

**AGREEMENT FOR SERVICES AS CONSTRUCTION MANAGER AS
ADVISOR AND OWNER'S REPRESENTATIVE between LARAMIE
COUNTY, WYOMING AND T C Solutions**

This agreement, is made between Laramie County, ("COUNTY" or "OWNER") and T C Solutions, LLC (CONTRACTOR). The purpose of the agreement is for COUNTY to retain the services of CONTRACTOR in the capacity as Construction Manager as Advisor and OWNER's Representative in regard to projects associated with four (4) ballot propositions approved by the taxpayers of Laramie County in November of 2021.

I. SERVICES:

CONTRACTOR's position shall include but not be limited to functions and obligations as follows:

- During planning and design:
 - Review the OWNER program, needs and desired outcomes;
 - Evaluate the constructability of the design;
Provide advice in regard to, and assist in preparation and/or review on behalf of OWNER of preliminary estimates of the cost of the work and any alternates;
 - Provide advice in regard to, and assist in preparation and/or review on behalf of owner any schedules needed to perform the construction;
 - Provide advice in regard to, and assist in preparation and/or review on behalf of owner in the evaluation and sequencing of the construction tasks;
 - Provide advice in regard to the delivery method to be used during for the contracted construction process;
 - Provide advice e upon and review in order to identify long lead-time items;
and
 - Advise upon, review and assist in preparation of bid packages as needed.
- During any bidding process:
 - Recommend criteria to pre-qualify contractors;
 - Recommend contractors who meet project qualifications;
 - Review and analyze competing bids;
 - Make recommendations for selection of contractors and materials;
 - Participate in negotiating price and other contractor terms; and

Assist the OWNER in preparing and/or reviewing contracts.

- During construction:
 - Provide on-site examination of the construction;
 - Inspect the progress of the work;
 - Assist, advise upon, make recommendations and monitor scheduling and the sequencing of construction;
 - Maintain and update the project schedule;
 - Schedule and conduct required project meetings;
 - Monitor and evaluate costs in relation to budget requirements;
 - Review and analyze contractor payment requisitions;
 - Review and advise on pertinent submittals;
 - Review, analyze, and negotiate change orders; and
 - Provide regular reporting to the OWNER on the progress and cost of the work.

Preconstruction consultation services as indicated, including preparation of requests for proposal in regard to designers, architects, and construction entities regardless of the form and/or function required for each particular project. This would include but not be limited to, advertisement for bids and/or responses and review of and advice to the COUNTY upon receipt of bids and responses.

CONTRACTOR's services shall further extend to involvement in construction administration and management, including a review of and consultation with the COUNTY in regard to contracts with third parties for the projects and in which capacity, he shall act as the OWNER's representative in all required capacities in regard to the projects subject to this agreement.

CONTRACTOR shall ensure that his role, responsibility and any further specificity in regard to his authority shall be defined or further outlined, as necessary in any agreement with third parties in connection with the carrying out of the projects.

CONTRACTOR shall schedule and attend regular meetings with the OWNER and any other necessary parties in regard to these projects, to review and discuss design and construction at each phase of the project. CONTRACTOR shall consult

regularly with OWNER and any project designer, architect or contractor regarding the use of the site, improvements, selection of materials, scheduling and equipment.

CONTRACTOR shall be responsible for review of construction documents including but not limited to those done by designers or architects. As the OWNER's representative CONTRACTOR shall be authority to interact with negotiate and request changes or modifications with such specific authority as to 'change order' as provided herein.

As indicated herein, among factors to be considered would be cost estimates, the accuracy thereof and its relationship to construction documents. CONTRACTOR shall also encourage and be alert to any value engineering which may be reasonably available in regard to the projects.

CONTRACTOR shall review invoices bills submissions and request for payment by retained third parties and shall make such recommendations to the COUNTY/OWNER as required in regard to their payment, compliance with contractual obligations and any other matter associated with these costs. It is the intent of parties that one of CONTRACTOR's primary responsibilities has to be aware of budgets in association with each project, the amount set allocated by each ballot proposition and the need for projects to be brought to completion within allowable budgetary limitations.

Factors included in CONTRACTOR's duties include, but are not limited to; analysis of materials and building systems in regard to durability, lifecycle cost, code compliance, analysis of availability and constructability. CONTRACTOR shall be aware of and work with parties to the projects to minimize adverse effects of labor or material shortages or increases in cost, time requirements for procurement installation and construction completion. This would further include attention to factors relating to construction costs including estimates alternative designs and materials, preliminary budgets, possible economies in regard to the construction and other matters to reduce cost and maintain schedules.

In providing services CONTRACTOR shall use reasonable skill and judgment, in accord with accepted industry standards to complete the projects in an expeditious and economical manner consistent with the interests of the OWNER. The CONTRACTOR shall endeavor in good faith to

promote harmony and cooperation among the OWNER, and any parties retained for services in association with the projects.

As CONTRACTOR works to create and review requests for proposal, as well as reviews of bids or responses designed and construction of any contracts associated with third parties for the projects, CONTRACTOR agrees to be attentive to the need to comply with appropriate Wyoming law including but not limited to, W.S. 16-6-103, 104, 106, 107, and 203, relating to preferences for Wyoming materials, supplies and labor.

CONTRACTOR shall maintain records of his work in accord with industry standards, and shall preserve all financial contractual or other records for a minimum of four (4) years after completion of this agreement.

II. CONTRACTOR'S SPECIFIC AUTHORITY:

COUNTY, through the Laramie County Commissioners, retain the final authority to enter into or amend any contract, approve changes in the scope of the projects and to improve and extend any change orders or change directives and or agree to an extension to time periods and dates including but not limited to, the dates associated with substantial or final completion.

In order to facilitate expeditious completion of the project, COUNTY delegates to CONTRACTOR a total authority to approve change orders or directives up to an amount of \$25,000. CONTRACTOR shall attempt to consult with the COUNTY in regard to also change orders in advance to the degree reasonably possible and the County Commissioners shall be advised, as soon as possible in regard to any change orders or directives approved by CONTRACTOR within or under that amount.

CONTRACTOR, in consultation with the COUNTY as available and necessary, shall have the authority to provide "notice to proceed" and establish the date of "substantial completion" on behalf of the COUNTY.

COUNTY may provide further clarification or specific additional authority to CONTRACTOR as required. Such extensions of authority shall be provided in writing and considered a settlement or addendum to this agreement and be fully incorporated herein upon issuance.

III. TERM:

This Agreement shall commence at the point all signatures are placed upon it by the parties. The agreement shall continue until completion of all services provided by CONTRACTOR up to and including certificates of final completion regard each project as well as completion of any services which may be associated with warranties on the projects and/or termination of the Agreement pursuant to its terms.

CONTRACTOR and COUNTY agree and understand that no exact time period may be ascertained for the length of the projects subject to this Agreement at the initiation of this Agreement. However, it is the intent of the parties that CONTRACTOR's services shall continue, unless otherwise modified by written agreement between the parties, to the extent of the warranty period in association with each of the projects. This time period is expected to be approximately one year beyond "substantial completion" of the projects.

Further definition of the term of this agreement in association with all, or any of the individual projects, may be achieved through mutual written agreement of the parties.

IV. PAYMENT:

Payments for contract services are to be provided through the County General Fund. It is intended that the COUNTY will reimburse said general fund payments, the appropriate funds allocated in the 2021 specific purpose tax approved by Laramie County voters. Specifically, the following propositions:

Ballot Proposition 2] A) 7), funds allocated an amount of \$4,060,452.69 "to Laramie County for Emergency Management and Cheyenne/Laramie County Health Department-Joint Powers Bd. (EMA/CLCHD) storage building [communication and response vehicles-storage of equipment, supplies]

Ballot Proposition 7] A) 2), funds allocated in the amount of "\$6,997,833.90 "to Laramie County for sewer connection for Archer facility."

Ballot Proposition 8] A) 2), funds allocated to the amount of \$1,559,213.83 “to Laramie County for Laramie County Events Department-archer event center improvements.”

Ballot Proposition 9] A), funds allocated in the amount of \$10,151,131.22 and interest earned thereon and to Laramie County for construction of a new Laramie County Senior Activity Center.”

The total amount anticipated to be collected in regard to the above noted projects/ballot proposition is \$ 22,768,631.64.

CONTRACTOR shall be paid based on invoices submitted, from Laramie County General funds, not from funds collected pursuant to the above noted ballot propositions. Laramie County shall, at appropriate time and in accord with its budgetary functions, allocate funds for reimbursement of CONTRACTOR’s costs in the requisite amounts as specified herein, specific to each project, from collections from the relevant ballot propositions.

CONTRACTOR shall submit monthly invoices for work performed. The invoices shall indicate which ballot proposition/project has been the subject of the work net monthly and a description as to the nature of the work performed subject to the specific invoice.

CONTRACTOR agrees and warrants that invoices must indicate with specificity work associated with each ballot proposition.

Invoices are to be submitted to the Laramie County Director of Public Works (Director) who shall serve as the Commissioners initial supervisor and liaison with CONTRACTOR. CONTRACTOR agrees and understands that the Director may request further information, greater specificity and/or documentation associated with any aspect of the work performed. CONTRACTOR in its discretion may invoice separately for each ballot proposition or submit single invoices in which work on individual ballot propositions is specifically identified.

CONTRACTOR further agrees, as the County’s Construction Manager, Advisor and Representative, to provide regular updates, informational briefings, provide documentation and/or further information to the County Commissioners regularly and/or as directed. Upon review and approval of CONTRACTOR’s invoices by the Director of Public Works, the Director will submit them to the County Finance Department for payment in accord with applicable County policies.

Upon satisfactory completion of the work specified herein CONTRACTOR shall be paid a total of 1.5% of the total amount of the Senior Center Project and 2.0% of individuals totals of the other three ballot proposition projects as a fee for services. Amount shall be \$ 341,529.48. Potential bonus in the amount of \$113,843.16 may be awarded in the discretion of the Board of commissioners who could contract or meet or exceed the performance standards described herein.

Payment shall be as provided below upon submission of invoices to the COUNTY. Invoices or accompanying documentation shall indicate the work performed during the relevant period subject to the invoice.

EMA Fleet Storage			
Design/Procurement	Construction	Closeout	Total
\$ 20,302.26	\$ 56,846.33	\$ 4,060.45	\$ 81,209.04

Senior Activity Center			
Design/Procurement	Construction	Closeout	Total
\$ 60,906.79	\$ 131,964.71	\$ 10,151.13	\$ 203,022.62

Archer Sewer Connection				
Programming	Design/Procurement	Construction	Closeout	Total
\$ 27,991.34	\$ 34,989.17	\$ 69,978.34	\$ 6,997.83	\$ 139,956.68

Archer Events Center Improvements			
Design/Procurement	Construction	Closeout	Total
\$ 10,914.50	\$ 18,710.57	\$ 1,559.21	\$ 31,184.28

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 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 sixty (60) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.

D. Entire Agreement: This Agreement (12 pages), Exhibit 1: "Insurance Requirements" (3 pages), and any added supplemental addendums, represent the entire and integrated agreement and understanding between the parties and supersede 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, religion, gender, creed, disability or national origin.

K. 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.

L. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/ Sovereign Immunity, as provided by any applicable law including Wyo. Stat. § 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, including the filing potential filing of a mechanics or materialmen's liens, 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 insurance sufficient to cover its obligations under this provision, in accord with the requirements listed in Exhibit 1 of this Agreement, the requirements of which are fully incorporated into terms and conditions of this agreement and provide COUNTY with proof of such insurance.

N. Insurance: CONTRACTOR shall obtain all insurance required in the attached Exhibit 1: "Insurance Requirements" and shall file certificates of such insurance satisfactory to the COUNTY and approved by the COUNTY.

O. 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.

P. 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.

Q. 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.

R. 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.

S. 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.

T. Agreement Controls: Where a conflict exists or arises between any provision or condition of this Agreement or the provisions of any subsequent agreements executed with third parties in connection with the work performed herein, to wit: the projects indicated the provisions and conditions set forth in this Agreement shall control.

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

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COUNTY, WYOMING AND T C Solutions**

Signature Page


LARAMIE COUNTY, WYOMING

By: _____ Date _____
Chairman, Laramie County Commissioners

ATTEST:

By: _____ Date _____
Debra Lee, Laramie County Clerk

CONTRACTOR:

By:  Date 4/26/22
T C Solutions: Director/Organizer

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

REVIEWED AND APPROVED AS TO FORM ONLY:

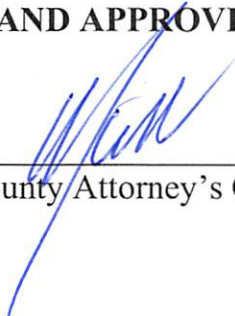
By:  Date 4/27/22
Laramie County Attorney's Office

Exhibit A
Insurance Requirements for Professional Services

Lead shall procure and maintain for the duration of the contract, *and for 5 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 Lead, his agents, representatives, employees, subcontractors, contractors, or consultants.

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 & advertising injury with limits no less than \$1,000,000 per occurrence, and endorsed with Stop Gap coverage providing Employers Liability insurance with limits no less than \$1,000,000 per accident for bodily injury or disease. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Umbrella or Excess Liability:** Lead may achieve required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in same or greater coverage as coverages required in paragraphs 1 and 2 above, and in no event shall any excess or umbrella liability insurance provide narrower coverage than primary policy. Excess policy shall not require exhaustion of underlying limits only through actual payment by underlying insurers.
4. **Workers Compensation** as required by the State of Wyoming, with Statutory Limits.
5. **Professional Liability** with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If Lead maintains broader coverage and/or higher limits than minimums shown for insurance, including but not limited to umbrella or excess liability insurance, the Owner requires and shall be entitled to the broader coverage and/or higher limits maintained by Lead. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Owner.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either: the Lead shall cause the insurer to reduce or eliminate such self-insured retentions as respects the Owner, its officers, officials, employees, and volunteers; or the Lead shall provide a financial guarantee satisfactory to the Owner guaranteeing payment of losses and related investigation, claim administration, and defense expenses.

Other Insurance Provisions

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

1. **The Owner, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lead 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 Lead. General liability coverage can be provided in the form of an endorsement to the LEAD's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).**

2. **For any claims related to this project, the Lead's insurance coverage shall be primary and noncontributory insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Owner, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees, or volunteers shall be excess of the Lead's insurance and shall not contribute with it.**

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

Claims Made Policies

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

1. **The retroactive date must be shown, and this date must be before 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 contract work.**
3. **If coverage is canceled 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 LEAD 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 Owner for review.**

Acceptability of Insurers

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

Waiver of Subrogation

Lead hereby agrees to waive rights of subrogation which any insurer of Lead may acquire from Lead by virtue of the payment of any loss. Lead agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

Verification of Coverage

Lead shall furnish the Owner 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 by the Owner within 2 weeks of work commencing. However, failure to obtain the required documents prior to the work beginning shall not waive the Lead's obligation to provide them. The Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Subcontractors

Lead shall require and verify that all subcontractors, contractors, or consultants maintain same insurance meeting all requirements stated herein. Lead shall ensure that Owner is an additional insured on insurance required from subcontractors, contractors, or consultants. For CGL coverage subcontractors, contractors, or consultants shall provide coverage with a form at least as broad as CG 20 38 04 13.

Special Risks or Circumstances

Owner reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.