

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED SUM**

THIS AGREEMENT made and entered by and between

**Laramie County
P.O. Box 608
Cheyenne, WY 82003
(hereinafter OWNER) and**

**Accurate Construction & Electrical Services
909 Fox Farm Road #3
P.O. Box 5207
Cheyenne, Wyoming 82003-5207
(hereinafter CONTRACTOR.)**

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

I. PURPOSE

The purpose of this Agreement is to obtain construction and remodeling services for the Laramie County and City of Cheyenne 911/Dispatch Center, located at 2020 Capitol Avenue, Cheyenne, Wyoming.

II. TERM

This Agreement shall commence and become fully effective on the date last executed by the duly authorized representatives of the parties to this Agreement.

III. PAYMENT

OWNER shall pay CONTRACTOR no more than one hundred and ninety-two thousand two hundred dollars (\$192,200.00) for all services and work performed pursuant to this Agreement. CONTRACTOR shall bill OWNER by a properly executed Laramie County Voucher. No payment shall be made before the last signature is affixed to this Agreement. Payments shall be in accordance with Wyo. Stat. § 16-6-602 (as amended).

IV. RESPONSIBILITIES OF CONTRACTOR

A. **CONTRACTOR** shall complete all the construction services, repairs and remodeling described in Exhibit 1, which is attached hereto and fully incorporated herein. All the

services provided by CONTRACTOR shall be performed and completed in a professional and workmanlike manner. All installation and construction services by CONTRACTOR shall be in accordance with the manufacturer's recommendations.

B. CONTRACTOR agrees to retain all required records for three (3) years after the OWNER makes final payment and all other matters relating to the Agreement are concluded. CONTRACTOR agrees to permit access by the OWNER or any of its duly authorized representatives to any books, documents, papers and records of the CONTRACTOR 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 CONTRACTOR under this contract shall be considered the property of the OWNER and upon completion of the services to be performed, or upon termination of this Agreement for cause, or for the convenience of the OWNER, will be turned over to the OWNER.

C. CONTRACTOR has examined and carefully studied the Contract Documents, addenda and other related data identified in the bidding Documents. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions which may affect cost, progress, performance, or furnishing of the work. CONTRACTOR is familiar with and is satisfied as to all federal, state and local laws and regulations which may affect cost, progress, performance, and furnishing of the Work. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site, and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site. CONTRACTOR acknowledges such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR'S purposes. CONTRACTOR does not consider any additional examinations, investigations, explorations, tests, studies or data are necessary for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.

V. GENERAL PROVISIONS

A. Independent Contractor: The services to be performed by CONTRACTOR are those of an independent contractor and not as an employee of OWNER. 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: OWNER 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. OWNER 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; or (b) upon mutual written agreement by both parties.

D. Entire Agreement: This Agreement (5 pages) and Exhibit 1 (1 page) 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 OWNER 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 OWNER in executing this Agreement. This provision is not intended nor shall it be construed to waive OWNER'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: OWNER 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, OWNER 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. OWNER, however, agrees to waive its immunity based upon this Agreement, solely, for a claim of breach of contract by CONTRACTOR on the condition that in no event will OWNER be liable to CONTRACTOR in excess of the cost of the goods and services purchased by OWNER pursuant to this Agreement.

M. Indemnification: To the fullest extent permitted by law, CONTRACTOR agrees to indemnify and hold harmless OWNER, 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 OWNER except to the extent liability is caused by the sole negligence or willful misconduct of OWNER or its employees. CONTRACTOR shall carry liability insurance sufficient to cover its obligations under this provision and provide OWNER 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: OWNER 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: OWNER'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 OWNER at the end of the period for which funds are available. OWNER shall notify CONTRACTOR at the earliest possible time of the services which will or may be effected 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 OWNER knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to OWNER in the event this provision is exercised, and OWNER 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 OWNER 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. Compliance with Law: CONTRACTOR shall comply with all laws, regulations, and ordinances, whether federal, state or local, including but not limited to the Wyoming Public Works and Contracts Act, Wyo. Stat. §§ 16-6-101 through 16-6-206.

LARAMIE COUNTY, WYOMING

By: Jack Knudson Date _____
Jack Knudson, Chairman, Laramie County Commissioners

ATTEST:

By: Debbie Lathrop Date 2-23-04
Debbie Lathrop, Laramie County Clerk

ACCURATE CONSTRUCTION & ELECTRICAL SERVICES, INC.

By: Dean Bixby Date 2-9-04
Dean Bixby, President

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

REVIEWED AND APPROVED AS TO FORM ONLY:

By: Peter H. Froelicher Date 1/28/04
Peter H. Froelicher
Laramie County Attorney

Exhibit 1

Contract Estimate
Accurate Construction & Electrical Services Inc.
909 Fox Farm Road #3
P.O. Box 5207
Cheyenne, WY 82003-5207
Dean Bixby, President

Scope of Work:

Construction:	Cost
Ceilings	\$ 6,800.00
HVAC	(not to exceed) \$ 6,800.00
Flooring	\$ 3,900.00
Painting	\$ 4,900.00
Computer Flooring/Carpet	\$25,250.00
Misc. Supplies	\$ 6,050.00
Labor	<u>\$11,800.00</u>
Total Construction	\$65,500.00

Electrical:	
Generator	\$29,450.00
Generator Rack	\$ 6,950.00
Power Distribution	\$ 7,975.00
Saw Cutting and Core Drilling	\$ 3,175.00
Power for Temporary Dispatch Facility	\$ 6,900.00
Branch Circuits & Lighting	\$ 8,370.00
Power to Work Stations	\$ 4,960.00
Cat 5 Line Installation	\$ 6,900.00
New Main Breaker	\$ 985.00
New Power Panel	\$ 1,100.00
Labor	<u>\$47,235.00</u>
Total Electrical	\$124,000.00

Building Permit:	<u>\$ 2,700.00</u>
Total	\$192,200.00

LARAMIE COUNTY CLERK BOARD OF COUNTY COMMISSIONERS AGENDA ITEM PROCESSING FORM

1. DATE OF PROPOSED ACTION: February 17, 2004

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: County Commissioners

APPLICANT: Patrick Byrne

AGENT:

4. DESCRIPTION: Consideration of a contract between Laramie County and Accurate Construction & Electrical Services for construction and remodeling services for the Laramie County and City of Cheyenne 911/ Dispatch center, located at 2020 Capital Avenue, Cheyenne, WY.

Amount \$\$192,200.00

From 02/17/2004

To 12/01/2004,

5. DOCUMENTATION: 2 Originals and (4) four copies

Commissioner

Clerks Use Only:

Signatures

Humphrey _____

Knudson _____

Ketcham _____

Action _____

Postponed/Tabled _____

Co Attny _____

Assist Co Attny _____

Grants Manager _____

Outside Agency _____