

TELESCOPING SEATING PURCHASE AGREEMENT
Between
LARAMIE COUNTY, WYOMING & BROCC, LLC

THIS AGREEMENT is made and entered into by and between Laramie County, Wyoming, P.O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY") and BROCC, LLC, 11676 Shaffer Place, Unit 406 Littleton, CO 80127 ("CONTRACTOR"). The parties agree as follows:

I. PURPOSE

The purpose of this Agreement is to provide for the purchase and installation of retractable modular seating as described in the attached Telescoping Seating Pricing quote dated August 21, 2019. The Agreement of the parties includes this Agreement and the following documents, which are attached and incorporated herein by reference:

- Telescoping Seating Pricing dated August 21, 2019 (Attachment A) (2 pages)
- Request for Proposal (RFP) to Build Retractable Modular Seating at the Laramie County Events Center.

In the event of a conflict between these documents, the terms of this Agreement shall control.

II. TERM

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

III. PAYMENT

COUNTY shall pay CONTRACTOR upon receipt of an invoice to the COUNTY, or submission of other documentation certifying the provision and installation of the Spec Section 126613-Telescoping Stands as described in Attachment A, for a total price not exceeding one hundred ninety-five thousand, six hundred twenty-nine dollars (\$ 195, 629.00).

This price excludes and sales or use tax as well as bonds DB

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).

V. RESPONSIBILITIES OF BROCC

A. CONTRACTOR shall deliver and install the products described in Attachment A.

B. CONTRACTOR bears all responsibility for loss or damage to the products during shipment, delivery and installation.

C. CONTRACTOR agrees to make available to COUNTY or any of its duly authorized representatives, any books, documents, papers and records of the CONTRACTOR

which are directly pertinent to this 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.

VI. GENERAL PROVISIONS

A. Independent CONTRACTOR: Reserved

B. Acceptance Not Waiver: COUNTY's acceptance or approval of the product furnished hereunder shall not in any way relieve CONTRACTOR of responsibility for its obligations hereunder. COUNTY's payment for the product 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 COUNTY upon notice to BROCC, (c), by BROCC, with thirty (30) days' prior written notice to the other party; or (d) upon mutual written agreement by both parties.

D. Entire Agreement: This Agreement (5 pages), The RFP (10 Pages), and Attachment A (2 Pages), represent the entire and integrated agreement and understanding between the parties and supersede all prior negotiations, statements, representations and agreements, 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. Federal, State and Local Taxes: COUNTY is exempt from sales and use taxes pursuant to Wyo. Stat. Ann. § 39-15-105 as amended. All payments made pursuant to this Agreement shall be in accordance with Wyo. Stat. Ann. § 16-6-602 as amended.

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 or the Federal District Court, District of 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.*, as amended 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 reasonable expenses arising from or in connection with negligent acts or omissions, willful misconduct, or defective products provided by CONTRACTOR pursuant to this Agreement except to the extent liability is caused by the sole negligence or willful misconduct of COUNTY or its employees. CONTRACTOR shall carry insurance and bonding sufficient to cover its obligations as indicated herein 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 BROCC, 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 BROCC, 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.

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.

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Between
LARAMIE COUNTY, WYOMING & BROC, LLC

Signature Page

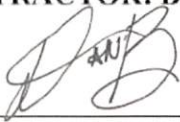
LARAMIE COUNTY, WYOMING

By: _____ Date _____
Linda Heath, Chairman, Laramie County Commissioners

ATTEST:

By: _____ Date _____
Debra Lee, Laramie County Clerk

CONTRACTOR: BROC, LLC

By:  _____ Date 9/9/19
Title: Daniel Baker, VP

REVIEWED AND APPROVED AS TO FORM ONLY:

By:  _____ Date 9/10/19
Gladys Ayokosok
Deputy Laramie County Attorney

B R O C , LLC

ATHLETIC PRODUCT SOLUTIONS

Office: 303.973.4517

Fax: 303.972.3307

Web: broellc.com

Laramie Community Center

Attn: Dan Ange

August 21, 2019

dange@laramiecounty.com

Re: Telescoping Seating Pricing

Dan,

For this pricing, we acknowledge concept drawings provided and conversations between Dan (with Laramie County) and Dan Baker (of BROC). We will be using **Interkal** for the telescoping stands – same as those installed at Pine Bluffs and City of Albin (closest in proximity to the event space). We will include the following items in our price:

Spec Section 126613 – Telescoping Stands – Assumes Deliver/Install Q4 2019

- 1 Bank 90'-0" Long (Clear Dimension) – *Center Section*
 - 10 Rows
 - Plastic Seat Module (Excel) Bench Style Seats
 - 24" Row Span
 - 10.25" Rise
 - Free Standing
 - Standard Back Panel with Back Rails – Per Code Requirement
- 1 Bank 78'-9" Long (Clear Dimension) – *Facing Bleacher – Right Hand Section*
 - 10 Rows
 - Plastic Seat Module (Excel) Bench Style Seats
 - 24" Row Span
 - 10.25" Rise
 - Free Standing
 - Standard Back Panel with Back Rails – Per Code Requirement
- 1 Bank 48'-6" Long (Clear Dimension) – *Facing Bleacher – Left Hand Section*
 - 10 Rows
 - Plastic Seat Module (Excel) Bench Style Seats
 - 24" Row Span
 - 10.25" Rise
 - Free Standing
 - Standard Back Panel with Back Rails – Per Code Requirement
- NOTE: No Section Greater than 18'-1" Long for Movement Through Doors
- Manual Operated

- 6 – Self Storing End Rails
- 8 – Aisles with Intermediate Steps and Center Aisle Rails
- 6 – Vinyl End Curtains
- No ADA Spaces Provided in First Row of Bleacher – Assumes ADA Spaces Located Elsewhere in Facility
- Includes Fork Lift Pockets
- Approx. 1,164 Seats (per industry minimum 18” seat width – anything smaller does not qualify as a full seat)
- Approx. 12’-7.5” to Top of Rail (Should not Have a Clearance Issue -14’ AFF Top of Door Opening)

This is for the delivered and installed price of \$195,629.00

If Required – Laramie County Tax Add (6% on Materials): \$9,638.00

Add Amount for P&P Bond (3% of Total Contract) – If Tax Included: \$6,349.00

Add Amount for P&P Bond (3% of Total Contract) – If Tax Excluded: \$6,051.00

Disclaimer: These prices exclude any additional structural steel, concrete, additional taxes, fees, permits, bonds, and electrical upgrades, electrical tie-in. Prices reflect delivery and install dates as noted for each section, deviations from these dates could result in price increases. Please call with any questions.

Thank you,



Rick Baker, *President & CEO* | BROCC, LLC