

**Engineering Services Agreement for Fiscal Years 2021 and 2022
Laramie County, Wyoming/BenchMark Engineers, PC**

This Agreement made and entered into by and between Laramie County, Wyoming, P.O. Box 608, Cheyenne, Wyoming, 82003-0608 (COUNTY), for the benefit of the Laramie County Public Works Department and the Laramie County Planning Department, and BenchMark Engineers, PC, 1920 Thomas Avenue, Suite 200, Cheyenne, WY 82001 (CONTRACTOR).

WHEREAS, the Laramie County Public Works and Planning Departments require ongoing engineering and surveying services for fiscal years 2021 AND 2022, and;

WHEREAS, CONTRACTOR has experience in engineering and surveying and is qualified to provide such service.

NOW THEREFORE IT IS HEREBY AGREED by and between the parties hereto:

1. CONTRACTOR shall be the resource for engineering services utilized by COUNTY during the period of the operation of this agreement. By signature below, CONTRACTOR agrees that nothing in this clause operates to provide an exclusive right to CONTRACTOR to provide engineering services to COUNTY. CONTRACTOR agrees that this Agreement does not bind COUNTY in any manner to offer or provide work to CONTRACTOR. Further, nothing in this clause or agreement limits COUNTY in the choice of entities to which it may offer engineering work.

2. CONTRACTOR will perform services at the request and in the discretion of the Laramie County Public Works Director or the Laramie County Planning Director. The services may consist of the following:

a). Development Review

- Review of site plans and similar development applications.
- Preparation of engineering-specific conditions of approval related to site plans and subdivision permit applications.
- Review of subdivision, site and development improvement plans for both onsite improvements and public right-of-way improvements for compliance with grading, drainage, SWPPP, WYPDES, transportation and County design standards.
- Review of hydrology maps and hydraulic calculations for private and public storm drain systems for compliance with State and County requirements.
- Proactively communicating with private developers and associated design professionals by telephone, e-mail, written correspondence, and face-to-face meetings at the County or consultant offices, whichever is requested by the applicant, to discuss plan check review comments.
- Review of NEPA documents, geotechnical investigations, traffic studies, and similar engineering reports to understand issues that may impact the design of private subdivision or development improvements, and/or public streets or utility

infrastructure.

- Preparation of reports to the Board regarding engineering issues.
- Assignments shall be completed to meet specified deadlines. Firms and individuals shall demonstrate sufficient depth of resources to assure timely service delivery and redundant capability.

b.) Traffic Engineering Services: CONTRACTOR will provide necessary services for the efficient planning of roads, location and design of specific projects as designated, review site plans, preliminary development plans, and final plats for subdivisions, with respect to traffic volumes and general design configuration. CONTRACTOR will also advise COUNTY as to safety issues, review traffic reports and studies submitted by others, and any other services as requested.

c.) Drainage Engineering: CONTRACTOR will provide necessary services pertaining to drainage issues for site plans, preliminary development plans, and final plats; review and make recommendations on drainage reports submitted by others, and any other areas as requested.

d.) Floodplain Management: provide clear, concise recommendations to COUNTY in carrying out the provisions contained in Laramie County's Floodplain Management Regulations including:

- Review all development permit applications to determine that the permit requirements of the regulations have been satisfied;
- Review all development permit applications to determine that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required;
- Review all development permit applications to determine if the proposed development is located in a floodway. If located in a floodway, assure that the encroachment provisions are met;
- When base flood elevation data have not been provided in accordance with the regulations, obtain, review and reasonably utilize any base flood elevation and floodway data available as criteria for requiring that new construction, substantial improvements, or other development in Zone A are administered in accordance with the regulation's Specific Standards;
- Identify and assure that maintenance specifications for altered or relocated portions of watercourses are such that flood-carrying capacity is not diminished;
- Perform interpretation as to the exact location of F.I.R.M. boundaries of the Areas of Special Flood Hazard.

e.) Construction Inspection Services: Perform or cause to perform the construction inspection services for county roads and other appurtenances as designated by the Laramie County Public Works Director or Planning and Development Director including the testing of materials and soils related to the acceptance of public improvements.

f.) Land Surveying Services General Survey work including, but not limited to, records research, road location survey, encroachments, monumentation, plat preparation and

construction-oriented work. In addition, any other survey work which may be required by the Public Works Director.

3. COUNTY may, during the course of this agreement, request modifications or changes in the scope of services to be performed hereunder. COUNTY may also, upon notice to CONTRACTOR, and without consent of CONTRACTOR, elect to delete any task detailed above. If work has been initiated on the task deleted, CONTRACTOR shall be entitled to compensation for any satisfactory work completed prior to deletion. Changes requiring mutual consent shall be in writing as an amendment hereto executed by COUNTY and CONTRACTOR.

4. This Agreement shall be effective from the date of the last signature affixed hereto and remain in full force and effect, unless terminated in accord with the provisions herein, until June 30th, 2022.

5. Payment for CONTRACTOR'S services will be made in accordance with Wyo. Stat. §16-6-602 (as amended) upon presentation of an itemized invoice to the Laramie County Clerk. Each invoice will be reviewed and approved by the Director of Public Works or the Director of Planning and in amounts in accord with "Attachment A" to this agreement attached hereto and incorporated by reference. CONTRACTOR shall provide to the COUNTY a detailed billing outlining hours and expenditures related to specific services rendered by the CONTRACTOR.

6. General Provisions

A. Independent Contractor: The services to be performed by CONTRACTOR are those of an independent contractor and not as an employee of COUNTY. CONTRACTOR is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. CONTRACTOR 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. CONTRACTOR is free to perform the same or similar services for others.

B. Acceptance Not Waiver: COUNTY approval of the reports, and work or materials furnished hereunder shall not in any way relieve CONTRACTOR 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. 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 (7 pages) and Attachment 'A' (2 pages) represent 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. 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 CONTRACTOR 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:** CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR for COUNTY except to the extent liability is caused by the sole negligence or willful misconduct of COUNTY or its employees. CONTRACTOR 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 CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the agreement described herein. No staff member of CONTRACTOR, 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 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.

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 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.

S. **CONTRACTOR** shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

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Signature page

LARAMIE COUNTY, WYOMING

By: _____
Gunnar Malm, Chairman
Laramie County Commissioners

Date _____

ATTEST:

By: _____
Debra Lee, Laramie County Clerk

Date _____

BenchMark Engineers, PC

By:  _____
Scott Larson, President

Date 6/22/20

APPROVED AS TO FORM:

 _____
Mark Voss, Laramie County Attorney

Date 6/22/2020