

LARAMIE COUNTY CLERK BOARD OF COUNTY COMMISSIONERS AGENDA ITEM PROCESSING FORM

1. DATE OF PROPOSED ACTION: February 17, 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

3. DEPARTMENT: Grants

APPLICANT: Laramie County/LEADS

AGENT: Mark Voss

4. DESCRIPTION: Consideration of a Contingency and Development Agreement between Laramie County, Cheyenne LEADS and Project Nephogram to provide necessary infrastructure for a data center approved through the Wyoming Governor's Data Center Recruitment Program Grant in the amount of \$5,000,000.

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

5. DOCUMENTATION: 3 originals

Clerks Use Only:

Commissioner

Ash _____

Hasenauer _____

Holmes _____

Humphrey _____

Thompson _____

Action _____

Postponed/Tabled _____

Signatures

Co Attny _____

Assist Co Attny _____

Grants Manager _____

Outside Agency _____

CONTINGENCY AND DEVELOPMENT AGREEMENT

This Contingency and Development Agreement ("Agreement") is entered into this ____ day of _____, 2015 by and between the County of Laramie, Wyoming ("County" or "Laramie County"), Cheyenne-Laramie County Corporation for Economic Development (Cheyenne LEADS) ("LEADS"), a Wyoming non-profit corporation and Microsoft Corporation ("Microsoft"), a Washington corporation, 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");

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, Laramie County desires to expand infrastructure resources to the location of Microsoft, which plans to operate a data center, in Laramie County, Wyoming and Laramie County further desires to procure funds to pay for site development infrastructure, including but not limited to one or more of the following projects: access roads, water and sewer lines, site preparation, fiber optic installation, subdivision of the proposed data center site, rezoning and replatting the property associated with the data center site so that the property becomes part of the North Range Business Park located in Laramie County, wetlands or endangered species mitigation, and Phase I soil testing (as more particularly described in Article I below, collectively, the "Improvements") on the property legally described on Exhibit A, attached hereto (the "Site"); and

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 administer, for the purpose of providing necessary infrastructure for Microsofts proposed data center facility. The anticipated construction cost of the Improvements and data center will exceed Two Hundred and Eight Million Dollars (\$208,000,000). The anticipated construction schedule will be 18 to 24 months. It is anticipated by the Parties that use of grant funds to provide the necessary infrastructure will assist to induce Microsoft to construct a data center facility on the Site.

The contemplated Improvements consist of:

- i. Design and construction of one or more redundant water and sewer utility lines from the water and sewer mains near the Site to a termination vault acceptable to Microsoft, including water supply and sewer meters, and all connection fees;
- ii. Design and construction of one or two water towers to handle peak water demand during summer months.
- iii. Engineering and procurement for one or two generators to support the pumps associated with the above water tower(s).
- iv. Subdivision of the Site into one or more parcels acceptable to Microsoft.
- v. Replatting of the Site to bring the property into the North Range Business Park located in Laramie County.
- vi. Rezoning the Site to allow the construction of data center facility.

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 and Laramie County 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 Laramie County and LEADS' obligation to pay for such Improvements shall not exceed the total amount of funds actually received by LEADS 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 a grant application for at least Five Million Dollars (\$5,000,000) from the Governor's Data Center Program (the "Grant").
- B. Seek reimbursement of these costs from the Governor's Data Center Program which shall be contingent upon an award of the Grant, and shall also provide receipt of invoices substantiating Project costs.
- C. Pay LEADS all funds received by the County under this Grant in consideration for LEADS performance as described in this Agreement.
- D. Enter into a cooperative agreement with the Wyoming Business Council to oversee the expenditure of the Grant funds that may be awarded and as the Governor may require. Should a cooperative agreement be required, the County shall provide the Wyoming Business Council and Microsoft with all information necessary to meet all applicable reporting requirements.

ARTICLE III. LEADS' RESPONSIBILITIES

LEADS shall:

- A. Work with Microsoft's engineers, suppliers, and design team to design and construct the Improvements to Microsoft's specifications and design criteria. In addition, LEADS shall assist, to the extent possible, in helping re-zone the land under a PUD designation.
- B. During the period of design and construction, construct and manage the Site and 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.
- 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. Including but not limited to providing the Laramie County Grants Manager any and all required information and/or reports in a timely manner for reporting and reimbursement requests that will be made from the Governor's Data Center Program. LEADS understands and agrees that the County will only reimburse costs incurred for the purposes described in this Agreement and for which the State of Wyoming reimburses the County.
- E. Provide an annual written report of the uses made of funds received under this Agreement for a period of five (5) years from the award of the Grant. The report will be provided to the County Commissioners and Microsoft or their designee not more than 90 days after the end of each calendar year.
- F. Maintain reasonable and responsible accounting procedures and practices, and maintain books, records, documents and other evidence to sufficiently and properly reflect all transactions of any nature relating to this Agreement and any funds provided by or through Laramie County, including but not limited to the funds referenced herein. Such books, records, documents, and other evidence shall be made available upon written request of the County or Microsoft for inspection at the offices of either LEADS or the County in Cheyenne, Wyoming or other such location as approved by the Parties.
- G. Manage the advertising, bidding, and award of construction contracts and other procurement related to the Project and certify to the Wyoming Business Council that Wyoming Statute §§ 15-1-113 and 16-6-101, *et seq* were followed, and that a public and competitive procurement process was used to award all contracts for which grant funds are utilized, including the requirement that preference be given to: Wyoming bidders for contractual services; Wyoming laborers, workman, and mechanics; and for materials, supplies, equipment, machinery, and provisions produced, manufactured, supplied or grown in Wyoming. Provided, however, that LEADS shall not hire, contract with, bind itself or otherwise commit Grant Funds for construction or development of the Project until it has consulted with

County Staff to ensure compliance with state law, applicable building and land use codes, and County policies.

***ARTICLE IV.
MICROSOFT'S RESPONSIBILITIES***

Microsoft shall:

- A. Enter into a contract or option for the purchase or lease of the Site on which the data center is to be constructed and which, after submitting an application to re-zone the property, will allow the construction of a data center.
- B. Construct and manage a data center with construction costs of the Improvements and data center expected to exceed Two Hundred and Eight Million Dollars (\$208,000,000). Of the \$208,000,000 Project cost, an amount anticipated to be greater than or equal to \$1,200,000 will be considered matching funds for the Grant and will be comprised of the following: (1) the land value of the Site used for the Project; (2) engineering, design, and other professional fees associated with the Improvements and data center; (3) construction management for the Improvements and data center; and (4) other costs, fees, and expenses incurred by the Project.
- C. Create and fill 25 new positions (with an estimated total annual payroll of \$1,073,280 for the 25 positions) to its workforce located in Laramie County, Wyoming within twelve months after completion of the first phase of the Project.
- D. Be solely responsible to pay any and all cost overruns for all Improvements which exceed the total amount received under the Grant.
- E. Ensure that ownership of completed Improvements paid for by the Grant are owned by the appropriate public entity or community development organization.
- F. Grant a utility easement to the County and/or the Board of Public Utilities, encumbering that portion of property where the water and sewer lines will be constructed.

Microsoft's obligations set forth above shall be expressly 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 in Laramie County, Wyoming; (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 referred to above as the "Conditions").

***ARTICLE V.
CONDITIONS TO BE SATISFIED BEFORE EFFECTIVENESS; TERM***

This Agreement shall not become effective until: (i) the Governor of Wyoming or his designee has approved the award of the Grant, (ii) this Agreement has been fully executed by all Parties, and (iii) Microsoft has delivered to the County and LEADS a fully executed Purchase Agreement, or other satisfactory evidence showing Microsoft's ownership, for the Site. The term of this Agreement shall commence upon the effective date of this Agreement as determined by satisfaction of the conditions set forth in the preceding sentence and shall continue until the expiration of LEADS' 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 Microsoft to build data center facilities which will ultimately be located in Laramie County, Wyoming.
- 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 and Microsoft.
- E. The Parties agree that their respective obligations to pay and perform hereunder are wholly contingent upon award of a Grant from the Governor's Data Center Program as referenced herein, and further hold such Grant award to be an absolute condition precedent to the their respective obligations under this Agreement.
- F. The parties agree and warrant that neither this Agreement nor any related grant documents associated with this project, shall constitute a pledge of or result in the imposition of any lien, charge, or encumbrance upon any tax revenues, cash reserves, or other assets or revenues of Laramie County.

**ARTICLE VII.
GENERAL PROVISIONS**

- A. Amendments. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed to by the Parties to this Agreement shall not be enforceable unless 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, without regard to its conflict

of laws principles. The courts of the State of Wyoming shall have jurisdiction over this Agreement and the Parties, and the venue shall be in the State of 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 Microsoft 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, email, 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.* (the "Act") 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 parties fully retain 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.
- J. Contingency. This Agreement, and the duties and obligations of the County, LEADS, and Microsoft under this Agreement are subject to the contingency that the Attorney General of Wyoming issues an opinion, pursuant to W.S. § 9-12-601(f), certifying: (i)

the legality of the grant transaction contemplated by this Agreement; and (ii) that the County may enter into the grant agreement contemplated by this Agreement without the necessity of conducting an election.

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: _____
Amber Ash, Chairman

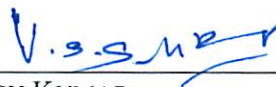
Debbye Lathrop, County Clerk

Date: _____

CHEYENNE-LARAMIE COUNTY
CORPORATION FOR ECONOMIC
DEVELOPMENT,

MICROSOFT CORPORATION,

BY: 
Randy Bruns, CEO

BY: 
SURESH KUMAR_
CORP VP, CLOUD INFRASTRUCTURE &
OPERATIONS

Date: 11 Feb 2015

Date: 09 FEB 2015

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

