

LARAMIE COUNTY CLERK BOARD OF COUNTY COMMISSIONERS AGENDA ITEM PROCESSING FORM

1. DATE OF PROPOSED ACTION: 2/7/2012

2. AGENDA ITEM: ☐ Appointments ☐ Bids/Purchases ☐ Claims
☐ Contracts/agreements/leases ☐ Grants ☐ Land Use: Variances/Board App/Plats
☐ Proclamations ☐ Public Hearings/Rules & Regs ☐ Reports & Public Petitions
☐ Resolutions ☐ Other: _____

3. DEPARTMENT: LARAMIE COUNTY MAINTENANCE

4. APPLICANT: Guy Cleveland AGENT: COUNTY ATTORNEY

5. CONSIDERATION OF A NAME CHANGE IN THE CURRENT CONTRACT WITH LARAMIE COUNTY FOR THE ELECTRONIC SIGN PLACEMENT IN THE ATRIUM FROM FOUR GUYS TO RIGHT BRAIN DIGITAL

Amount

From

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

<u>Commissioner</u>	<u>Clerks Use Only:</u>
Woodhouse _____	Signatures
Thompson _____	Co Attny _____
Humphrey _____	Deputy Co Attny _____
Action _____	Grants Manager _____
Postponed/Tabled _____	Outside Agency _____

120207-02

**ELECTRONIC SIGN PLACEMENT AGREEMENT
LARAMIE COUNTY, WYOMING /NAME CHANGE OF FOUR GUYS TO
RIGHT BRAIN DIGITAL D.B.A. CAPTIVE ADS**

THIS AGREEMENT is made and entered into by and between Laramie County, Wyoming, P.O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY") and Right Brain Digital DBA Captive Ads, 3048 Homestead Ave., Cheyenne, WY 82001 ("CONTRACTOR"). The parties agree as follows:

I. PURPOSE

The purpose of this Agreement is to provide the terms and conditions for the placement of an electronic sign in the Atrium of the Laramie County Courthouse.

II. TERM

This Agreement shall commence on the date last executed by the duly authorized representatives of the parties to this Agreement, and shall remain in full force and effect until completely performed.

III. RESPONSIBILITIES OF COUNTY

COUNTY shall be allowed to review and or preview advertisements or other messages which will appear on the electronic sign and will be allowed veto power of any messages which the Board of Commissioners feel is inappropriate for presentation in the Courthouse complex. Such messages may include, but not be limited to, messages advocating political candidacy or which contain offensive or sexual content or themes. Except to the extent that County exercises its rights under this sub-section, CONTRACTOR agrees and warrants that it is solely responsible for the content of messages, not presented for the County, that appear on the sign.

IV. RESPONSIBILITIES OF CONTRACTOR

A. CONTRACTOR shall pay the Laramie County the cost of the electricity for the operation of the sign in the Atrium and will also allow the County to place such public service announcements or other messages as they deem appropriate on the sign in the Atrium and will also arrange for these messages to appear on the other similar signs operated by CONTRACTOR in the Laramie County area.

B. CONTRACTOR will pay the costs for installation and/or removal of the sign including any power needs. CONTRACTOR shall either reimburse County for expenses associated with installation and/or removal or use and pay a County approved contractor for such work.

C. Blum
bls

C. **CONTRACTOR** agrees to retain any 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 permit access by 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.

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 thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.

D. **Entire Agreement:** This Agreement (5 pages) represents 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: omitted

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.

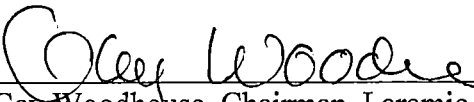
S. Compliance with Laws: CONTRACTOR shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

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LARAMIE COUNTY, WYOMING /RIGHT BRAIN DIGITAL DBA CAPTIVE ADS**


Signature Page

LARAMIE COUNTY, WYOMING

By: 
Gay Woodhouse, Chairman, Laramie County Commissioners

Date 2/8/12

ATTEST:

By: 
Debbye Lathrop, Laramie County Clerk

Date 2/8/12


CONTRACTOR:

By: 
Guy Cleveland

Date 2/9/12

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

REVIEWED AND APPROVED AS TO FORM ONLY:

By: 
Mark T. Voss, Laramie County Attorney

Date 2/7/12