

CONSTRUCTION REPAIR AGREEMENT
Between
LARAMIE COUNTY and AP MOUNTAIN STATES, LLC

THIS AGREEMENT is made and entered into by and between Laramie County, P.O. Box 608, Cheyenne, Wyoming 82001 ("COUNTY") and AP Mountain States, LLC, d/b/a Adolfson & Peterson Construction ("CONTRACTOR"). The parties agree as follows:

I. PURPOSE

The purpose of this Agreement is for the CONTRACTOR to perform work that include but is not limited to, the reconstruction of the exterior eaves systems and flashing at the clerestory pop-ups for the Laramie County Juvenile Services Center, as fully described in CONTRACTOR's scope of work, which is attached and incorporated into this Agreement by this reference as Exhibit A.

II. TERM

This Agreement shall run from the date of the last affixed signature and shall remain in full force and effect until completion of the work and services to be provided by the CONTRACTOR, unless terminated pursuant to the provisions of this Agreement, or pursuant to federal or state statute, rule or regulation.

III. PAYMENT

The COUNTY is not responsible for any cost associated with the work and material to be provided by the CONTRACTOR, as described in Exhibit A. Any payments due under this Agreement shall be made in accordance with Wyo. Stat. §16-6-602 (as amended) that requires payment within forty-five (45) days after receipt of a correct notice of amount due for the goods or services provided.

IV. RESPONSIBILITIES OF CONTRACTOR.

A. CONTRACTOR shall provide the labor and materials necessary to complete the project as described in Exhibit A.

B. CONTRACTOR shall coordinate with the COUNTY and schedule repairs during times that will have the least impact on the services provided in this facility.

C. CONTRACTOR 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. CONTRACTOR agrees to make available to the COUNTY 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 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.

D. CONTRACTOR shall perform all work in a professional manner in accordance and conformity with accepted industry standards and all warranty requirements. CONTRACTOR shall receive and forward to the COUNTY, for their review and records, all written warranties and related documents. CONTRACTOR warrants to the COUNTY that materials furnished under the Agreement will be of good quality new or re-used, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform to the requirements of the Agreement. CONTRACTOR shall also perform the work in accordance and conformance with all applicable laws, regulations, codes, including, but not limited to, applicable Laramie County and City of Cheyenne ordinances and codes.

VI. GENERAL PROVISIONS

A. 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.

B. Independent Contractor: The services to be performed by CONTRACTOR are those of an independent contractor and not as an employee of Laramie 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.

C. Entire Agreement: This Agreement (10 pages, inclusive of any Exhibits and Attachments) represent the entire and integrated agreement and understanding between the parties and supersede all prior negotiations, statements, representations and agreements, whether written or oral.

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

E. 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 inability to enforce, 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including Wyo. Stat. §§ 1-39-101 through 121, as amended, 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. Indemnification: To the fullest extent permitted by law, CONTRACTOR agrees to indemnify and hold harmless COUNTY, its elected and appointed officials, employees 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.

M. Insurance: The CONTRACTOR shall obtain insurance, and provide certificates and policies, to the COUNTY's satisfaction and subject to requirements substantially similar to those set out in Exhibit 5-Insurance Requirements for Construction Contracts, which is attached and incorporated her by reference.

N. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR'S 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.

O. 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.

P. Compliance with Law: 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: _____ Date _____
Gunnar Malm, Chairman, Laramie County Board of Commissioners

ATTEST:

By: _____ Date _____
Debra Lee, Laramie County Clerk

CONTRACTOR: AP MOUNTAIN STATES, LLC

By: Christopher Meek Digitally signed by Christopher Meek
DN: cn=Christopher Meek, o=End Users,
ou=AP Users, DC=ap, DC=mont Date 01/15/2021
Name (printed): Christopher Meek
Title: Sr. Project Manger

REVIEWED AND APPROVED AS TO FORM ONLY:

By: _____
Laramie County Attorney's Office

Date 1/20/21

Exhibit 5
Insurance Requirements for Construction Contracts

Contractor shall procure and maintain for the duration of the contract, *and for five years thereafter*, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Service Office Form Number CA 0001 covering Code 1 (any auto), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

3. **Workers’ Compensation** insurance as required by the State of Wyoming with Statutory Limits, and Employers’ Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

4. **Builder’s Risk** (Course of Construction) insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

5. **Surety Bonds:** Not required.

6. **Professional Liability** (if Design/Build) with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 policy aggregate.

7. **Contractors’ Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the contractor maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The Entity, its officers, officials, employees, and volunteers are to be covered as additional insured's** on the CGL policy with respect to liability arising out of with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contract's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used.)

2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officer, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall provide that coverage shall not be cancelled, except with notice to the Entity.

Builder's Risk (Course of Construction) Insurance

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the Entity as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the Entity, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation, and testing at the Entity's site.

Claims Made Policies

If any of the coverage required is written on claims-made coverage form:

1. The retroactive date must be shown, and must be before the date the execution date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.

3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

4. A copy of the claims reporting requirements must be submitted to the Entity for review.

5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractor's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Entity for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable insurance language effecting coverage required by this contract. All certificates and endorsements are to be received and approved the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

Exhibit A

Scope:

Provide all labor and materials necessary to re-construct the exterior eave systems ensuring proper roof venting and moisture barrier to the interior space. This includes but is not limited to all safety measures to ensure safe working conditions, scaffolding, ladders, lifts, demolition, replacement of damaged roofing and miscellaneous metals removed or handled during these repairs, replacement of damaged masonry, installation of wood blocking, insulation, caulking, spray foam, etc. Repair locations are included in the Exhibits attached to this Contract.

Provide all labor and materials necessary to ensure no moisture infiltration around the clerestory window pop-ups on the south side of the building. This includes but is not limited to all safety measures to ensure safe working conditions, ladders, demolition of existing exterior finishes and roofing, replacement of miscellaneous metals, replacement of vapor barrier if necessary, replacement of metal flashing and trim if necessary, caulking if necessary, etc.

Existing conditions not found in accordance with the repair design details included in the Exhibits attached to this Contract shall be brought to the attention of the Owner and Architect. All parties shall come to an agreement for the repair procedure to be instituted prior to work continuing.

The Contractor shall not be responsible for repairs that are noted to be existing prior to the work in this scope. This includes existing water damage on the interior of the building, landscape repairs, parapet cap repairs, roofing repairs. Any damage to the building and grounds resulting from the work within this scope shall be repaired by the Contractor.

A one year warranty shall be provided for the specific work completed during the performance of this scope identified in Exhibit A of work for all material and repairs conducted by the contractor. This warranty does not extend to any material and work outside the scope items mentioned herein. This warranty does not cover the performance of the new design. This warranty shall commence when Laramie County issues a letter of substantial completion and shall be enforced for one year. The date of substantial completion shall be agreed to by all parties.