

EQUIPMENT STAGING AND ELECTRICITY USAGE AGREEMENT
Laramie County, Wyoming and Gloria Merrill

THIS AGREEMENT made and entered into by and between Laramie County P.O. Box 608, Cheyenne, WY 82009 (COUNTY), and Gloria Merrill, c/o Laramie County Public Works, 13797 Prairie Center Circle, Cheyenne, WY 82009 (SUPPLIER).

IN CONSIDERATION of the mutual covenants and obligations expressed herein, it is agreed by and between the parties hereto:

1. This Agreement shall commence on the date of the last signature ("Effective date"), and remain in full force and effect until June 30, 2024.
2. COUNTY shall be permitted to stage equipment, consisting of but not limited to one motor grader, one pickup truck, and two self-contained fuel cells up to 500 gallons each (MACHINERY), at an agreed-upon pre-designated location on SUPPLIER'S property. The MACHINERY shall be parked in a manner that does not impede the SUPPLIER'S use of property. The permission granted hereunder is expressly limited to parking the MACHINERY when not in operation by the COUNTY.
3. In no case shall the MACHINERY be driven, transported, or serviced by any person other than a COUNTY Public Works employee.
4. COUNTY shall be responsible for ensuring that the MACHINERY is parked safely and in compliance with all applicable laws. COUNTY shall be responsible for repairing any damage to real property owned by the SUPPLIER caused by the MACHINERY or operations related thereto within reason.
5. SUPPLIER agrees to provide electricity during the winter season for the MACHINERY located on or near the property of SUPPLIER.
6. SUPPLIER agrees to provide fuel to the COUNTY in lieu of or in addition to staging fuel cells, if on-site fuel tanks are available. COUNTY will compensate SUPPLIER within 45 days, in accordance with Wyo. Stat. Ann. §16-6-602, upon receipt of itemized monthly invoice to Laramie County Public Works at current market value per gallon.
7. Upon presentation of a properly executed Laramie County contract, COUNTY shall pay SUPPLIER the sum of \$325.00 per year for providing electricity hereunder. Payment will be made within 45 days, in accordance with Wyo. Stat. Ann. §16-6-602, upon receipt of invoice to Laramie County Public Works.
8. General Provisions
 - a) Assignment. This Agreement may not be assigned or subcontracted by SUPPLIER without the express written permission of COUNTY, and any assignment or subcontracting of any of the duties, obligations or rights under this Agreement by SUPPLIER without the required express written consent shall constitute a breach.
 - b) Modification. This Agreement shall be modified only by a written agreement, duly executed by all parties hereto.

- c) Entire Agreement. This Agreement represents the entire and integrated Agreement and understanding between parties and supersedes all prior negotiations, statements, representations, and agreements whether written or oral.
- d) Each and every term and condition hereof shall be deemed to be a material element of the Agreement. In event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default hereof.
- e) Discrimination. All parties agree they will not discriminate against any person working under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition, or national origin.
- f) ADA Compliance. All parties agree they will not discriminate against a qualified individual with disability, pursuant to 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.
- g) Indemnification. To the fullest extent permitted by law, SUPPLIER agrees to indemnify and hold harmless the 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 this Agreement except to the extent liability is caused by the sole negligence or willful misconduct of COUNTY. SUPPLIER shall maintain liability insurance for the term of this Agreement sufficient to cover its obligations under this paragraph and provide COUNTY with proof of such insurance.
- h) The parties agree all covenants, agreements, conditions, and terms contained in this Agreement shall be binding upon, apply, and inure to the benefit of the successors and assigns of the respective parties hereto.
- i) Applicable law. 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 the Agreement are fully severable.
- j) Venue. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suitor 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.
- k) 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.

- l) Contingencies. SUPPLIER certifies and warrants 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.
- m) Conflict of Interest. COUNTY and SUPPLIER affirm, to their knowledge, no County employee has any personal beneficial interest whatsoever in the agreement described herein. No staff member of SUPPLIER 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.
- n) 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 limited 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.
- o) 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 parties address listed herein, or when delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.
- p) 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 this 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. This provision is not intended to waive COUNTY's sovereign immunity in any way and shall not be construed to waive COUNTY's sovereign immunity in any way.
- q) 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, within thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.
- r) Invalidity. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, or if 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 provision of this Agreement are fully severable.

- s) 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.
- t) Compliance with Law: CONTRACTOR shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

LARAMIE COUNTY, WYOMING
BOARD OF COMMISSIONERS

By: _____
Chairman

Date: _____

ATTEST:

Debra Lee, Laramie County Clerk

Date: _____

By: Stana Merrill
(SUPPLIER details)

Date: 11-6-23

Reviewed and approved as to form:


Laramie County Attorney

Date: 11/28/23