

ADDENDUM TO CUSTOMER VALUE AGREEMENT BETWEEN WYOMING MACHINERY COMPANY AND LARAMIE COUNTY

THIS ADDENDUM is made and entered into by and between Laramie County, Wyoming, P. O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY") and Wyoming Machinery Company, 7819 Hutchins Dr, Cheyenne, WY 82001 (hereinafter, "CONTRACTOR").

I. PURPOSE

The purpose of this Addendum is to modify the proposal to assist Laramie County with provision of Caterpillar parts only kits for filter replacements and SOS Services as needed under the terms of the Customer Value Agreement, attached hereto as Attachment 'A' and fully incorporated herein (hereinafter "Agreement").

II. TERM

This Addendum shall commence on the date last executed by the duly authorized representatives of the parties to this Addendum and Agreement and shall remain in full force pursuant to the terms of the Agreement and this Addendum.

III. RESPONSIBILITIES OF CONTRACTOR

A. CONTRACTOR shall provide and complete the services described in Attachment 'A', attached hereto and fully incorporated herein.

B. COUNTY shall pay CONTRACTOR on a per invoice basis. 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. ADDITIONAL PROVISIONS

1. 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.

2. 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.

3. Entire Agreement: The Agreement (3 pages) and Addendum (5 pages) represents the entire and integrated agreement and understanding between the parties in regard to the subject matter herein and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

4. Assignment: Neither this Agreement and Addendum, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

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

6. 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.

7. Invalidity: If any provision of this Agreement and Addendum 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 the provisions of this Agreement and Addendum are fully severable.

8. Applicable Law and Venue: The parties mutually understand and agree this Agreement and Addendum 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 and Addendum 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 or the Federal District Court, District Of Wyoming. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in this Agreement and Addendum.

9. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement and Addendum because of race, color, gender, creed, handicapping condition, or national origin.

10. 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.

11. 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 and Addendum. 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 and Addendum.

12. Third Parties: The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement and Addendum shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement and Addendum shall operate only between the parties to the Agreement and Addendum, and shall inure solely to the benefit of the parties to this Agreement and Addendum.

13. 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.

14. 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.

15. Force Majeure: Neither party shall be liable to perform under this Agreement and Addendum 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.

16. 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.

17. 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.

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

19. Compliance with Law: The parties agree that they shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

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**ADDENDUM TO CUSTOMER VALUE AGREEMENT BETWEEN WYOMING
MACHINERY COMPANY AND LARAMIE COUNTY**

Signature Page

LARAMIE COUNTY, WYOMING

By: _____ Date _____
Chairman, Laramie County Commissioners

ATTEST:

By: _____ Date _____
Laramie County Clerk

Wyoming Machinery Company:

By:  **Jim Thorpen** Date 9/30/2022 | 4:24 PM MDT
DocuSigned by: E72F58EC81BA4EC
Authorized Signature

REVIEWED AND APPROVED AS TO FORM ONLY

By:  _____ Date 10.3.22
Laramie County Attorney's Office



CUSTOMER VALUE AGREEMENT (“CVA”)

Wyoming Machinery Company (“WMC”) is pleased to enter into this Customer Value Agreement with the undersigned customer (“Customer”)

CUSTOMER INFORMATION

Customer Name Laramie County Public Works Customer # 0112500
Customer Contact Lars Luhrsen Email Lars.luhrsen@laramiecountyywy.gov

This Customer Value Agreement consists of (a) Scope of Work (b) Duration (c) Price and Invoicing (d) Equipment List (e) Customer Responsibilities (f) Definitions (g) Conditions (h) Termination (i) Signatures and (j) Schedule A.

Scope:

Provide Caterpillar parts only kits for Filter Replacements and SOS Services as scheduled in the most current Caterpillar's Operations and Maintenance Manual (OMM) guidelines. Initial services are not included.

The Filters and SOS Services parts will be scheduled and sent at the appropriate Service Meter Units (SMU). Standard Intervals are 250, 500, 1000 and 2000 hours.

Duration:

This CVA begins on 7/19/2022, with starting hours 44 SMU. The services performed for each machine is listed in the attached Schedule A for the machines identified in the “**Equipment List**” below.

The first scheduled service will occur when the machine reaches 250 hours SMU and each service after, will occur at every 250 hour SMU intervals.

This CVA provides Caterpillar Parts Only for Filters and SOS Services for 10 years, through 07/18/2032, or an additional 10,000 SMU, with a meter reading of 10,044 SMU, whichever comes first.

Price and Invoicing:

Pay As Performed – Current Pricing at Time of Service

As the services are performed an invoice at the current parts pricing will be provided. Sales Tax to be charged at time of fulfillment as applicable.

Equipment List:

Machine Model	Serial Number	Attached Schedule
140-15 AWD	0EB300583	A

Customer Responsibilities:

- Installation of Product Link Hardware, maintain in an operational and reporting condition
- Keep an active remote connectivity subscription for the duration of this CVA
- Perform Daily, Weekly, and/or As Required PM services as outlined in the Caterpillar OMM, including adding any proper make up fluids that may be required that meet Manufacturer's specification
- Any repairs, inspections, maintenance and required cleaning outside of the scope of this CVA



Definitions:

1. "WMC" is defined as Wyoming Machinery Company.
2. "Customer" is defined in the Customer Information of this CVA.
3. "Scope" as used herein means all work and services described herein, performed by WMC employees.
4. "Duration" is the length of hours or time frame projected for each machine for this agreement.
5. "Equipment List" is the list of equipment under this particular agreement including the listed serial numbers.
6. "Price and Invoicing" is the agreed upon pricing and invoicing structure for the duration of this CVA.
7. "Product Link" is the monitoring and reporting hardware on each machine.
8. "Remote Connectivity" is the web portal for Product Link reporting.
9. "As Performed" is the 'Price and Invoicing' structure, as the work is performed, the customer is invoiced according to the current pricing agreed upon.
10. "SOS" herein means scheduled oil samples, fluid samples performed by WMC employees, in WMC laboratory providing interpretations and online reporting.
11. "Customer Responsibilities" is the list of agreed upon responsibilities of the customer per the CVA.

Conditions:

1. Customer must maintain their customer account in good standing as defined by the Customer Credit Application for a WMC Account.
2. If payment is not received within 60 days of when the payment is due throughout the term of the CVA, the CVA will be considered terminated by the customer effective on the 61st day after the payment is due.
3. WMC shall be an independent contractor for all CVA Work and for all of its obligations and activities
4. WMC, or the customer, will not assign or transfer any of the rights under the CVA without the prior written consent of the opposite party, which consent shall not be unreasonably withheld.
5. Upon expiration of this CVA, the customer has the option to enter into a new CVA with updated pricing, duration, terms, and conditions as needed.

Termination: Termination is the ending of the CVA prior to the expiration of the duration.

1. Pay as Performed Early Termination – The Customer has the right to cancel a Pay as Performed Agreement with a 30 day written notice. The customer would be responsible to pay for any completed services through the termination date.

Signatures:

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Schedule A: 140-15 AWD 0EB300583

Pay as Performed	Per Occurrence	# Of Occur	Next Occur	Hour Interval
250 HOUR SOS	-	20	250	250
500 SERVICE HOUR MAINT without Fluids	-	10	500	500
1000 SERVICE HOUR MAINT without Fluids	-	5	1000	1,000
2000 SERVICE HOUR MAINT without Fluids	-	5	2000	2,000
PRIMARY AIR FILTER	-	20	500	500
SECONDARY AIR FILTER	-	10	1000	1,000
CAB AIR FILTER	-	20	500	500
DIESEL EXHAUST FLUID FILTER	-	2	5000	5,000
DEF MANIFOLD FILTER(S)	-	1	10000	10,000

Pricing is for parts kits only. Excludes all Labor, oils, lubricants, and grease. Excludes mileage and freight charges.
Pricing does not include Product Link hardware or installation, nor remote connectivity monitoring subscription service. Remote monitoring service is required for duration of agreement term.

Task	PM250- SOS	PM500	PM1000	PM2000	PM5000	PM10000
Engine Oil Sample	X					
Engine Oil Filter		X	X	X		
Primary Engine Air Filter		X	X	X		
Cab Air Filter		X	X	X		
Engine, Trans, Hydraulic, Wheels, Tandems Oil Samples		X	X	X		
Fuel Tank Cap Filter		X	X	X		
Hydraulic Oil Filter Seal-O-Ring		X	X	X		
Fuel Filter Element (Washable)		X	X	X		
Fuel/Water Separator		X	X	X		
Crankcase Breather - Seal-O-Ring		X				
Crankcase Breather / Seal / Clamp			X	X		
Transmission Oil Filter Housing - Seal-O-Ring			X	X		
Transmission Oil Filter Element			X	X		
AWD Oil Filters			X	X		
Secondary Engine Air Filter			X	X		
Hydraulic Oil Tank Return Filter			X	X		
Tandem Breather				X		
Coolant Tank Cap				X		
Diesel Exhaust Fluid Replace with New Filter					X	
Def Manifold Filter(S) Replace With New						X