

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

**1. DATE OF PROPOSED ACTION:** December 15, 2015

**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:** Sheriff

**APPLICANT:** MKK Consulting Engineers      **AGENT:** Undersheriff Hillegas

**4. DESCRIPTION:** Request Commissioners approval of contract addendum providing for up to \$20,000 additional funds to MKK Engineers for planning and design of the domestic hot water system replacement at the Sheriff's Department.

Amount \$20,000                      From                      To

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

**5. DOCUMENTATION:** 2 Originals



<u>Commissioner</u>	<u>Clerks Use Only:</u>	<u>Signatures</u>
Ash	_____	County Attorney
Holmes	_____	Deputy Attorney
Thompson	_____	
Heath	_____	
Kailey	_____	Grants Manager
Action	_____	Outside Agency
Postponed	_____	

**ADDENDUM to ENGINEERING DESIGN AND CONSULTING AGREEMENT**  
**between**  
**Laramie County, WY and MKK Consulting Engineers, Inc.**

THIS ADDENDUM is made and entered into by and between Laramie County, Wyoming, P.O. Box 608, Cheyenne, Wyoming 82003-0608, (“COUNTY”) and MKK Consulting Engineers, Inc., 500 West 18th St., Suite 200, Cheyenne, WY 82001-4368 (“CONTRACTOR”).

**I. PURPOSE**

The purpose of this Addendum is to amend the Engineering Design and Consulting Agreement to authorize payment for additional design services related to the upgrade to the domestic water heater and supporting mechanical and electrical systems at the Laramie County Detention Center, as set forth in the original Engineering Design and Consulting Agreement dated December 16, 2014 (“Attachment A”), and as described in the accompanying letter dated November 19, 2015 (“Attachment B”).

**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 Attachments ‘A’ and ‘B’, attached hereto and fully incorporated herein.

B. The costs for the extra design services shall be based on the same hourly rate as indicated in the original Engineering Design and Consulting Agreement dated December 16, 2014 (“Attachment A”), not to exceed \$20,000.

C. All other provisions of the original Engineering Design and Consulting Agreement dated December 16, 2014 (“Attachment A”) shall remain in full force and effect.

**IV. ADDITIONAL PROVISIONS**

Entire Agreement: This Addendum (2 pages), the Engineering Design and Consulting Agreement dated December 16, 2014 (“Attachment A”), and the accompanying letter dated November 19, 2015 (“Attachment B”) represent the entire and integrated agreement and understanding between the parties in regard to the subject matter herein and supersede all prior negotiations, statements, representations and agreements, whether written or oral.

LARAMIE COUNTY, WYOMING

By: \_\_\_\_\_  
Amber Ash, Chairman, Laramie County Commissioners

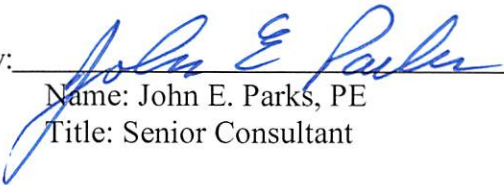
Date \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Debbye Lathrop, Laramie County Clerk

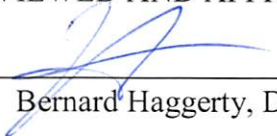
Date \_\_\_\_\_

CONTRACTOR: MKK CONSULTING ENGINEERS, INC.

By:  \_\_\_\_\_  
Name: John E. Parks, PE  
Title: Senior Consultant

Date 12/1/2015

REVIEWED AND APPROVED AS TO FORM ONLY

By:  \_\_\_\_\_  
Bernard Haggerty, Deputy Laramie County Attorney

Date 12-2-15



November 19, 2015

Rich Hillegas  
Laramie County Law Enforcement Facility  
1910 Pioneer  
Cheyenne, WY 82001

RE: LCLEF Domestic Water Heater Replacement  
Extra Services  
MKK Project No.: 2014.02.0031

Dear Rich,

As we had briefly discussed, the engineering effort to get the Construction (Bid) Documents ready for this project has required a significant amount of additional time and production hours. The complications of keeping domestic water available during construction required design effort to develop a phased project scheme to assist the contractor(s) with the bidding and ultimate construction. This included the addition of the separate boiler water heated water heater plus the additional set of recirculation pumps and temporary piping systems. We also have developed additional documents to include adding new isolation/service valves throughout the facility as requested by Gary Ford. From our recent phone conversation you indicated that we could submit these additional engineering consulting costs as extra services to the original contract.

The costs for these extra design services are proposed to be based on hourly rates not to exceed \$20,000. These hours will be billed as a separate "Task" within our accounting system and will be billed separately on a separate invoice.

Also, this is to advise that now that the project is proceeding into the Construction Phase, we will be providing the Construction Phase Services on an hourly basis as noted within our current Engineering, Design and Consulting Services Agreement. These charges will be billed separately on separate invoices.

If you are in agreement with these additional design/consulting costs I will get the new "Task" input within our accounting system to get you the separate invoice for these additional consulting services. Please acknowledge agreement by signing and returning a copy of this letter.

Rich Hillegas  
November 19, 2015  
Page 2



Please call if you have any questions or comments.

Sincerely,

ENGINEER

MKK Consulting Engineers, Inc.

A handwritten signature in blue ink that reads 'John E. Parks'. The signature is written in a cursive style with a large initial 'J' and 'P'.

John E. Parks, PE  
Senior Consultant

CLIENT

Laramie County

By:

\_\_\_\_\_  
(insert name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

141216-07

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

1. DATE OF PROPOSED ACTION: December 16, 2014

2. AGENDA ITEM:  Appointments  Bids/Purchases  Claims

X Contracts/agreements/leases  Grants  Land Use: Variances/Board App/Plats

Proclamations  Public Hearings/Rules & Reg's  Reports & Public Petitions

Resolutions  Other: Fixed Asset Disposal

3. DEPARTMENT:

APPLICANT: MKK Consulting Engineers

AGENT: Undersheriff Hillegas

4. DESCRIPTION: Request Commissioner approval of a contract with MKK Consulting Engineers, which sets hourly rates for services toward the design, construction, bidding and general contracting of the Detention Center domestic hot water system update.

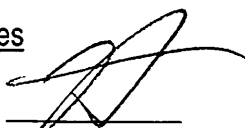
Amount \$ Sets Hourly Rates

From

To

RECEIVED AND APPROVED AS  
ATTORNEY GENERAL BY THE  
DEPUTY ATTORNEY GENERAL  
ATTORNEY

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

<u>Commissioner</u>	<u>Clerks Use Only:</u>	<u>Signatures</u>
Ash _____		
Hasenauer _____		
Holmes _____		
Humphrey _____		
Thompson _____		
Action _____		
Postponed/Tabled _____		Co Attny _____
		Assist Co Attny _____
		Grants Manager _____
		Outside Agency _____

**ENGINEERING DESIGN AND CONSULTING SERVICES AGREEMENT**  
**between**  
**LARAMIE COUNTY, WYOMING and MKK CONSULTING ENGINEERS, INC.**

This Engineering Design and Consulting Services Agreement (Agreement) is made and entered into between Laramie County, Wyoming, 310 W. 19th Street, Cheyenne, Wyoming, 82001 ("COUNTY"), and MKK Consulting Engineers, Inc., 500 West 18<sup>th</sup> St., Suite 200, Cheyenne, WY 82001-4368 ("CONTRACTOR").

**I. PURPOSE**

The purpose of this Agreement is to provide for engineering design and consulting services for an upgrade to the domestic water heater and supporting mechanical and electrical systems at the Laramie County Detention Center, as set forth in greater detail in the attached Engineering Services Proposal and Conditions of Agreement, dated September 10, 2014 (Proposal & Conditions) (10 pages), which is incorporated by reference here ("Attachment A").

**II. TERM**

This Agreement shall commence on the date last executed by the duly authorized representatives of the parties, and shall remain in force until completion of the project or until terminated pursuant to the provisions of this Agreement.

**III. MODIFICATIONS**

A. The paragraph titled "Corporate Protection:" on page 6 of the Proposal & Conditions is deleted and shall be of no further force and effect.

B. The paragraph titled "Limitation of Liability:" on page 7 of the Proposal & Conditions is deleted and shall be of no further force and effect.

C. The paragraph titled "Mediation:" on page 8 of the Proposal & Conditions is deleted and shall be of no further force and effect.

D. The paragraph titled "Consequential Damages:" beginning on page 8 and ending on page 9 of the Proposal & Conditions is deleted and shall be of no further force and effect.

**IV. PAYMENT**

COUNTY shall pay CONTRACTOR billing rates and expenses not to exceed the amounts indicated in the Proposal & Conditions, upon completion of the services described in the Proposal & Conditions, or upon submission of such periodic invoices as mutually agreed to by the parties. Payment will be made upon receipt of the CONTRACTOR'S invoice to the COUNTY, or submission of other documentation certifying completion of the services. 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 CONTRACTOR

A. CONTRACTOR shall provide the engineering design and consulting services for an upgrade to the domestic water heater and supporting mechanical and electrical systems at the Laramie County Detention Center, as set forth in the Engineering Services Proposal and Conditions of Agreement (Attachment A).

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 COUNTY or any of its duly authorized representatives to any books, documents, papers and records of 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 COUNTY and upon completion of the services to be performed, or upon termination of this Agreement for cause, or for the convenience of COUNTY, will be turned over to the COUNTY.

## VI. 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), Exhibit 2: "Insurance Requirements" (3 pages), and Attachment A (10 pages) 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 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 Wyo. Stat. § 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. Insurance: Contractor shall obtain all insurance required in the attached Exhibit 2: "Insurance Requirements" and shall file certificates of such insurance satisfactory to the County and approved by the County.

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 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.

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. Agreement Controls: Where a conflict exists or arises between any provision or condition of this Agreement and the (Proposal & Conditions) (Attachment A), the provisions and conditions set forth in this Agreement shall control.

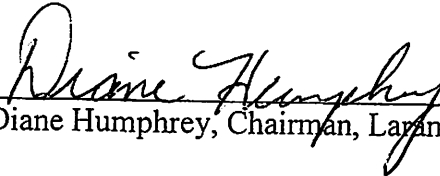
U. Compliance with Law: CONTRACTOR shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

**[The remainder of this page is intentionally left blank.]**

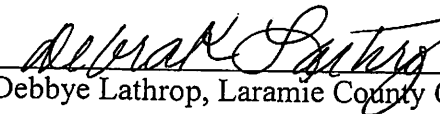
**ENGINEERING DESIGN AND CONSULTING SERVICES AGREEMENT**  
**between**  
**LARAMIE COUNTY, WYOMING and MKK CONSULTING ENGINEERS, INC.**

**Signature Page**

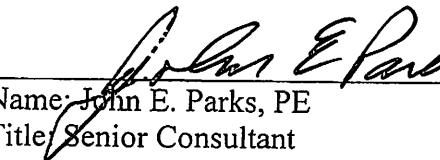
**LARAMIE COUNTY, WYOMING**

By:  Date 12-17-14  
Diane Humphrey, Chairman, Laramie County Commissioners

ATTEST:

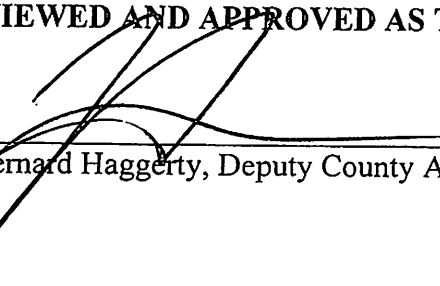
By:  Date 12-17-14  
Debbye Lathrop, Laramie County Clerk

**CONTRACTOR: MKK CONSULTING ENGINEERS, INC.**

By:  Date 12/2/2014  
Name: John E. Parks, PE  
Title: Senior Consultant

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

**REVIEWED AND APPROVED AS TO FORM ONLY:**

By:  Date 12-3-14  
Bernard Haggerty, Deputy County Attorney

**Exhibit 2:**  
**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 by the Contractor, its agents, representatives, or employees.

**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 **\$1,000,000** 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:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and Code 9 (non-owned autos), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

3. **Workers’ Compensation** insurance 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. *(Not required if Contractor provides written verification it has no employees)*

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 County 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 County.

**Other Insurance Provisions**

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

***Additional Insured Status***

The County, 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 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 County, its officers, officials, employees, and volunteers. Any insurance of self-insurance maintained by the County, 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 County.**

### ***Waiver of Subrogation***

Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County 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 County 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 County. The County may require the Contractor to provide proof of ability to pay losses and related investigations, claim 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 County.

### ***Claims Made Policies***

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 County 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 County 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 County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### ***Subcontractors***

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

### ***Special Risks or Circumstances***

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

Acceptance of the insurance by the County shall not relieve, limit, or decrease the liability of the Contractor. The Contractor shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The County does not represent that the insurance requirements are sufficient to protect the Contractor's interest or provide adequate coverage.

ATTACHMENT A  
TO COUNTY AGREEMENT.



September 10, 2014

Rich Hillegas  
Laramie County Law Enforcement Facility  
1910 Pioneer  
Cheyenne, WY 82001

RE: LCLEF Domestic Water Heater Replacement  
MKK Project No.: 2014.02.0031

Dear Rich,

Thank you for contacting us concerning the project referenced above. We are pleased to provide you with an Engineering Services proposal for the Project.

**A. The Project is Described as follows:**

The project includes the preparation of the necessary engineering and development of the Contract Documents (plans and specification) for the replacement of the domestic water heater generating systems for the Laramie County Detention Facility. The basis of the design will utilize the systems and types of equipment presented and approved by the Sheriff's staff and the County Commissioners after our preliminary review and analysis. This will include providing three natural gas fired instantaneous domestic water heaters plus the addition of one instantaneous domestic water heater heated from the exiting building heating water boilers (gas/oil fired). The new system will not utilize storage tanks. The new system design will provide two water temperatures; 140 deg. F and 120 deg. F. The existing 160 deg. F water system that currently supplies water to the kitchen and laundry will be eliminated. These systems will be provided with the 140 deg. F water. Gary Ford requested this change as he will get these systems converted to using the 140 deg. water.

The design will incorporate a "temporary" installation of one of the new units that will be connected to the existing domestic water systems. This unit will provide the two water temperatures while the existing systems are demolished, removed and the remaining new units are installed. The "temporary" unit will then be connected into the overall new system. This will minimized the "down time" and provide domestic hot water to the entire building during construction. Note that the 160 deg. water system will be provided with 140 deg. water at this time.

**B. The Following Work is Included:**

**1. Design and Consulting Project Phases:**

- a. Preliminary Schematic Design Phase
- b. Construction Documents Phase





- c. Bidding Phase
- d. Construction Administration Phase
- e. Post Construction Phase

## 2. Design and Consulting Services:

The following Design and Consulting Services are included in this contract:

**GENERAL:** The scope will include the engineering design of the domestic water heater system, supporting mechanical and electrical systems for the project. The specific design scope as it relates to the various divisions of work is detailed below.

The scope will include required coordination of our design with the existing equipment and space to allow continued use of the facility and keep all interruptions of services as little as feasible. The scope will also include responses to questions and comments from the Owner during design. It will also include required coordination with the Authorities Having Jurisdiction (AHJ) to expedite the compliance of our design documents.

It is expected that visits to the client's existing building will be required and shall be provided as needed to allow for an understanding of the existing building and systems operations. Our visits are intended to verify the general arrangement and conditions of the MEP systems and should not be construed as a detailed system survey. All site visits will be coordinated with Sheriff's personnel for access and security requirements.

### **DRAWING PLATFORM:**

The submittal of the drawings shall be completed using AutoCAD 2013. Final documents will be provided in a PDF format for reproduction and distribution as needed.

**SUBMITTAL DOCUMENTS:** At the end of the design period the following documents will be submitted:

- Stamped and signed construction drawings
- Stamped and signed written book specifications.

**CONSTRUCTION ADMINISTRATION:** The construction administration scope shall include assistance with the Construction Contract, construction meetings, submittal reviews and approvals, responses to RFIs, site observations and punch list walks. These services will be provided as needed or requested on an hourly basis as noted below.

The construction administration scope will also include the review and completion of contractor created record drawings. The contractor shall provide their markups including presentation of addenda, change orders and as-builts to original drawings. The creation of an as-built electronic document including the contractor's mark-ups would be included within this construction phase. The construction administration scope will also include the



review of the operation and maintenance manuals.

POST CONSTRUCTION: The post construction scope if requested could include post occupancy walk through at the 6 month and 11 month periods from acceptance of the final installation of the systems.

**C. Conditions of Service:**

Conditions of service and compensation for services in accordance with the attached "Conditions of Agreement - 2014", MKK Consulting Engineers, Inc., which form part of this agreement.

**D. Payments:**

1. For the Services listed above in paragraph B.1.a,b,& c and the Scope of the Project as discussed in paragraph A
  - a. Preliminary Schematic Design Phase
  - b. Construction Documents Phase
  - c. Bidding Phase

The total hourly charges are agreed not to exceed **\$32,000.00** plus expenses.

2. For the Services listed above in paragraph B.1.d & e
  - a. Construction Administration Phase
  - b. Post Construction Phase

These services will be provided as required or as requested for the Construction Administration Phase as noted in the attached Conditions of Agreement. Compensation for these services will be based on hourly charges at the then current rates plus expenses.

We look forward to working on the project. If this agreement is acceptable, sign and return a copy of the agreement to our office.

Rich Hillegas  
September 10, 2014  
Page 4



This agreement incorporates the attached Conditions of Agreement. Client acknowledges receipt of the Conditions of Agreement and acknowledges that the Conditions of Agreement contains a limitation of liability clause, among other important terms.

This agreement is deemed to be accepted when you have signed the agreement, authorized MKK (either verbally or in writing) to proceed with the project, or otherwise signified your acceptance of the agreement. MKK shall proceed with the above Scope of service when you have accepted this agreement.

Please call if you have any questions or comments.

Sincerely,

ENGINEER

MKK Consulting Engineers, Inc.

A handwritten signature in black ink that reads 'John E. Parks'. The signature is written in a cursive style with a large initial 'J' and 'P'.

John E. Parks, PE  
Senior Consultant

CLIENT

Laramie County

By: \_\_\_\_\_  
(insert name)

\_\_\_\_\_  
Signature Date

Attachment



**MKK CONSULTING ENGINEERS, INC.  
CONDITIONS OF AGREEMENT – JANUARY 2014**

**"Engineer" as used herein refers to MKK Consulting Engineers, Inc. and its officers, directors, shareholders, owners and employees.**

**Engineer's Responsibility:**

The Engineer will serve as the Client's professional consultant and will perform the Engineering Services for the project. The Engineer shall so perform his work as to coordinate with the Client/Owner for the Project; arranging the character, order and schedule thereof for that purpose. He shall attend the necessary conferences and provide consultation and advice for the Project.

If the Engineer provides opinions of probable construction cost, the Client understands that the Engineer has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing. Any opinions of probable construction costs provided by the Engineer are based only upon Engineer's qualifications and experience which are inadequate to provide accurate estimates. Client may not reasonably rely upon any opinions of probable construction costs and should retain a separate professional cost estimator if reliable estimates are desired. The Engineer makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

During the Preliminary Design Phases (Schematic Design), the Engineer shall utilize the previous established design criteria from which systems and equipment will be selected. (RE: 8.14.2014 letter and presentation information)

During the Construction Document Phase, the Engineer shall prepare working drawings and specifications setting forth the requirements of the construction for this part of the project. This will include review and inclusion of "Front-end" contract requirements, Owner/Contractor Agreement and General Conditions.

During the Bidding Phase the Engineer will assist with the distribution of bid documents, review of the bid process, set-up and attend pre-bid walk through of the construction area, answer questions, review submittals and prepare addenda. When bids are received, assist the Client/Owner with bid reviews and recommendations.

During the Construction Administration Phase, the Engineer will assist with the construction contract administration including review of the Owner/Contractor agreement, pay applications, review shop drawings, interpret the Engineer's drawings and specifications for the Contractors, and provide on-site construction review trips, as needed or requested. These trips are made during active periods of construction rather than on a fixed schedule and are to observe general quality of workmanship and answer any Contractors' questions. On-site reviews are not intended for superintending or supervising the project in any way. The Engineer does not guarantee the Contractors' performance. On-site reviews do not include responsibility for construction means, methods, techniques, sequences, procedures, or the safety precautions incident thereto, in, on, or about the project site.



When requested for the Post Construction Phase, the Engineer will provide a 6th month and/or an 11th month observation with report on warranty items to be corrected by the Contractor.

**Client Responsibility:**

Client agrees to provide full information for the requirements of the project, deemed appropriate for the Engineer to perform. The Client also will provide the necessary access to the various portions of the facility to allow the project design to be completed. This will include providing clearance and necessary personnel for access to or through any secure areas.

Client agrees to provide, all available information, requirements and instructions required for performance of this Agreement.

**Standard of Care:**

Services performed by the Engineer will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances and same geographic area. The Engineer makes no representations or warranties, expressed or implied, as to its professional services rendered under this Agreement.

**Corporate Protection:**

It is intended by the parties to this Agreement that the Engineer's services in connection with the project shall not subject the Engineer's individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand, or suit shall be directed and/or asserted only against the Engineer, a Colorado corporation, and not against any of the Engineer's individual employees, officers or directors.

**CADD Responsibility:**

Computer Aided Drafting and Design (CADD) documents will be in the Engineer's standard format using AutoCAD, Release 2013 or earlier; operating on a PC using Windows 7/XP. The Engineer makes no representation as to the compatibility of these files beyond the specified release of the above stated software.

**Invoice:**

Invoice is due on presentation. Client recognizes that prompt payment of Engineer's invoices is an aspect of the overall consideration Engineer requires for providing service to Client. Accordingly, Client agrees to advise Engineer as to the preferred billing cycle, invoice format, person to whom invoices should be addressed, and such other pertinent details Engineer should observe to help Client expedite payment. Client agrees to pay all reasonable costs and expenses, including attorneys' fees, incurred by Engineer in the course of collecting any amounts due under this Agreement, plus interest at the annual rate of twelve percent, compounded monthly. Credit is extended and interest will commence after 60 days of the invoice date on unpaid balance at the election of the Engineer.



The Engineer shall submit, in timely fashion, invoices for Services, Additional Services and Reimbursable Expenses. The Client shall review such invoices and, if they are considered incorrect or untimely, the Client shall review the matter with the Engineer and confirm, in writing to the Engineer within ten days from receipt of the Engineer's invoice. The Client shall identify the specific cause of disagreement and shall pay when due the portion of the invoice not in dispute. The Client and Engineer shall work together to resolve the disputed matter within 60 days of its being called to the Engineer's attention. If resolution of the matter is not attained within 60 days, either party may terminate this Agreement in accordance with conditions indicated in the Termination clause.

Regardless of any dispute regarding payment, Engineer reserves the right, at its sole discretion, to withhold or withdraw documents prepared by the Engineer from subsequent design, permit or construction use if payment for service is not made upon invoice presentation. Regardless of any dispute regarding payment, Engineer has the right to cease work on the project and the Client shall waive any claim against Engineer for cessation of services and shall defend and indemnify the Engineer from and against any claims for injury or loss stemming from Engineer's cessation, if the Client fails to make payment upon invoice presentation. Client shall also pay Engineer for expenses incurred as a result of suspension of work and resumption of its services, and the Engineer's schedule and fees for the remainder of the Project shall be equitably adjusted.

**Limitation of Liability:**

In recognition of the relative risks and benefits of the project to both the Client, the Owner and the Engineer, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Engineer and his or her sub consultants to the Client, the Owner (including all inmates and employees) and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorney's fees and costs and expert-witness fees and costs so that the total aggregate liability of the Engineer and his or her sub consultants to all those named shall not exceed fifty thousand dollars (\$50,000), or the Engineer's total fee for services rendered on this project, whichever is less. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

**Ownership of Instruments of Service:**

All reports, plans, specifications, field data and notes and other documents, whether on paper or in electronic format, prepared by the Engineer as Instruments of Service, are the property of the Engineer whether the work for which they are prepared be executed or not. Instruments of Service are not to be used on other work, including repetitive construction, except by specific written agreement with the Engineer. The Engineer shall retain all common law, statutory and other reserved rights in these Instruments of Service, including the copyright thereto. The Contract Documents prepared under this agreement may be retained by the Client with other Contract Documents pertaining to the project.

In case of conflict, sealed drawings take precedence over electronic files.



**Termination:**

This Agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one party through no fault of the other party. Engineer shall be paid for services performed to the date of termination, including reimbursements then due.

Notwithstanding any other provisions of this Agreement, Engineer may terminate without consequence or liability if Client fails to make payments upon invoice presentation.

**No Third Party Beneficiaries:**

Nothing contained in this agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Engineer or Client.

**No Certification or Warranty:**

Engineer shall not be required to certify, warrant or guarantee the existence of any condition or the adequacy of work performed by others if such cannot be ascertained with certainty by Engineer.

**Successors and Assigns:**

This agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the Client, and the Engineer respectively and its partners, successors, assigns, and legal representatives. Neither the Client nor the Engineer shall have the right to assign, transfer, or sublet its interest or obligations hereunder without written consent of the other party.

**Mediation:**

In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and the Engineer agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Client and the Engineer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, sub consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

**Consequential Damages:**

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Engineer, their respective officers, directors, partners, employees, contractors or sub consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall be broadly construed to include, without being limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract



and breach of strict or implied warranty. Both the Client and the Engineer shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

**Betterment:**

If due to Engineer's error, any required item or component of the project is omitted from Engineer's Construction Documents, Engineer shall not be responsible for the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will Engineer be responsible for any cost or expense that provides betterment, upgrade or enhancement to the project.

**Verification of Existing Conditions:**

Inasmuch as the remodeling and/or rehabilitation of an existing building requires that certain assumptions be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money, or destroying otherwise adequate or serviceable portions of the building, the Owner/Client agrees to bear all costs, losses and expenses, including the cost of the Engineer's Additional Services, arising from the discovery of concealed or unknown conditions in the existing building, or from any deficiencies or inaccuracies in any information or documentation furnished to the Engineer by the Owner/Client.

**Extra Services:**

Any additional work (Extra Service), which is not included in the above fees, will be done after Client's approval at the then current hourly rates.

**Hourly Charges: (when applicable)**

- a. Hourly charges of all personnel for time devoted directly to the project.

The following schedule sets forth billing rates for the various classifications of employees. These rates are current and applicable only through December 31, 2014.

**BILLING RATES – JANUARY 2014**

<b>CLASSIFICATION</b>	<b>RATE PER HOUR</b>
1. Consultant (legal and expert witness only)	\$250.00
2. Principal	172.00
3. Engineer E-7, Designer D-7	137.00
4. Engineer E-6, Designer D-6	125.00
5. Engineer E-5, Designer D-5	108.00
6. Engineer E-4, Designer D-4, CADD Op. C-4	97.00





7. Engineer E-3, Designer D-3, CADD Op. C-3	90.00
8. Engineer E-2, Designer D-2, CADD Op. C-2	82.00
9. Engineer E-1, Designer D-1, CADD Op. C-1	75.00
10. Administrator A-4	97.00
11. Administrator A-3	80.00
12. Administrator A-2	75.00
13. Administrator A-1	60.00

**Expenses:**

When subcontracted third party professional services are required and authorized by the Client, the Engineer will be paid the third party compensation plus an administration charge of 15% of the third party compensation for such professional services engaged by the Engineer for the project.

Reimbursable expenses are in addition to Basic Compensation and include costs incurred by the Engineer and Engineer's Consultants in the interest of the project. These expenses are identified as follows:

- a. Authorized out-of-town travel expenses, and fees paid for securing approval of authorities having jurisdiction over the project.
- b. Expenses of reproductions (except for coordination prints), postage, deliveries and handling of Drawings, Specifications and other documents.
- c. Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Client in excess of that normally carried by the Engineer and Engineer's Consultant.

**Period of Service:**

The provisions for services and compensation for services provided by this Agreement are based upon the orderly and continuous progression of the project through design and construction phases. If the project is delayed or suspended more than 60 days, the Engineer shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the Client shall compensate the Engineer for expenses incurred as a result of the suspension and resumption of its services, and the Engineer's schedule and fees for the remainder of the Project shall be equitably adjusted. If the Engineer's services are suspended for more than 90 days, the Engineer may terminate this Agreement upon giving not less than 5 calendar days' written notice to the Client.