

**ADDENDUM TO DIGITAL ARCHIVING CONTRACT/PROPOSAL
#7282020P1V1**

**Between
Laramie County and ArcaSearch Corporation**

THIS ADDENDUM is made and entered into by and between Laramie County, Wyoming P.O. Box 608, Cheyenne, WY 82003-0608, ("COUNTY") and ArcaSearch Corporation, 22517 178th Ave., Suite D, Cold Spring, MN 56360 ("CONTRACTOR"). The parties agree as follows:

I. PURPOSE

This Addendum modifies the Terms and Conditions of Proposal # 7282020P1V1, between COUNTY and CONTRACTOR (hereinafter the "Agreement"), for purposes of digitizing images and optimizing documents' viewing/searches within the Compass Eclipse Research System using patented technology.

II. TERM

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

III. MODIFICATIONS

1. The Section entitled "Confidentiality", second ¶ is modified to include the following at the end:

"CONTRACTOR recognizes that the duties and obligations of COUNTY with respect to this Section may be limited and controlled by the operation of State or Federal law regarding the disclosure of publicly held records. CONTRACTOR agrees that COUNTY shall not be held in breach or default of this Agreement in the event release of information related to this Agreement and its subject matter is released in accord with and pursuant to any applicable law or regulation, including, but not limited to, the Wyoming Public Records Act, Wyo. Stat. § 16-4-201 et seq., as amended. CONTRACTOR agrees and understands that in the event of a properly formatted public records request for copy of or a copy of the contents of this agreement, COUNTY will notify CONTRACTOR of any such request and shall inform the requesting individual or entity, that this material cannot be released as it constitutes a "trade secret" pursuant to the above-noted Wyoming Public Records Act. In the event that the requesting individual or entity seeks relief in a court of appropriate jurisdiction for this refusal, COUNTY agrees to appear through counsel in any proceedings, however, CONTRACTOR agrees that it bears the sole

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responsibility for demonstrating in any court or other forum that the information designated as "trade secrets" is in fact confidential, and not subject to disclosure."

2. The Section entitled "Limitation of Liability" is excluded in its entirety and is of no further force or effect.

IV. RESPONSIBILITIES OF CONTRACTOR

CONTRACTOR shall provide and complete in a timely manner, the services described in Proposal #2020P1V1 attached hereto and fully incorporated herein by this reference.

V. RESPONSIBILITIES OF COUNTY

COUNTY shall pay CONTRACTOR an estimated project cost of eleven thousand, nine hundred forty nine dollars (\$11,949.00) plus the annual fee as reflected in Proposal #7282020P1V1. CONTRACTOR shall bill COUNTY by a properly executed invoice specifying services performed. 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).

VI. 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. 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 and Addendum or of any cause of action arising out of the performance of this Agreement and Addendum.

3. Termination: This Agreement and Addendum 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 and Addendum; (b) by either party, with thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.

4. Entire Agreement: The Agreement (Proposal #7282020P1V1) eight (8) pages) and this Addendum (6 pages), represent the entire and integrated agreement and understanding

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between the parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

5. 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.

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

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. 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 and Addendum. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in this Agreement and Addendum.

9. Contingencies: CONTRACTOR certifies and warrants no gratuities, kick-backs or contingency fees were requested by CONTRACTOR or paid by COUNTY in connection with this Agreement and Addendum, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement and Addendum.

10. 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.

11. 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.

12. 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.

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. 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.

15. 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 and Addendum, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Agreement and Addendum.

16. 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.

17. 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 and Addendum 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 and Addendum in order to acquire similar services from another party.

18. Notices: All notices required and permitted under this Agreement and Addendum 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 to such party. A party may change its address for notice hereunder by giving written notice to the other party.

19. 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.

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

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ADDENDUM TO DIGITAL ARCHIVAL CONTRACT/PROPOSAL
Laramie County/ ArcaSearch Corporation

Signature page

LARAMIE COUNTY, WYOMING

By: _____ Date _____
Gunnar Malm, Chairman, Laramie County Commissioners

ATTEST:


By: _____ Date _____
Debra Lee, Laramie County Clerk

CONTRACTOR: ArcaSearch Corporation

By:  Date 8.11.20
Authorized Signature

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

REVIEWED AND APPROVED AS TO FORM ONLY

By:  Date 8/24/2020
Gladys Ayokosok, Deputy Laramie County Attorney



Laramie County

Commissioner Minutes

Proposal #7282020P1V1

July 28, 2020

Prepared for:

Laramie County

2001 Carey Avenue
Cheyenne, WY 82001

Deanna Grimm

Records Center Supervisor
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www.arcasearch.com

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OVERVIEW

ArcaSearch is pleased to be considered as a digital archiving and processing partner with Laramie County, WY. Enclosed you will find our response to your request for a proposal including project benefits, record group/product details, estimated timing, estimated costs, and agreement terms.

Commissioner Minutes

- Approximate Images 12,250
- Date Range 1868 through 1994
- Image Size 5" x 9"; some as large as 12" x 18"
- Condition Fair to good
- Bindery Bound, pinned and 35mm
- Image Capture RGB
- Image Resolution 300 DPI
- OCR Yes, of typed text
- File Format PDF/A and JPEG High Resolution file
- Delivery Single and two-page spreads
- Metadata Book and page number
- Work Location Materials to be digitized at client location in Cheyenne, WY

There will be no other metadata schema understanding than what is expressly stated within this proposal.

ARCASEARCH DIGITAL ARCHIVING

As your digital archiving partner, we provide project management and will use ArcaSearch technology/personnel to:

- Digitize images from provided materials
- Optimize PDF for viewing/searching within the Compass Eclipse Research System using patented technology
- Provide two complete sets of PDF/A and JPEG files on external hardware upon receiving final payment for project

We look forward to working with **Laramie County, WY**. Below are a few items ArcaSearch will need to begin your project.

- Notify ArcaSearch of any scheduling requirements
- Provide a minimum of 500 square feet of office space to be utilized for image capture equipment accessible by ramp or elevator with a minimum door entry width of 32 inches
- Allocated space will need to have standard office outlets, minimum of six 15 Amps
- Provide access to high speed internet, to include VPN permissions
- Allow ArcaSearch staff access to building during business hours

ESTIMATED TIMING

The following is a timeline for your planning purposes.

The scheduled start month will be determined after receipt of the signed contract, down payment, completion of the job plan (if applicable) signed by both parties. Any discrepancies will be resolved before the start of the project.

ArcaSearch anticipates the start date to be within 12 months from the receipt of down payment.

Please allow 12 weeks from the start of imaging to this project's completion.

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TERMS AND CONDITIONS

Document Care

ArcaSearch will exercise great professional care in preserving and digitizing the documents of the Client, as ArcaSearch performs this project. Client will not hold ArcaSearch responsible for any damage sustained to original documents, aperture cards or microfilm, due to fire, water damage, natural disaster or *force majeure* while on premises of the Client. The parties acknowledge that some of the original documents are of such age as to have been torn from past handling, and brittle, so as to be subject to splits and tears upon handling. Client will not hold ArcaSearch responsible for any incidental damage in handling of the documents, except for any damage alleged to be caused by gross negligence of ArcaSearch employees.

Confidentiality

Subject to provisions of the Freedom of Information Act (5 U.S.C. § 552) and any conforming statutes of the state in which this Proposal is executed, the parties and their attorneys shall keep the specific terms, conditions and covenants of this Proposal confidential except:

- i. Where mutually agreed to in writing by the parties;
- ii. Where necessary to share such information with the parties' accountants or attorneys;
- iii. Where disclosure to a government entity is required; or
- iv. Where disclosure is ordered by a court of competent jurisdiction.

The parties and their attorneys shall not communicate with anyone associated with any media or publication entities concerning the terms of this Proposal. This confidentiality provision is a material term of this document, and its violation shall constitute a breach of this Proposal.

Content of Documents

Client shall be solely responsible for the content of documents to be duplicated, digitized, printed and/or preserved by ArcaSearch in the performance of this agreement. ArcaSearch will not be responsible for payment of any claims or damages alleging content of said documents or records to be defamatory, or to violate or infringe upon the rights of third parties.

Limitation of Liability

Initial

In recognition of the relative risks and benefits of this project, to both the Client and ArcaSearch, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of ArcaSearch to Client for any and all claims, losses, costs, damages of any nature whatsoever, or expenses related to any such claims or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of ArcaSearch to Client shall not exceed 75% of ArcaSearch total fee for services rendered on this project. It is intended that this limitation apply to any and all liability or cause of action, however asserted, alleged, pled or arising, unless otherwise prohibited by law.

Warranty

ArcaSearch warrants and represents that all products or deliverables specified and furnished by or through ArcaSearch under this agreement meet the completion criteria set forth in this agreement, and that services will be provided in a workmanlike manner in accordance with industry standards.

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Termination

During the terms of this agreement for this archive project, both ArcaSearch and Client will have the right to terminate this agreement for cause with 30 days written notice. Terms giving either party just cause to terminate are as follows: If one of the parties does not adhere to the responsibilities set forth in this agreement, and/or if payment(s) has not been made in accordance with terms of this agreement. Client may also terminate without cause if funding becomes unavailable. In the event of termination, for this, or any other reason, resulting in an underage between the estimated image count represented in this proposal and the actual image count, the difference will be priced at an adjusted rate of 70 percent of the per page rate used to determine the estimated project price in this proposal. (Estimated project price divided by the estimated image count equals per page rate) The decrease-allowance shall not be more 80 percent of the proposal total.

Client will receive a prorated refund on the annual fee if the agreement is terminated prior to yearly renewal.

Terms and conditions may be updated annually.

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PRICING**Project Estimating**

In consultation with our clients, ArcaSearch experienced sales representatives and technicians make every effort to accurately estimate the number of documents and other items in the proposed digital archive. This estimate is one of the primary components in the overall proposal ArcaSearch presents to its customers. Final invoice will reflect the actual number of images at the completion of this project. Additional images over the estimated image count for this project will be priced at the per page rate of this project.

Payment Terms

ArcaSearch will invoice 50 percent of the project price upon receipt of this signed proposal. Final payment of the project will be invoiced upon completion and final acceptance from the customer. Applicable local and federal tax will be applied in addition to proposal price. Failure to pay an invoice within 90 days of invoice date may result in access termination of your research site.

Oversized Documents and Inserts

Maximum page size for this proposal is 17 ½ inches' x 23 ½ inches'. Individual books containing separate oversized supporting documents or loosely oversized inserted images other than what has already been identified in this proposal will be billed at rate of \$9.50 per image.

Additional Programming

Additional programming, beyond the scope of this proposal will be billed at \$225/hour with 1-hour minimum. ArcaSearch will do our best at providing you the highest quality searchable image when digital images have been provided to us to be added to our research site. We are not responsible for missing images or naming errors on images that are provided to us in a digital born format or paper to digital format.

By signing this agreement for **Proposal #07282020P1V1** you are acknowledging that you have read, understand and agree to the terms presented in this document. No understanding exists other than those expressed in this agreement. This proposal is valid for 6 months from its issuance and supersedes all previous proposals or agreements.

PROJECT PRICE

- **Estimated Project Price: \$11,949**

Includes:

- Patented document creation process delivers the highest OCR accuracy possible, without sacrificing the visual integrity of the final PDF files
- Two-step verification process for image quality and accuracy
- Two complete copies of your completed, archived files on external media

ANNUAL FEE

- **Compass Eclipse Research System Annual fee *increase*: \$675.00**

Includes:

- Seamless integration of new product category, Commissioner Minutes, within the Compass Eclipse Research System

ACCEPTED BY:

Client: _____ Date: _____
Client Name- Signature

Client: _____ Date: _____
Client Name- Printed

For ArcaSearch: 2 Hoelstra Date: 8.11.20
ArcaSearch

CONTACT INFORMATION:

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