

LARAMIE COUNTY CLERK BOARD OF COUNTY COMMISSIONERS AGENDA ITEM PROCESSING FORM

1. DATE OF PROPOSED ACTION: April 21, 2015

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 County Vehicle Disposal

3. DEPARTMENT: **Assessor**

APPLICANT: **Thomas Y. Pickett & Co. Inc.** AGENT: **Kenneth Guille**

4. DESCRIPTION: Consideration of a FY2016 contract with Thomas Y. Pickett & Co., Inc. for industrial appraisal services in the amount of thirty six thousand three hundred thirty dollars (\$36,330)

Amount **\$36,330**

From **7-1-2015**

To **6-30-2016**

5. DOCUMENTATION: 2 Originals

<u>Commissioner</u>	<u>Clerks Use Only:</u>	<u>Signatures</u>
Ash _____		County Attorney _____
Holmes _____		Deputy Attorney _____
Thompson _____		
Heath _____		
Kailey _____		Grants Manager _____
Action _____		Outside Agency _____
Postponed _____		

**APPRAISAL SERVICE CONTRACT
LARAMIE COUNTY, WYOMING/THOMAS Y. PICKETT & COMPANY, INC.**

THIS AGREEMENT made and entered into by and between Laramie County, Wyoming, P.O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY") and Thomas Y. Pickett & Company, Inc., 4464 Sigma Road, Dallas, Texas 75244, ("PICKETT").

WHEREAS, the Laramie County Assessor receives for inspection, correction, and approval, renditions of tangible industrial personal and real property, including technical data and testimony pertaining to such properties requiring scientific knowledge, technical skill and experience in analysis and appraisals of such properties; and

WHEREAS, the COUNTY has determined to employ experts skilled in analysis and appraisal of such properties to compile information for use by the Laramie County Assessor in valuing said property; and

WHEREAS, PICKETT has experience in such matters and employs registered professional engineers, qualified in Wyoming, with scientific and technical knowledge.

NOW THEREFORE, it is hereby agreed by and between the parties hereto:

1. PICKETT agrees to make analysis and surveys as of January 1, 2016, which shall include all information which PICKETT is able to procure pertaining to the character, quality, and quantity, as well as the value of the industrial properties within Laramie County for use of the Laramie County Assessor in valuing said properties, and for the further purpose of furnishing the testimony as hereinafter specified. PICKETT shall be responsible for the professional quality, technical accuracy, and timely completion of the services rendered by PICKETT and shall, without any additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies. It is expressly agreed and understood "INDUSTRIAL BUSINESS, REAL AND PERSONAL PROPERTY" as such term is used herein, shall include all tangible industrial, real and personal property, including all buildings and appurtenances connected thereto except for lands for the following industrial facilities:

- (a) Frontier Refining, Inc.
- (b) Airgas Carbonic Inc.
- (c) Dyno Nobel, Inc.
- (d) Wal-Mart Stores East Ltd Ptensp
- (e) Cheyenne Logistics LLC
- (f) EOG Fairway Compressor Station and Gathering System
- (g) Swan Ranch Crude to Rail Facility
- (h) Future EOG Compressor Station if constructed

2. PICKETT further agrees to provide such expert testimony as may be required at any protest hearing at the Laramie County Board of Equalization, in any depositions, requests for discovery and the like, answers to subpoena, at or for the State Board of Equalization, or in any civil litigation arising from the appraisals of property covered by this contract. PICKETT shall

be recompensed at a rate not to exceed Eight Hundred Dollars (\$800.00) per day per appraiser appearing or participating. PICKETT shall also be reimbursed by the COUNTY for reasonable travel and subsistence expenses and for all appropriate other expenses incurred.

3. PICKETT agrees to prepare, based upon the information procured for use as evidence in determining the market value of such properties as herein defined, a tabulation of technical data and appraised values pertaining to any and all such properties, for use by the Laramie County Assessor.

4. Recognizing the cooperation of the parties hereto is of special importance in agreements of this character, COUNTY, and the Laramie County Assessor, as a further consideration; expressly agree to use all lawful powers in carrying out the purposes of this Agreement, particularly the powers of entry, subpoena, summons, etc.

5. For the skilled services, technical knowledge and experience of PICKETT, as employed in its performance under this Agreement, COUNTY agrees to pay PICKETT at their office, 4464 Sigma Road, Dallas, Texas, 75244, the sum of Thirty Six Thousand Three Hundred and Thirty Dollars (\$36,330.00) for the year 2016, as full compensation for the services rendered pursuant to this Agreement as follows: (a) Five Thousand One Hundred Dollars (\$5,100.00) on the first day of July, August, September, October, November, and December, 2015; (b) the balance upon completion of work for the year 2016.

6. PICKETT agrees neither the Laramie County Assessor, or COUNTY, shall be obligated to PICKETT or its assistants, for salaries, expenses, or materials except as stated herein.

7. General Provisions

a. Independent Contractor: The services to be performed by PICKETT are those of an independent contractor and not as an employee of COUNTY.

b. Acceptance Not Waiver: COUNTY approval of the reports, and work or materials furnished hereunder shall not in any way relieve PICKETT of responsibility for the technical accuracy of the work. COUNTY approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

c. Default: Each and every term and condition hereof shall be deemed to be a material element of the Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default thereof.

d. Remedies: In the event a party has been declared in default hereof, such defaulting party shall be allowed a period of fifteen (15) days after the date of mailing written

notice of default, to cure said default. In the event the default remains uncorrected, the party declaring default may, without waiving any remedy available to such party:

- 1) terminate the Agreement and seek damages;
- 2) treat the Agreement as continuing and require specific performance; or
- 3) utilize any other remedy at law or equity.

e. Independent Entities: COUNTY and PICKETT are independent entities and their employees or volunteers are not to be considered agents or employees of the other.

f. Term: This Agreement shall commence on the date last executed by the duly authorized representatives of the parties to this Agreement, and shall remain in full force and effect until June 30, 2012.

g. Termination: This Agreement may be terminated (a) by either party at any time for failure of the other party to comply with the terms and conditions of this agreement; (b) by either party, with thirty days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.

h. Entire Agreement: This Agreement (6 pages) represents the entire and integrated agreement and understanding between the parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

i. Assignment: Neither this Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

j. Modification: This Agreement shall be modified only by a written agreement, duly executed by all parties hereto.

k. Invalidity: The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties the provisions of this Agreement are fully severable.

l. Jurisdiction: If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The parties hereby waive any objection a suit or proceeding brought in the foregoing forum is brought in an improper or inconvenient forum or otherwise should be heard in any other forum for any reason including, without limitation, insufficiency in the service of process. The parties hereby agree if either party shall bring suit hereon in any other court than the above named, the parties shall cooperate fully in the removal, transfer or dismissal, as necessary, of any

such proceeding to the end no suit concerning this Agreement shall lie, except in the aforementioned court. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to PICKETT and to COUNTY executing this Agreement.

m. Contingencies: PICKETT certifies and warrants no gratuities, kick-backs 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.

n. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition, or national origin.

o. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.

p. Governmental Immunity: COUNTY does not waive its Governmental Immunity, as provided by any applicable law including W.S. § 1-39-101 *et seq.*, by entering into this Agreement. Further, 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.

q. Indemnification: To the fullest extent permitted by law, PICKETT agrees to indemnify and hold harmless COUNTY, its elected and appointed officials, employees and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with work performed by or on behalf of PICKETT for COUNTY except to the extent liability is caused by the sole negligence or willful misconduct of COUNTY or its employees. PICKETT shall carry liability insurance to cover its obligations under this provision.

r. Third Parties: 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 the agreement, and shall inure solely to the benefit of the parties to this agreement. The parties to this agreement intend and expressly agree that only parties signatory to this agreement shall have any legal or equitable right to seek to enforce this agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this agreement, or to bring action for breach of this agreement.

s. Conflict of Interest: COUNTY and PICKETT affirm, to their knowledge, no PICKETT employee has any personal beneficial interest whatsoever in the agreement described herein. No staff member of PICKETT, compensated either partially or wholly with funds from this Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Agreement.

t. Force Majeure: Neither party shall be liable to perform under this Agreement if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

u. Limitation on Payment: COUNTY's payment obligation is conditioned upon the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment provided by CONTRACTOR the Agreement may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CONTRACTOR at the earliest possible time of the services which will or may be affected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit COUNTY to terminate this Agreement in order to acquire similar services from another party.

v. Notices: All notices requires and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

[the remainder of this page is intentionally left blank]

Signature Page

**Appraisal Service Contract
Laramie County/Thomas Y. Pickett and Company, Inc.**

LARAMIE COUNTY, WYOMING

By: _____ Date _____
Amber Ash, Chairman, Laramie County Commissioners

ATTEST:


By: _____ Date _____
Debra K. Lathrop, Laramie County Clerk

Thomas Y. Pickett & Company, Inc.

By:  Date 6/18/15
Executive Vice President

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

REVIEWED AND APPROVED AS TO FORM ONLY

By:  Date 6/9/15
Mark T. Voss, Laramie County Attorney

