

**LARAMIE COUNTY CLERK
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM PROCESSING FORM**

1. DATE OF PROPOSED ACTION: October 18, 2016

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: Laramie County Attorney

APPLICANT: Capitol Counseling

AGENT: Mark Voss

4. DESCRIPTION: Consideration of a mental health evaluation services agreement with Capitol Counseling LLC. who will provide occasional mental health evaluation services in the Laramie County Detention Facility and to testify in involuntary hospitalization proceedings in court.

Amount \$155.00/hr

From

To

5. DOCUMENTATION: 2 Originals

RECEIVED AND APPROVED AS
TO FORM ONLY BY THE
LARAMIE COUNTY ATTORNEY

Clerks Use Only:

Commissioner

Signatures

Ash _____

Co Attny _____

Heath _____

Assist Co Attny _____

Holmes _____

Grants Manager _____

Kailey _____

Outside Agency _____

Thompson _____

Action _____

Postponed/Tabled _____

MENTAL HEALTH EVALUATION SERVICES AGREEMENT
between
LARAMIE COUNTY, WYOMING and CAPITOL COUNSELING, LLC

THIS AGREEMENT is made and entered into by and between Laramie County, Wyoming, P.O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY") and Capitol Counseling, LLC, 1918 Thomes Ave., Cheyenne Wyoming 82001 ("CONTRACTOR"). The parties agree as follows:

I. PURPOSE

The purpose of this Agreement is for CONTRACTOR to provide occasional mental health evaluation services in the Laramie County Detention Facility and to testify in involuntary hospitalization proceedings in court.

II. TERM

This Agreement shall commence on the date of the last signature necessary and shall remain in full force and effect until terminated as provided in this Agreement.

III. RESPONSIBILITIES OF COUNTY

COUNTY shall pay CONTRACTOR a rate of one hundred and fifty-five dollars (\$155.00) per hour. Payment will be made monthly upon receipt of CONTRACTOR'S invoice to the COUNTY, or submission of other documentation certifying completion of the services, and upon review and approval by the County Attorney. 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 provide occasional mental health evaluations and testimony in court for inmates in the Laramie County Detention Facility as requested by the County Attorney.
- B. CONTRACTOR shall be responsible for obtaining a signed, independent review of evaluation reports by a licensed physician before use in court.

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 (4 pages plus Exhibit 1) 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, 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, including 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.

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 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 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.

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.

T. Agreement Controls: Where a conflict exists or arises between any provision or condition of the this Agreement, and any provisions and conditions set forth in its attachments this Agreement shall control.

LARAMIE COUNTY, WYOMING

By: _____ Date _____
Buck Holmes, Chairman, Laramie County Commissioners

ATTEST:

By: _____ Date _____
Debra Lee, Laramie County Clerk

CONTRACTOR: CAPITOL COUNSELING, LLC

By:  _____ Date 10/07/2016
Thomas D. Kirk, Ph.D, Co-Owner/Therapist

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

REVIEWED AND APPROVED AS TO FORM ONLY:

By:  _____ Date 10-7-16
Bern Haggerty, Deputy Laramie County Attorney

Exhibit 1

Insurance Requirements

Contractor shall procure and maintain for the duration of the contract 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 and the results of that work 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 **\$2,000,000** 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:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

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

4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the Contractor’s profession with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate. *(If applicable – see footnote next page)*

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.

Other Insurance Provisions

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

Additional Insured Status

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 work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form

of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

Primary Coverage

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

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice of Entity.

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claims administration, and defense expenses within the retention.

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.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the 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 date, the contractor must

purchase “extended reporting” coverage for a minimum of *five (5)* years after completion of work.

Verification of Coverage

Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. 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 complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

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