

ARCHER WATER TOWER EMERGENCY REPAIR AGREEMENT LARAMIE COUNTY, WYOMING /TANCO ENGINEERING

THIS AGREEMENT is made and entered into by and between Laramie County, Wyoming, P.O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY") and Tanco Engineering, 1400 Taurus Ct., Loveland, Colorado 80537 ("CONTRACTOR"). The parties agree as follows:

I. PURPOSE

The purpose of this Agreement is for CONTRACTOR to provide emergency repair services to COUNTY's Archer Complex Water Tower ("Water Tower") located at or near 11453 Thunder Ridge Road, Cheyenne Wyoming 82009.

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 pay CONTRACTOR in accordance with the "TIME and MATERIAL RATE SHEET" attached hereto as Attachment 'A' and incorporated fully by this reference. Payment will be made upon receipt of the CONTRACTOR'S invoice to the COUNTY. 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 the following services, which include, but are not necessarily limited to, stabilization of the roof damage the Water Tower incurred, repair of said damage and any other necessary repairs, inspecting said damage and the surrounding areas of the Tower, and providing COUNTY with photographs of the damage identified and completed repairs. Repairs to the Tower shall be made for the COUNTY to resume ordinary operation of the Archer Complex Water Tower and water system, allowing the COUNTY to provide safe drinking water to all Archer Complex system users.

B. 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 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. It is agreed that finished or unfinished documents, data or reports, prepared by CONTRACTOR under this contract 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.

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. Preference-Wyoming Labor Should the subject of this agreement constitute the construction, reconstruction, improvement, enlargement, alteration, or repair, of any public works project or improvement, by signature below CONTRACTOR acknowledges the requirement for the use of Wyoming labor pursuant to W.S. §16-6-203 as amended, except in circumstances as provided by law including, but not limited to W.S. §16-6-201 et seq.

C. 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.

D. 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.

E. Entire Agreement: This Agreement (5 pages) and Attachment 'A' (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.

F. 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.

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

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

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 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. This provision shall not be interpreted or construed to permit COUNTY to terminate this Agreement in order to acquire similar services from another party.

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

U. Counterparts: This Agreement may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Agreement. Each person signing this Agreement represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, and that all necessary approvals and conditions precedent to his or her execution have been satisfied.

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**ARCHER WATER TOWER EMERGENCY REPAIR AGREEMENT
LARAMIE COUNTY, WYOMING /TANCO ENGINEERING**

Signature Page

LARAMIE COUNTY, WYOMING

By:  _____ Date 12/17/21
Chairman, Laramie County Commissioners

ATTEST:

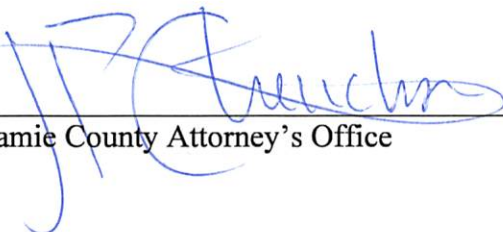
By:  _____ Date 12/17/2021
Laramie County Clerk

CONTRACTOR:

By: _____ Date _____

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

REVIEWED AND APPROVED AS TO FORM ONLY:

By:  _____ Date 12/17/21
Laramie County Attorney's Office

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Signature Page

LARAMIE COUNTY, WYOMING

By: _____ Date _____
Chairman, Laramie County Commissioners

ATTEST:

By: _____ Date _____
Laramie County Clerk

CONTRACTOR: _____ Date _____
By: Josh D. Flock 12/17/21

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

REVIEWED AND APPROVED AS TO FORM ONLY:

By: _____ Date 12/17/21
J. J. French
Laramie County Attorney's Office



2021

"TIME and MATERIAL" RATE SHEET

<u>Labor by Classification</u>	<u>Regular Rate</u>	<u>Overtime Rate</u>	<u>Double time Rate</u>
Foreman	\$70.00/hr.	\$84.00/hr.	\$99.00/hr.
Welder	\$65.00/hr.	\$79.00/hr.	\$93.00/hr.
Helper/ Laborer	\$49.00/hr.	\$62.00/hr.	\$75.00/hr.
Safety Watch	\$42.00/hr.	\$54.00/hr.	\$66.00/hr.
<u>TANCO Owned Equipment</u>			\$9.75/hr.
Winch Trucks			
Pickups			
30' Trailers			
Welding Machines			
Air Tools			
Fresh Air Equipment			
Safety Equipment			
Test Equipment			
Boilermaker & Pipefitter Fitup and Hand Tools			
Tank Scaffolding and Rigging Equipment			
Hand Tools			
<u>Consumable Supplies</u>			\$9.25/hr.
e.g. Weld Rod, Gas, Fuel, Gloves, Oxygen, Acetylene			
<u>Third Party Equipment Rental</u>			Cost plus 10%
e.g. Cranes, Manlifts			
<u>Material and Freight</u>			Cost plus 10%
<u>TANCO Subcontractors</u>			Cost plus 10%
<u>Mobilization-Demobilization</u>			
			\$1.50/mile for each person
			\$1.25/mile for each vehicle
			\$1.00mile for each trailer