

MINIMUM REVENUE GUARANTEED PAYMENT AGREEMENT

Between

LARAMIE COUNTY, WYOMING / CRAFT

THIS AGREEMENT is made and entered into by and between Laramie County, Wyoming, P. O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY") and the Cheyenne Regional Air Service Focus Team, c/o Cheyenne LEADS, P.O. Box 1045, Cheyenne, Wyoming 82003-1045 ("CRAFT"). The parties agree as follows:

I. PURPOSE

The purpose of this Agreement is for COUNTY to pay a portion of the Minimum Revenue Guaranteed ("MRG") funds to CRAFT, for payments to SkyWest Airlines for providing scheduled flight services between Cheyenne and Dallas - Fort Worth.

II. 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 terminated as provided herein.

III. RESPONSIBILITIES OF COUNTY

COUNTY shall pay to CRAFT up to Six Hundred Twenty-Three Thousand, Five Hundred One and 52/100 Dollars (\$ 623,501.52) of the MRG which MRG is capped at One Million, Nine Hundred Ninety-Five Thousand, Eight Hundred Eighty-Eight Dollars and 00/100 (\$1,995,888.00), upon presentation of a properly executed Invoice and Accounting as prescribed by the Laramie County Clerk. COUNTY shall be responsible for thirty-one point two three nine four percent (31.2394%) of the MRG amounts that are presented to the County. COUNTY's payment obligation under this Agreement is capped at Six Hundred Twenty-Three Thousand, Five Hundred One and 52/100 Dollars (\$ 623,501.52). The parties understand and agree that any MRG amount that is payable to SkyWest Airlines only comes into effect if and when SkyWest Airlines fails to meet the MRG margin. Payments shall be made in accordance with W. S. §16-6-602 (as amended).

IV. RESPONSIBILITIES OF CRAFT

A. CRAFT agrees that the funds paid by Laramie County pursuant to this Agreement shall not be for the express aid of any private citizen, or in violation of Article 16 §§ 6 of the Constitution of the State of Wyoming.

B. CRAFT agrees to provide an invoice to the COUNTY consisting at a minimum of detailed accounting describing the costs and services provided pursuant to this Agreement.

C. COUNTY acknowledges and agrees that CRAFT will not have an active role, other than a right to review and audit records, in the accounting of the costs associated with the services provided by the commercial airline carrier. Subject to the foregoing, for those funds passing

through CRAFT, CRAFT agrees to maintain generally accepted accounting procedures and practices, and to maintain books, records, documents and other evidence to sufficiently and properly reflect all transactions of any nature relating to this Agreement or any funds provided by or through Laramie County including, but not limited to the funds referenced herein, and any books, records, documents and other evidence shall be made available upon written request of the COUNTY for the inspection at the offices of CRAFT in Cheyenne, Wyoming.

D. CRAFT agrees to retain all required records for three (3) years after the County makes final payment and all other matters relating to the Agreement are concluded. CRAFT agrees to permit access by the COUNTY or any of its duly authorized representatives to any books, documents, papers and records of the CRAFT which are directly pertinent to this specific Agreement for purposes including but not limited to audit, examination, excerpts, and transcriptions. It is agreed that finished or unfinished documents, data or reports, prepared by CRAFT under this Agreement shall be considered the property of the COUNTY and upon completion of the services to be performed, or upon termination of this Agreement for cause, or for the convenience of the COUNTY, will be turned over to the COUNTY.

V. GENERAL PROVISIONS

A. Independent Contractor: The services to be performed by CRAFT are those of an independent Contractor and not as an employee of COUNTY. CRAFT is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. CRAFT assumes responsibility for its personnel who provide services pursuant to this contract and will make all deductions required of employers by state, federal and local laws and shall maintain liability insurance for each of them. CRAFT is free to perform the same or similar services for others.

B. Acceptance Not Waiver: COUNTY's approval of the reports, and work or materials furnished hereunder shall not in any way relieve CRAFT of responsibility for the technical accuracy of the work. COUNTY's 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. 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 (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.

D. Entire Agreement: This Agreement (5 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.

E. 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.

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

G. Invalidity: 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 that the provisions of this Agreement are fully severable.

H. Applicable Law and Venue: The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming, without regard to its conflict of laws principles. 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 foregoing provisions of this paragraph are agreed by the parties to be a material inducement to CRAFT and to COUNTY in executing this Agreement. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in this Agreement.

I. Contingencies: CRAFT 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.

J. 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.

K. 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.

L. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign 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.

M. Indemnification: To the fullest extent permitted by law, CRAFT 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 solely from or in connection with the work that is to be performed by or on behalf of CRAFT for COUNTY except to the extent liability is caused by the sole negligence or willful misconduct of COUNTY or its employees. CRAFT shall carry liability insurance sufficient to cover its obligations under this provision and provide COUNTY with proof of such insurance.

N. 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.

O. Conflict of Interest: COUNTY and CRAFT affirm, to their knowledge, no CRAFT employee has any personal beneficial interest whatsoever in the agreement described herein. No staff member of CRAFT, 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.

P. 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.

Q. Limitation on Payment: COUNTY's payment obligation is conditioned upon the availability of funds which are appropriated, allocated or approved by the electorate for the payment of this obligation. If funds are not allocated, appropriated or approved and available, in the fiscal judgment of the COUNTY, for the continuance of the services and equipment provided by CRAFT the Agreement may be terminated by COUNTY at the end of the period for which funds are available. 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.

R. Notices: All notices required 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 party's 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.

S. Compliance with Laws: CRAFT shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

LARAMIE COUNTY

By: _____ Date _____
Linda Heath, Chairman, Laramie County Commissioners

ATTEST:

By: _____ Date _____

Debra Lee, Laramie County Clerk

CHEYENNE REGIONAL AIR SERVICE FOCUS TEAM

By: Wendy Volk
Wendy Volk, President

Date 11/5/2019

ATTEST:
By: Lori Schoene
Lori Schoene, Secretary

Date 11-5-19

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

REVIEWED AND APPROVED AS TO FORM ONLY:

By: Gladys Ayokosok
Gladys Ayokosok, Deputy Laramie County Attorney

Date 11/6/19