramie County - Microsoft Recruitment	
DESCRIPTION	Governor's Data Center Recruitment Funds
Non Construction Costs	\$160,000
Construction Costs	\$4,840,000
Total Project Cost	\$5,000,000

For the above Projected Grant Expenditure Schedule "Non Construction Costs" include: appraisal, architectural, engineering, and project inspection fees; "Construction Costs" include: site work, materials, labor, utilities, and contingencies.

Upon completion of closing, the Grantee must provide the warranty deed demonstrating the ownership transfer of property from Cheyenne LEADS to Microsoft.


This grant is incrementally funded as costs are incurred according to the above Projected Grant Expenditure Schedule. The State will release funds only after payment vouchers or invoices approved by the Grantee are submitted to the State. After receipt of cash requests and billing documentation, the STATE will pay the amounts of invoices at one-hundred percent (100%). Verification of all in-kind contributions must be submitted to the State.

If actual costs of the project are more than the available funds indicated in Attachment B, Grantee agrees to pay the difference in the amount of funds awarded through the Governor's Data Center Recruitment Funds and the actual costs of the completed Project.

If there is additional funding for the project, the Grantee must provide the State with all necessary information regarding the funding.

**ATTACHMENT C TO
GOVERNOR'S DATA CENTER RECRUITMENT FUNDS
AGREEMENT BETWEEN THE STATE OF WYOMING OFFICE OF THE
GOVERNOR AND LARAMIE COUNTY**

***CONTINGENCY AND DEVELOPMENT
AGREEMENT***

APR 11 2012


This Agreement is entered into this 9 day of March, 2012 by and between the County of Laramie, Wyoming ("County"), Cheyenne-Laramie County Corporation for Economic Development ("LEADS"), a Wyoming non-profit corporation, and Project Summit, collectively referred to as the "Parties."

WHEREAS, the purpose of this Agreement is to enable the County to provide funds received under the Governor's Data Center Recruitment Grant Program ("Governor's Data Center Program") to LEADS, who shall undertake projects and services, collectively known as the "Project", described in the Wyoming Business Council Grant Application, attached hereto, incorporated by reference and expressly made a part hereof (the "Grant Application"). Performance by LEADS and Project Summit of the requirements of this Agreement and all related agreements, as well as compliance with all Governor's Data Center Program rules and regulations constitute express conditions precedent to LEADS's receipt of any funds hereunder;

WHEREAS, the Governor's Data Center Program allows for grants to cities, towns and counties for necessary public infrastructure to enable the recruitment and operation of data centers;

WHEREAS, LEADS desires to facilitate the location of Project Summit, which operates a data center business, in Laramie County, Wyoming, and further desires to procure funds to pay for site development infrastructure, including but not limited to, access roads, water and sewer lines, site preparation, fiber optic installation, subdivision of the proposed data center site, and Phase I soil testing (as more particularly described in Article I below, collectively, the "Improvements") at Lot 3, Block 6 of LEADS's North Range Business Park (the "Site");

NOW, THEREFORE, in consideration of the promises and agreements contained herein, the parties agree as follows:

***Article I.
Project Description***

The County shall apply for and obtain a grant from the Governor's Data Center Program which LEADS shall facilitate and administer, for the purpose of providing necessary infrastructure at Project Summit's data center facility. The anticipated construction cost of the Improvements and data center will equal or exceed fifty million dollars (\$50,000,000). It is anticipated by the Parties that use of grant funds to provide the necessary infrastructure will attract Project Summit to locate a new facility in Laramie County, Wyoming.

The contemplated Improvements consist of:

- i. Phase I environmental assessment;

- ii. All surveys, engineering and design documents, permits and legal documents associated with the items described below.
- iii. Design and construction of one or more access roads to and on the site in a locations or locations acceptable to Project Summit;
- iv. Design and construction of two redundant water and two redundant sewer utility lines from the water and sewer mains adjacent to the Site onto the Site to a termination vault acceptable to Project Summit, including water supply and sewer meters, and all connection fees;
- v. Two redundant fiber optic routes and other necessary communications lines to accommodate two redundant fiber routes from manholes/vaults on the Site back to the nearest independent splice points in opposite directions from the Site. This shall include, but is not limited to a minimum of 12 conduits in the fiber trench, each capable of holding multiple strands of fiber optic cable. Three (3) of the twelve conduits shall be dedicated to Project Summit's use.
- vi. Grading and leveling of the entire Site (including both the initial property and the option property) per plans provided by Project Summit in preparation for construction, including the preparation of laydown/staging areas, temporary trailer areas, temporary power for construction (including the purchase/lease and installation of temporary electric meters) and construction of temporary parking areas.
- vii. Design, permitting, and construction of a Storm Water Protection Plan (SWPP) for use during construction.
- viii. Subdivision of the Site into a 50 acre parcel and a 38.8 acre option parcel.

The Parties expressly acknowledge and agree that the contemplated Improvements to the Site to be constructed or provided by LEADS shall be limited to those items that will be paid for by, or which are otherwise eligible for reimbursement from, the Governor's Data Center Program. The Parties also acknowledge and agree that LEADS shall be under no obligation to undertake or pay for any such Improvements until an award is approved by the Governor's Data Center Program for this project, and likewise LEADS's obligation to pay for such Improvements shall not exceed the total amount of funds actually received from the Governor's Data Center Program. The Parties further acknowledge and agree that any work commenced prior to an award of funds under the Governor's Data Center Program will not be eligible for reimbursement from the Governor's Data Center Program.

ARTICLE II.

COUNTY'S RESPONSIBILITIES

The County shall:

- A. Prepare and submit the Grant Application for a grant of five million dollars (\$5,000,000.00) from the Governor's Data Center Program (the "Grant").
- B. Contingent upon award of the Grant and receipt from LEADS of invoices substantiating Project costs, the County will seek reimbursement of these costs from the Governor's Data Center Program.
- C. Funds received by the County under the Grant will be paid to LEADS in consideration for performance as described in this Agreement.

- D. In connection herewith, as the Governor may require, the County will enter into a cooperative agreement with the Wyoming Business Council to oversee the expenditure of the Grant funds that may be awarded. Should the cooperative agreement be required, the County shall provide the Wyoming Business Council with all information necessary to meet all applicable reporting requirements.

ARTICLE III.
LEADS' RESPONSIBILITIES

LEADS shall:

- A. Work with Project Summit's engineers, suppliers, and design team to design the Improvement to Project Summit's specifications and design criteria.
- B. During the period of design and construction, construct, own and manage the Improvements necessary for the placement of a data center facility on the Site, all for the purpose of furthering the economic development of the community. At the conclusion of the construction phase of the Improvements, and after reasonable review and approval between the Parties, LEADS shall transfer ownership of the on-site Improvements to Project Summit.
- C. Pay all Improvement project costs up to and including the amount of Grant funds actually received by LEADS.
- D. Provide to the County all information necessary to meet all applicable reporting requirements.
- E. Use any net income generated by LEADS from the operation, lease or sale of the Improvements constructed pursuant to this Agreement for the purpose of promoting the economic development of the County.
- F. Provide an annual written report of the uses made of funds received under this Agreement for a period of five (5) years. The report will be provided to the County Commissioners or their designee within 90 days of the end of the calendar year.

ARTICLE IV.
PROJECT SUMMIT'S RESPONSIBILITIES

Project Summit shall, contingent upon (i) the conditions to the effectiveness of this Agreement set forth in Article V being satisfied, (ii) its obtaining all necessary permits for the construction of the data center described in Subsection B below, (iii) its obtaining commitment letters from the water and electric utilities serving the Site confirming, to its satisfaction, the availability of sufficient water and electric power capacity to serve the proposed data center, and (iv) the construction of the Improvements by LEADS in accordance with this Agreement (collectively, the "Conditions"):

- A. Enter into a contract or option for the purchase or lease of real property on which the data center is to be constructed and which is zoned to allow use of the property as a data center (the "Purchase Agreement").
- B. Construct and manage a data center with construction costs of the Improvements and data center to equal or exceed fifty million dollars (\$50,000,000.00).
- C. Post a bond (which may be in the form of a letter of credit or other security device in compliance with the governing statute) that shall secure the repayment of all funds expended from the Governor's Data Center Program for the site if (i) all of the Conditions are satisfied, and (ii) construction of the data center is not commenced within three (3) years after the last expenditure of the grant funds (the "Bond"). Repayment of such Governor's Data Center Program funds shall be the exclusive remedy of the County and LEADS for any failure by Project Summit to perform its obligations under this Article IV.

ARTICLE V *CONDITIONS TO EFFECTIVENESS; TERM*

This Agreement shall not become effective until (i) the Governor of Wyoming has approved the award of the Grant, and (ii) Project Summit has delivered to the County and LEADS: (i) a fully executed original of this Agreement, (ii) a fully executed Contingency and Development Agreement with the County providing for a grant under the Business Ready Community Program, (iii) the fully executed Purchase Agreement, and (iv) the Bond. The term of this Agreement shall commence upon the effectiveness of this Agreement as provided in the preceding sentence and shall continue until the expiration of LEADS's reporting requirements under Article III, Section F.

ARTICLE VI *SPECIAL PROVISIONS*

- A. The County is an eligible applicant for the Governor's Data Center Program funding and has the authority to contract for economic development services with LEADS for the use of the funds sought hereunder.
- B. The Parties agree that the Improvements are necessary to allow Project Summit to build data center facilities within the North Range Business Park.
- C. The Parties agree that LEADS as a professional economic development organization and the contracted economic development agency for the Cheyenne and Laramie County, has the personnel, experience, and professional relationships necessary to undertake these services for the County.
- D. The Parties agree that their respective obligations to pay and perform hereunder, are wholly contingent upon award from the Governor's Data Center

Program referenced herein, and further hold such award to be an absolute condition precedent to the their respective obligations under this agreement.

ARTICLE VII.
GENERAL PROVISIONS

- A. Amendments. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
- B. Applicable Law. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be in the First Judicial District, Laramie County, Wyoming.
- C. Compliance with Laws. The Parties agree to comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.
- D. Entirety of Agreement. This Agreement is the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- E. Indemnification. LEADS shall release, indemnify and hold harmless the County and its officers, agents, employees, successors and assigns from any cause of action, or claims or demands arising out of LEADS' performance under this Agreement.
- F. Independent Contractor. LEADS shall function as an independent contractor for the purposes of this Agreement. LEADS shall assume sole responsibility for any debts or liabilities that may be incurred by LEADS. Nothing in this Agreement shall be interpreted as authorizing LEADS or its agents or employees to act as an agent or representative of or on behalf of the County or to incur any obligation of any kind on the behalf of the County.
- G. Notice. All notices arising out of or from the provisions of this Agreement shall be in writing and given to the parties either by regular mail or delivery in person.
- H. Nondiscrimination. LEADS shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act, Wyo. Stat. § 27-9-105 et seq., and the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, et seq. LEADS shall assure that no person is discriminated against based on the grounds of age, sex, race, religion, national origin or disability in connection with the performance of this Agreement.

- I. Governmental Immunity. The County does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including Wyo. Stat. §§ 1-39-101 *et seq.*, by entering into this Agreement, except to the extent necessary for the parties to pursue a contract action to clarify or enforce the written terms of this Agreement. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. Any actions or claims against the County under this Agreement, to the extent that the same are permissible under the terms of this Section and/or applicable law, must be brought in accordance with the procedural requirements of the Act. Further, the County fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement.

In witness thereof, the parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the days and dates set out below and certify that they have read, understood and agreed to the terms and conditions of this Agreement.

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

LARAMIE COUNTY, WYOMING

Attest:

By:

Gay Woodhouse
Gay Woodhouse, Chairman

Debbie Lathrop
Debbie Lathrop, County Clerk

Date: March 26, 2012

CHEYENNE-LARAMIE COUNTY
CORPORATION FOR ECONOMIC
DEVELOPMENT,

Identified throughout this Agreement as

PROJECT SUMMIT, MICROSOFT CORP.,
DATA WASHINGTON CORPORATION

BY:

Randy Bruns
Randy Bruns, CEO

BY:

Dayne Samson
NAME: DAYNE SAMEGON
ITS: CORP. V.P. G.F.S.

Date: 23 March 2012

Date: 4/9/12

REVIEWED AND APPROVED AS TO FORM ONLY

By:

Sylvia Lee Hackl
Sylvia Lee Hackl, Deputy Laramie County Attorney

Date: 3/23/12

MATTHEW H. MEAD
GOVERNOR



STATE CAPITOL
CHEYENNE, WY 82002

Office of the Governor

May 11, 2012

Sandra Newland
Laramie County Grants Manager
The Board of Laramie County Commissioners
310 West 19th Street, Suite 300
Cheyenne, WY 82001

Dear Sandra,

Enclosed you will find a completely executed contract for the Governor's Data Center Recruitment Funds for your records.

If you need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Shelly L. Andrews".

Shelly L. Andrews
Budget Advisor
Office of the Governor
State Capitol, Room 124
Cheyenne, WY 82001
307-777-8214

SLA:mt

Enclosure