**AGENDA**
**CITY OF LARAMIE, WYOMING**
**CITY COUNCIL MEETING**
**CITY HALL**
**AUGUST 15, 2016 6:30 pm**

*City Council Meetings are open to the public. Requests for accommodations from persons with disabilities must be made to the City Manager's Office 24 hours in advance of a meeting.*

*Please be advised no additional agenda item will be introduced at a Regular City Council meeting after the hour of 9:30 p.m., unless the majority of the City Council members present vote to extend the meeting.*

1. **AGENDA**

2. **Pledge of Allegiance**

3. **Roll Call**

4. **PRE-MEETING ITEMS**

4.A. **PROCLAMATIONS & PRESENTATIONS**

4.B. **PUBLIC HEARING**

4.B.i. **PUBLIC HEARING: Original Ordinance No. 1952, amending various sections of the Laramie Municipal Code related to parking.**

Documents:

PH for Parking 8-15-16.pdf

4.C. **ANNOUNCEMENTS**

5. **Disclosures by City Council Members**

6. **Consideration of Changes in Agenda and Setting the Agenda**

A. MOTION BY ___, seconded by ___, that the following changes to the Agenda be approved:

B. MOTION BY ___, seconded by ___, that the Agenda be set as submitted or changed.

7. **Approval of Consent Agenda**

Items listed on the Consent Agenda are considered to be routine and will be enacted by one motion in the form listed below. There will be no separate discussion of these items unless a Councilor or citizen so requests, in which case the item will be removed from the Consent Agenda and will be considered on the Regular Agenda.

MOTION BY ____, seconded by _____, that the Consent Agenda be approved and that each specific action on the Consent Agenda be

approved as indicated.

## 8. CONSENT AGENDA

### 8.A. MINUTES: City Council Meetings

**Action:**

that Council approve the Minutes of the City Council Regular Meeting of August 2, 2016 and the Public Hearing of August 2, 2016, and have them placed on file for public inspection.
**[Johnson, CC]**

Documents:

Minutes 08.02.2016.pdf
Public Hearing 08.02.16.OO1951.pdf

### 8.B. CEMETERY DEEDS: For August 1-15, 2016

**Action:**

that the Cemetery Deeds for August 1-15, 2016 be accepted, and the Mayor and City Clerk be authorized to sign and have them recorded in the Office of the County Clerk. **[Feezer, P/R Dir]**

### 8.C. MINUTES: July 14, 2016 Traffic Commission Meeting

**Action:**

to acknowledge receipt of the Minutes from July 14, 2016 Traffic Commission Meeting and that the following items be approved as indicated:
1) To approve placement of a specifically reserved handicap parking space at the location of 620 East Fremont Street.
2) To approve placement of a specifically reserved handicap parking space at the location of 709 Ivinson Avenue.
3) To approve placement of a specifically reserved handicap parking space at the location of 562 North 8th Street.
4) To approve the elimination of the handicap parking space and remove the sign at 1115 Reynolds Street.
**[Smith, PW Dir]**

Documents:

Cover Sheet TC Minutes 07.14.16.pdf
07 14 16 TC Minutes.pdf

### 8.D. MINUTES: of the July 20, 2016 Parks, Tree & Recreation Advisory Board.

**Action:**

that Council acknowledge receipt of the Minutes from the July 20, 2016 regular meeting of the Parks, Tree and Recreation Advisory Board:
1) To approve the minutes from the July 20, 2016 regular meeting of the Parks, Tree and Recreation Advisory Board. (Approved)
2) To approve continuation of the American Red Cross Shelter Agreement and to authorize the completion of the agreement. (Approved)
3) Introduction of new board member Dylan Esquivel to fulfill position vacated by Jamie Le Jambre, term expires December 2016. (Approved)
4) Presentation of Raj Patel's donation for trees in honor of his grandparents to be planted on Boulder Drive medians adjacent to the new Laramie High School. (Approved)
5) To discuss an Administrative Policy and Procedure for Naming/Renaming City of Laramie, Parks & Recreation Department Parks and/or Facilities and

forward to City Council for acknowledgment. (Postponed)
**[Feezer, P&R Dir.]**

Documents:

PTR Advisory Board Minutes 7.20.16 Cover Sheet.pdf
Advisory Board Minutes July 20, 2016.pdf

**8.E. AGREEMENT: State Revolving Loan Fund documents for the Grand Avenue Water Line Replacement Project 13th to 15th Street**

**Action:**
that Council approve the State Revolving Loan Fund documents for the Grand Avenue Water Line Replacement Project (13th to 15th Street) and authorize the Mayor and City Clerk to sign.
**[Smith, PW Dir]**

Documents:

Cover Sheet SRF Loan Docs Grand Ave Water Line 13-15.pdf
WY State Lands.pdf

**8.F. AGREEMENT: FAA Grant Agreement No. 3-56-0017-33-2016 for federal funding to Rehabilitate Commercial Apron (Phase II – Construction)**

**Action:**
that Council approve the FAA Grant Agreement No. 3-56-0017-33-2016 for federal funding to Rehabilitate Commercial Apron (Phase II – Construction) in the amount of $1,842,210 and authorize the Mayor and City Clerk to sign.
**[Derragon, ACM]**

Documents:

1. Cover Sheet - Airport Grant 8-15-16.docx
2. Letter - Airport 8-15-16.pdf
3. Letter - FAA 8-15-16.pdf
4. Grant Agreement - Airport 8-15-16.pdf

**8.G. ORDINANCE: Original Ordinance No. 1951, amending Title 13, Division IV, Chapter 62 of the Laramie Municipal Code to regulate Solid Waste Fees in the City of Laramie**

Third and Final Reading. (Introduced by Hanson)
**Action:**
to approve Third and Final Reading of Original Ordinance No. 1951, amending Title 13, Division IV, Chapter 62 of the Laramie Municipal Code to modify Solid Waste fees and to authorize the Mayor and City Clerk to sign.
**[Smith, PW Dir]**

Documents:

Cover Sheet SW Rate Ord 3rd Reading.pdf
SW Rate Ordinance 3rd.pdf

**8.H. RESOLUTION: Resolution 2016-_____, authorizing sponsorship of the Laramie Animal Welfare Society-Dog Day in the Park Event to be held on August 28, 2016.**

**Action:**
that council approve Resolution 2016-_____ authorizing co-sponsorship of the Laramie Animal Welfare Society – Dog Day in the Park event allowing for the use of associated parks, shelters, facilities and equipment for the event and authorize the Mayor and Clerk to sign.
**[Feezer, P&R Dir.]**

Documents:

LAWS Dog Day Event Sponsor Cover Sheet.pdf
LAWS Dog Day Event Sponsor Resolution.pdf
LAWS Dog Day Event Request Letter.pdf

**8.I. SCHEDULE MEETING(S)**

**Action:**
that Council schedule the following meeting(s):
**1. September 6, 6:30 pm, Public Hearing:** Hero Primo, LLC Liquor License Application.
**2. September 13, 2016, 6:00 pm, Work Session:** WY Business Council Sponsored Trip Update to the National Main Street Conference
**3. September 13, 6:00 pm, Work Session:** Fluoridation in municipal water
**4. September 27, 6:00 pm, Work Session:** Urban Renewal

**9. REGULAR AGENDA**

**10. Original Ordinance No. 1949, amending Title 15 of Laramie Municipal Code for the purposes of amending the Landscaping Requirements.**
Second Reading. (Introduced by Pearce)
**[Derragon, ACM]**

Documents:

1.Cover Sheet.pdf
2.Original Ordinance No. 1949.pdf
3.Memo to Council.pdf
4.Planning Commission Staff Report.pdf

**11. Grant Agreement between the Wyoming Business Council and the City of Laramie for the Business Ready Communities Award for Bright Agrotech**
**[Jordan, CM]**

Documents:

1. Agenda Cover~ Grant Agreement.pdf
2. WBC Grant Agreement.pdf

**12. Design and Pre-Construction Contract for Bright Agrotech Corporate Office and Manufacturing Facility**

**[Jordan, City Manager]**

Documents:

Bright Agrotech Pre-Construction Cover Sheet 8.15.16.pdf

DBIA 2009 Form 525 - Haselden Standard-SF edits.pdf
DBIA 2009 Form 535 - Haselden Standard-SF edits.pdf

13. **Bid Award for Beech Street Overlay Project**
**[Smith, PW Dir]**

Documents:

Coversheet Beech Overlay revised.pdf
ConstructionContract_Simon.pdf
Bid Rec 2016 Beech Revised 8 11 16.pdf
Beech Street Overlay 2016 Bid Tabulation.pdf

14. **Bid Award for 2016 Overlay Project**
**[Smith, PW Dir]**

Documents:

Cover Sheet 2016 Overlay.pdf
2016 Overlay ConstructionContract.pdf
Overlay 2016 Bid Tabulation.pdf
Bid Rec 2016 Overlay.pdf

15. **Award of Professional Services Agreement for the 20" Transmission Line Rehabilitation Project**
**[Smith, PW Dir]**

Documents:

Cover Sheet 20 inch transmission main rehab.pdf
prof services agmt-MSI.pdf
Staff Recommendation 20 trans.pdf

16. **Original Ordinance _____ to amend sections 9.12.010, 9.12.020, 9.12.030 and 9.16.070 of the Laramie Municipal Code.**
Introduction and First Reading
**[Loos, CA]**

Documents:

Cover Sheet First Reading.pdf
Ordinance.pdf

17. **Original Ordinance 1952 to add section 10.36.330; amend sections 10.36.010, 10.36.020, 10.36.080, 10.36.090, 10.36.120, 10.36.130, 10.36.140, 10.36.150, 10.36.220, 10.36.280, 10.36.300, 10.36.310, 10.36.350; delete Sections 10.36.050, 10.36.160, 10.36.170, 10.36.180, 10.36.190, 10.36.200 of the Laramie Municipal Code.**
Second Reading. (Introduced by Summerville)
**[Loos, CAO]**

Documents:

Cover Sheet Second Reading 8-15-16.pdf
Parking Ordinance Revisions for second reading final.pdf

18. **Resolution No. to the Wyoming Legislature's Interim Joint Revenue Committee advocating for the support of the preservation of the excise tax on electricity produced by wind at its current level**
**[Derragon, ACM]**

Documents:

1. Resolution Wind Excise Tax Cover Sheet 8-15-16.pdf
2. Resolution - Wind Excise Tax 8-15-16.pdf
3. Letter - Power Company of Wyoming.pdf
4. Resolution - Carbon County.pdf
5. Resolution - City of Rawlins.pdf

19. **Consideration of future Council work session topics**

Documents:

Upcoming Meetings Aug 15-2016.pdf
Future Work Session Topics 8-15-2016.pdf

20. **Public Comments on Non-Agenda Items by sign-in requests**
(Members of the public may address the City Council on items not on the printed Agenda. Please observe the time limit of five (5) minutes.)

21. **Adjournment**

# NOTICE OF PUBLIC HEARING

COMES NOW the City of Laramie, Wyoming, provides public notice of a public hearing on proposed amendments to parking regulations in the City of Laramie.

A public hearing will be held by the City Council in City Council Chambers at 406 Ivinson Street, Laramie, WY at 6:30 p.m. on August 15, 2016. The public is invited to offer comments on parking regulations either in person at the meeting or by mailing comments to Mayor, c/o City Clerk, P.O. Box C, Laramie, WY 82073.

/s/David Paulekas, Mayor
Attest: Angie Johnson, City Clerk

Legal Publish: August 6, 2016

## 1. AGENDA

Regular Meeting of the City Council was called to order by Mayor Paulekas at 6:30 p.m.

## 2. Pledge of Allegiance

Mayor Paulekas led the Pledge of Allegiance.

## 3. Roll Call

Roll call showed present: Henry, Shumway, Shuster, Summerville, Vitale, Weaver, Pearce, and Paulekas. Absent: Hanson. Hanson connected telephonically about 6:40 p.m.

Staff present: Janine Jordan, City Manager; David Derragon, Assistant City Manager; LaDene Culver, City Clerk's Administrative Assistant; Jason Loos, City Attorney; Todd Feezer, Parks & Recreation Director; Earl Smith, Public Works Director; Dan Johnson, Fire Chief; and Dale Stalder, Police Chief.

## 4. PRE-MEETING ITEMS

## 4.A. PROCLAMATIONS & PRESENTATIONS

## 4.B. PUBLIC HEARING

Original Ordinance No. 1951

## 4.C. ANNOUNCEMENTS

## 5. Disclosures by City Council Members

None.

## 6. Consideration of Changes in Agenda and Setting the Agenda

A. MOTION BY PEARCE, seconded by Shumway, that the following changes to the Agenda be approved: On the Consent Agenda 8K will now be Vouchers, and add 8L Schedule Meetings.

MOTION CARRIED by voice vote.

B. MOTION BY PEARCE, seconded by Summerville, that the Agenda be set as changed.

MOTION CARRIED by voice vote.

**7. Approval of Consent Agenda**

MOTION BY PEARCE, seconded by Summerville, that the Consent Agenda be approved and that each specific action on the Consent Agenda be approved as indicated.

Roll call showed Aye: Henry, Shumway, Shuster, Summerville, Vitale, Weaver, Pearce, and Paulekas. Nay: Henry on 8D. Absent: Hanson. MOTION CARRIED.

**8. CONSENT AGENDA**

**8.A. MINUTES: City Council Meetings**
**Action:** that Council approve the Minutes of the City Council Regular Meeting of July 19, 2016, the Special Meeting of July 26, 2016, and have them placed on file for public inspection.

**8.B. CEMETERY DEEDS: For July 16-31, 2016**
**Action:** that the Cemetery Deeds for July 16-31, 2016 be accepted, and the Mayor and City Clerk be authorized to sign and have them recorded in the Office of the County Clerk.

**8.C. LICENSING: Temporary use of Retail Liquor License No. 2, Literature & Libations, LLC in Albany County.**

**Action:** to grant permission to Literature & Libations, LLC, dba Mulligans Pub, Retail Liquor License No. 2, to file an application for alcohol catering with Albany County Commissioners to locate their license at 251 Mandel Lane in Albany County on August 13, 2016 from 3:00 pm to 12:00 am, for a private wedding reception.

**8.D. ORDINANCE: Original Ordinance No. 1948, vacating a 4,224 sq. ft. area of alley right-of-way within Block 1, University Place Addition and consideration of related Quitclaim Deed.** Third and Final Reading. (Introduced by Summerville)
**Action:**
a. to approve Original Ordinance No. 1948 on third and final reading, vacating a 4,224 sq. ft. area of alley of right-of-way within Block 1, University Place Addition, based on findings of fact and conclusions of law, authorize the Mayor and Clerk to sign the Ordinance and authorize the Clerk to record the Ordinance with the County Clerk.
b. to approve the Quitclaim Deed conveying a 4,224 sq. ft. area of alley right-of-way within Block 1, University Place Addition to the University of Wyoming, authorize the Mayor and Clerk to sign the Quitclaim Deed and authorize the Clerk to record the Quitclaim Deed with the County Clerk.

**8.E. ORDINANCE: Original Ordinance 1950 to delete Section10.24.030(H) of the Laramie Municipal Code Driving Under the Influence. Third and Final Reading. (Introduced by Weaver).** Third and Final Reading. (Introduced by Weaver).
**Action:** to approve Original Ordinance 1950 and authorize the Mayor and Clerk to sign

**8.F. AGREEMENT MODIFICATION: Consideration of a modification to the term of the Agreement between the City of Laramie and Wyoming State Parks and Cultural Resources for a Wyoming Cultural Trust Fund grant for improvements to the Edgar J. Lewis Band Shell in Washington Park.**
**Action:** to approve the modified agreement extending the term from June 30, 2016 to October 1, 2016 between the City of Laramie and Wyoming State Parks and Cultural Resources for a Wyoming Cultural Trust Fund grant for improvements to the Edgar J. Lewis Band Shell in Washington Park and authorize the Mayor and Clerk to sign.

**8.G. AGREEMENT: Operational Agreement Between the City of Laramie and the Albany County Rural Fire District No. 1**
**Action:** that Council approves the operational agreement between the City of Laramie and Albany County Fire District No. 1 for the 2016 - 2017 fiscal year, in the amount of $118,320.00, and authorize the Mayor and City Clerk to sign.

**8.H. AGREEMENT: Professional Services Agreement with Ayres Associates for a bicycle/pedestrian corridor feasibility study.**
**Action:** to approve the Professional Services Agreement between the City of Laramie and Ayers Associates of Cheyenne, WY for a bicycle/pedestrian feasibility study in the amount of $47,500.00 plus a contingency of $2,500.00 for a total not to exceed amount of $50,000.00, to approve the agreement therefore, and authorize the Mayor and Clerk to sign.

**8.I. ADOPTION: Albany County Emergency Operations Plan**
**Action:** that Council adopts the Albany County Emergency Operations Plan for the City of Laramie, Town of Rock River, and Albany County, Wyoming, and authorizes the Mayor and City Clerk to sign.

**8.J. MOU: Memorandum of Understanding between the Laramie Police Department and Albany County School District #1 for School Resource Officers**
**Action:** to approve a memorandum of understanding between the Laramie Police Department and Albany County School District #1 to provide School Resource Officers for the 2016-2017 school year.

**8.K. Vouchers**
**Action:** that the following Resolution be adopted: BE IT RESOLVED: that all vouchers approved by the Finance Committee be allowed, warrants drawn on proper City funds in payment thereof, and the vouchers be placed on file in the Treasurer's Office subject to public inspection; and that Council authorize payment for the month-end payroll, light and gas charges, telephone charges, Pioneer Canal-Lake Hattie Irrigation District lease, employee travel, other employee reimbursements, pay advances, refunds for City services, recording fees, postage, lease purchase and bond payments, self-funded employee health insurance claims, miscellaneous insurance claims, Council-approved bid items, outside attorney fees, other consulting fees, before normal City Council approval on the first Tuesday of August. These expenditures are to be paid subject to audit by the City of Laramie Finance Department.

**8L. SCHEDULE MEETING(S)**

**Action:** that Council schedule the following meeting(s):

**1. August 15, 2016, 6:30 pm, Public Hearing:** Ordinance amending various sections of the Laramie Municipal Code related to parking.

**2. August 17, 2016, 4:00 pm, Work Session:** LCCC Tour (LCCC Cheyenne campus)

**3. August 18, 2016, 6:00 pm, Special Meeting:** Adjourn into Executive Session regarding personnel

**4. August 19, 2016, 6:00 pm, Special Meeting:** Public Comments re city attorney selection; Recess to Executive Session regarding: personnel; Consideration to direct City Attorney to enter into contractual negotiations with selection for position of City Attorney; Adjournment.

**9. REGULAR AGENDA**

**10. Resolution 2016-55, accepting the donation of funds from Mr. Raj Patel to be used towards the purchase of trees in the Boulder Drive medians.**

MOTION BY WEAVER, seconded by Pearce, that Council move to approve Resolution 2016-55, accepting the donation of funds from Mr. Raj Patel to be used towards the purchase of trees in the Boulder Drive medians and authorize the Mayor and Clerk to sign.

Roll call showed Aye: Henry, Shumway, Shuster, Summerville, Vitale, Weaver, Pearce, and Paulekas. Nay: None. Absent: Hanson. MOTION CARRIED.

**11. Stagecoach Preliminary Plat**

MOTION BY SHUSTER, seconded by Weaver, that Council approve the Stagecoach Subdivision Preliminary Plat, based on findings of fact and conclusions of law, and subject to all Planning Commission's recommended conditions.

MOTION BY SHUSTER, seconded by Shumway, that Council amend Planning Commission condition 2a) and 3 as recommended by staff.

Hanson joined telephonically about 6:40 p.m.

MOTION BY SHUSTER, seconded by Shumway, that Council amend the amendment that the sidewalk between the two properties in the twenty foot easement now become a five foot standard City approved sidewalk.

Roll call ON SIDEWALK AMENDMENT showed Aye: Shumway and Paulekas. Nay: Hanson, Henry, Shuster, Summerville, Vitale, Weaver, and Pearce. Absent: None. MOTION FAILED.

MOTION BY SHUSTER, seconded by Shumway, that Council amend that the twenty foot Right-of-Way, ten feet out of each one of these that was just an easement, now becomes a twenty foot gap between the two lots, that will be completely owned by the City, and the sidewalk would be a five foot sidewalk, standard width, meeting all City standards.

Roll call ON RIGHT-OF-WAY AMENDMENT showed Aye: Henry, Shumway, Shuster, Vitale, and Paulekas. Nay: Hanson, Summerville, Weaver, and Pearce. Absent: None. MOTION CARRIED.

Roll call ON AMENDMENT AS AMENDED Aye: Henry, Shumway, Shuster, Summerville, Vitale, and Paulekas. Nay: Hanson, Weaver, and Pearce. Absent: None. MOTION CARRIED.

Roll call ON MAIN MOTION AS AMENDED Aye: Henry, Shumway, Shuster, Vitale, and Paulekas. Nay: Hanson, Summerville, Weaver, and Pearce. Absent: None. MOTION CARRIED.

**12. Resolution 2016-56, supporting the petition regarding the street name change of Ivinson Street to Ivinson Avenue, for the address of 406 Ivinson only."**

MOTION BY HENRY, seconded by Shuster, that Council approve Resolution 2016-56 authorizing the approval of resident petition to formally return the naming of Ivinson Street to Ivinson Avenue, and authorize the Mayor and Clerk to sign the resolution and the petition.

Roll call showed Aye: Hanson, Henry, Shumway, Shuster, Summerville, Vitale, Weaver, Pearce, and Paulekas. Nay: None. Absent None. MOTION CARRIED.

**13. Approval of Buy-Sell Agreement in the Amount of $400,000 for Monolith Ranch acreage (722.60 acres) between the City of Laramie and Mountain Cement**

MOTION BY VITALE, seconded by Shuster, that Council approve the buy-sell agreement between the City of Laramie and Mountain Cement for sale of 722.60 acres located on the Monolith Ranch in the amount of $400,000 and authorize the Mayor and City Clerk to sign.

MOTION BY SUMMERVILLE, seconded by Pearce, that council postpone this item until September 6, 2016, direct staff to negotiate and include in the contract an economic development description and benchmarks.

Roll call ON POSTPONEMENT showed Aye: Hanson, Summerville, and Pearce. Nay: Henry, Shumway, Shuster, Vitale, Weaver, and Paulekas. Absent: None. MOTION FAILED.

MOTION BY SUMMERVILLE, seconded by Pearce, that Council amend so Laramie retains the First Right of Refusal in the event that they do not receive the mining permit or when they sell the land in the future.

Council recessed at 8:21 p.m.

Council reconvened at 8:30 p.m.

Roll call ON FIRST RIGHT AMENDMENT showed Aye: Hanson, Henry, Summerville, and Pearce. Nay: Shumway, Shuster, Vitale, Weaver, and Paulekas. Absent: None. MOTION FAILED.

Roll call ON MAIN MOTION showed Aye: Shumway, Shuster, Vitale, Weaver, and Paulekas. Nay: Hanson, Henry, Summerville, and Pearce. Absent: None. MOTION CARRIED.

Vitale exited the meeting at 8:40 p.m.

**14. Amendment I to the Business Ready Community Grant and Loan Program Grant Agreement between the Wyoming Business Council and the City of Laramie for the Tungsten Heavy Powder and Parts Project**

MOTION BY SHUSTER, seconded by Henry, that Council approve Amendment I to the Business Ready Community Grant and Loan Program Grant Agreement between the Wyoming Business Council and the City of Laramie for the THPP Project and authorize Mayor and Clerk to sign.

Roll call showed Aye: Hanson, Henry, Shumway, Shuster, Summerville, Weaver, Pearce, and Paulekas. Nay: None. Absent: Vitale. MOTION CARRIED.

**15. Original Ordinance No. 1951, Amending Title 13, Division IV, Chapter 62 of the Laramie Municipal Code to Regulate Solid Waste Fees in the City of Laramie** Second Reading (Introduced by Hanson)

MOTION BY WEAVER, seconded by Pearce, that Council approve Second Reading of Original Ordinance No. 1951 amending Title 13, Division IV, Chapter 62 of the Laramie Municipal Code to modify solid waste fees and to authorize the Mayor and City Clerk to sign.

Roll call showed Aye: Hanson, Henry, Shumway, Shuster, Summerville, Weaver, Pearce, and Paulekas. Nay: None. Absent: Vitale. MOTION CARRIED.

**16. Agreement with the University of Wyoming to extend Jacoby Water Agreement through the end of the year.**

MOTION BY SHUMWAY, seconded by Summerville, that Council approve the Agreement to extend the Jacoby Water Agreement through the end of the year 2016 and authorize the Mayor and Clerk to sign.

Roll call showed Aye: Hanson, Henry, Shumway, Shuster, Summerville, Weaver, Pearce, and Paulekas. Nay: None. Absent: Vitale. MOTION CARRIED.

MOTION BY SUMMERVILLE, seconded by Shuster, that Council consider item No. 19 and No. 20 out of order.

MOTION CARRIED by voice vote.

**19. Resolution 2016 - 57, setting the time and date of the Regular Council Meeting normally held on Tuesday, August 16, 2016.**

MOTION BY SHUMWAY, seconded by Shuster, that Council approve Resolution 2016-57, setting the time and date of the Regular City Council Meeting normally held on Tuesday, August 16, 2016 to be changed to Monday, August 15, 2016, and authorize the Mayor and Clerk to sign.

Roll call showed Aye: Hanson, Henry, Shumway, Shuster, Summerville, Weaver, and Paulekas. Nay: Pearce. Absent: Vitale. MOTION CARRIED.

**20. Resolution 2016 - 58 appointing one (1) member of the Environmental Advisory Committee in concurrence with the Board of County Commissioners.**

MOTION BY HENRY, seconded by Weaver, that that Council approve Resolution 2016 - 58, appointing Geoffrey Thyne to the Environmental Advisory Committee for the remainder of a

three year term, expiring on November 7, 2016, and authorize the Mayor and Clerk to sign the Resolution.

Roll call showed Aye: Hanson, Henry, Shumway, Shuster, Summerville, Weaver, Pearce, and Paulekas. Nay: None. Absent: Vitale. MOTION CARRIED.

**17. Original Ordinance 1952 to add section 10.36.330; amend sections 10.36.010, 10.36.020, 10.36.080, 10.36.090, 10.36.120, 10.36.130, 10.36.140, 10.36.150, 10.36.220, 10.36.280, 10.36.300, 10.36.310, 10.36.350; delete Sections 10.36.050, 10.36.160, 10.36.170, 10.36.180, 10.36.190, 10.36.200 of the Laramie Municipal Code.**
Introduction and First Reading

AN ORDINANCE TO ADD SECTION 10.36.330; AMEND SECTIONS 10.36.010, 10.36.020, 10.36.080, 10.36.090, 10.36.120, 10.36.130, 10.36.140, 10.36.150, 10.36.220, 10.36.280, 10.36.300, 10.36.310, 10.36.350; DELETE SECTIONS 10.36.060, 10.36.160, 10.36.170, 10.36.180, 10.36.190, 10.36.200 OF THE LARAMIE MUNICIPAL CODE
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LARAMIE, WYOMING

MOTION BY SUMMERVILLE, seconded by Shumway, that Council approve Original Ordinance 1952 to add section 10.36.330; amend sections as enumerated, and delete sections as enumerated, of the Laramie Municipal Code, set it for second reading on August 16, 2016, and set a Public Hearing August 16, 2016.

Roll call showed Aye: Hanson, Henry, Shumway, Shuster, Summerville, Weaver, Pearce, and Paulekas. Nay: None. Absent: Vitale. MOTION CARRIED.

~~**18. Original Ordinance No. 1949, amending Title 15 of LMC for the purposes of amending the Landscaping Requirements.** Second Reading. (Introduced by Pearce)~~

~~**21. Consideration of future Council work session topics**~~

**22. Public Comments on Non-Agenda Items by sign-in requests**

None.

**23. Adjournment**

MOTION BY WEAVER, seconded by Summerville, that Council adjourn.

MOTION CARRIED by voice vote.

Council adjourned at 9:40 p.m.

Respectfully submitted,

Angie Johnson
City Clerk

**LARAMIE CITY COUNCIL**
**PUBLIC HEARING**
**Original Ordinance 1951**
**August 2, 2016**

Public Hearing was called to order by Mayor Paulekas at 6:32 p.m.

City Council present: Vicki Henry, Joe Shumway, Bryan Shuster, Andi Summerville, Joe Vitale, Paul Weaver, Jayne Pearce, and Dave Paulekas. Absent: Klaus Hanson.

The City Clerk's Administrative Assistant read the notice:

THE CITY COUNCIL WILL HOLD THE FOLLOWING PUBLIC HEARING AT 6:30 P.M. ON AUGUST 2, 2016 IN THE CITY COUNCIL CHAMBERS, LARAMIE CITY HALL, 406 IVINSON AVENUE, LARAMIE, WY, TO TAKE PUBLIC COMMENTS ON THE FOLLOWING: ORIGINAL ORDINANCE NO. 1951, AMENDING TITLE 13, DIVISION IV, CHAPTER 62 OF THE LARAMIE MUNICIPAL CODE TO REGULATE SOLID WASTE FEES IN THE CITY OF LARAMIE WHICH WOULD MODIFY CERTAIN SOLID WASTE FEES FOR THE CITY OF LARAMIE. ALL APPLICATIONS, PLANS AND SPECIFICATIONS RELATIVE TO THESE MATTER(S) ARE AVAILABLE FOR REVIEW AT THE OFFICE OF THE CITY CLERK, AT 405 GRAND AVENUE, LARAMIE, WY. ANYONE WISHING TO BE HEARD SHOULD BE PRESENT OR MAY BE REPRESENTED BY HIS OR HER AGENT AT THE MEETING.

Mayor Paulekas asked if there were any comments.

Richard W. Wilkins, 350 N. 4th St. stated he was concerned about fees and the amount of apartment dwellings in Laramie, and the services to them vs. the individual homeowner. They have dumpsters without any recycling, so everything goes into the dumpster, which goes to our landfill cells. There is no regulation on the items placed on the dumpsters.

Public Hearing was closed at 6:35 p.m.

Respectfully submitted

Angie Johnson
City Clerk

# CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016

| | |
|---|---|
| LARAMIE 1868 | **Agenda Item: Minutes**<br><br>**Title: Minutes of the July 14, 2016 Traffic Commission Meeting** |

**Recommended Council MOTION:**
Move to acknowledge receipt of the Minutes from the July 14, 2016 Traffic Commission meeting and that the following items be approved as indicated:

- To approve placement of a specifically reserved handicap parking space at the location of 620 East Fremont Street.
- To approve placement of a specifically reserved handicap parking space at the location of 709 Ivinson Avenue.
- To approve placement of a specifically reserved handicap parking space at the location of 562 North 8th Street.
- To approve the elimination of the handicap parking space and remove the sign at 1115 Reynolds Street.

**Administrative or Policy Goal:**
In general, the Traffic Commission provides the necessary framework for receiving, reviewing, and implementing valid concerns of City Residents that pertain to traffic safety and circulation within the Community.

**Background:**
The Traffic Commission held a regular meeting on July 14, 2016. The Minutes are attached.

**Legal/Statutory Authority:**
Laramie Municipal Code: Chapter 10.08 Official Traffic Commission

## BUDGET/FISCAL INFORMATION:

**EXPENSE**

Proposed Project Cost.

| | | | |
|---|---|---|---|
| Project Cost | | $450.00 | Street Division: 100-4025-431.43-64 |
| Loans on Project | | | ADA signage and paint |
| Grants for Project | | | |
| Other/Outside Projects | | | |
| City's Amount | | $450.00 | |
| Contingency | 0% | $0.00 | |
| Total Amount | | $450.00 | |
| | | | |

Amount spent to date (approved and adopted by Council)

| | | |
|---|---|---|
| Total Budget Allocation | $52,500.00 | |
| Less Amount Spent to Date | $507.58 | |
| Remainder of Budget | $51,992.42 | |
| | | |

## Responsible Staff:

Earl Smith, Public Works Director
Eric Jaap, City Engineer
Shane Johnson, Street Division Manager

Attachments:
07/14/2016 Traffic Commission Minutes

**CITY OF LARAMIE**
Public Works Department
P.O. Box C
Laramie, WY 82073

Public Works 721-5230
Engineering 721-5250
Solid Waste 721-5279
Street 721-5277
Utility 721-5280
FAX (307) 721-5286
TDD (307) 721-5295

# MINUTES
## Traffic Commission
## July 14, 2016 at 7:00 AM
## City Council Chambers, City Hall
## 406 Ivinson Avenue, Laramie, WY

*The Traffic Conference meetings are open to the public. Requests from person with disabilities must be made to the Community Development Department 24 hours in advance of the meeting.*

**1. CALL TO ORDER/ ROLL CALL**

Meeting convened at 7:01 AM
Members present: Arthur Denison, Michael Moeller, Lindsay Schumaker, Debbie Shinstine and Nany Sindelar (Chair),
Members absent: Harold Colby, and Megan Hayes
There was a quorum present at all times.
Council Liaison: Klaus Hanson (present)
Staff Present: Randy Griesbach (WYDOT), Eric Jaap, Kathleen Wickersham, Cindy Williams, and William Winkler

**2. APPROVAL OF AGENDA AND MINUTES**

**2-A. AGENDA: July 14, 2016 Traffic Commission Meeting Agenda**

**MOTION BY MOELLER, second by Denison,** to amend the agenda to correct item 6-A to reflect 620 Fremont not 602 Fremont and to postpone item 4-A. USAC Update until the next Traffic Commission meeting. Agenda approved as amended.
Aye: 5
Nay: 0
**Motion carried.**

**2-B. MINUTES: Thursday, March 10, 2016 Traffic Commission Meeting Minutes**

**MOTION BY MOELLER, second by Schumaker,** to approve the March 10, 2016 Traffic Commission Minutes as written.
Aye: 5
Nay: 0
**Motion carried.**

**3. CITIZEN COMMENTS**

No citizen comments.

**4. TRAFFIC COMMISSION AND STAFF REPORTS AND COMMENTS**

City Engineer Jaap informed the Commission that Randy Hunt the Community Development Director would be leaving the City of Laramie on July 15th. Hunt is taking a new position as Community Development Director in Estes Park, Colorado.

Carl Lund, Engineer in Training, has also left the City of Laramie to work in Yuma, AZ.

The Commission thanked Hunt and Lund for their service to the Commission and the Community.

William Winker recently passed his Professional Engineer's exam and has been promoted to Civil Engineer and looks forward to continuing his career with the City.

More Engineering news: Jaap stated that the City Engineering Division has been newly assigned to the Public Works Department as of July 1st.

Cindy Williams was introduced as the new secretary and clerk to the Traffic Commission, and will be training with Wickersham.

**5. DISCLOSURES – Ex-parte communications; potential conflicts of interest**
No disclosures.

**6. CURRENT BUSINESS**

**OLD BUSINESS**
No items.

**NEW BUSINESS**
**6-A. MP-16-02 Request for Specifically Reserved Handicap Parking Space – 620 E. Fremont Street**
Civil Engineer Winkler provided the staff report. The applicant Charmaine Delmatier requested a specifically reserved handicap parking space in front of her residence at 620 East Fremont Street.

**MOTION BY MOELLER, second by Schumaker,** to approve placement of a specifically reserved handicap parking space for license plate number WY 4-6336 at the location of 620 Fremont Street.
Aye: 5
Nay: 0
**Motion carried.**

**6-B. MP-16-03 Request for Specifically Reserved Handicap Parking Space – 709 Ivinson Avenue**
Winkler shared with the Commission that the applicant Jessica Dawkins requested a specifically reserved handicap parking space in front of her residence at 709 Ivinson Avenue.

**MOTION BY MOELLER, second by Shinstine,** to approve placement of a specifically reserved handicap parking space for license plate number WY 5-232 at the location of 709 Ivinson Avenue.
Aye: 5
Nay: 0
**Motion carried.**

**6-C. MP-16-04 Request for Specifically Reserved Handicap Parking Space – 562 North 8th Street**
Engineer Winkler informed the Commission that the applicant Larry M. Derr requested a specifically reserved handicap parking space in front of his residence at 562 North 8th Street.

**MOTION BY SHINSTINE, second by Moeller,** to approve placement of a specifically reserved handicap parking space for license plate numbers WY 2-18881 and WY 5-10744 at the location of 562 North 8th Street.
Aye: 5
Nay: 0
**Motion carried.**

**6-D. Eliminate Handicap Parking Space – 1115 Reynolds Street**

Winkler shared the City's recommendation to eliminate the handicap parking space at 1115 Reynolds Street and remove the blue curb by painting it gray. The house has been sold and the handicap parking is no longer needed.

**MOTION BY MOELLER, second by Schumaker,** to approve the elimination of the handicap parking space, remove the sign at 1115 Reynolds Street and remove the blue curb by painting it gray.
Aye: 5
Nay: 0
**Motion carried.**

**7. NEXT MEETING DATE – August 11, 2016**

**8. ADJOURN**

**MOTION BY SHINSTINE, second by Denison,** to adjourn.
Aye: 5
Nay: 0
**Motion carried.**

Meeting adjourned at 7:18 AM.

VALIDATED:

Nancy Sindelar, Traffic Commission Chair Date

Kathleen Wickersham, Traffic Commission Secretary and Clerk Date

# CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016

| | |
|---|---|
| | **Agenda Item:** Minutes<br><br>**Title:** Minutes of the July 20, 2016 regular meeting of the Parks, Tree and Recreation Advisory Board. |

**Recommended Council MOTION:**

I move that Council acknowledge receipt of the Minutes from the July 20, 2016 regular meeting of the Parks, Tree and Recreation Advisory Board: 1) To approve the minutes from the July 20, 2016 regular meeting of the Parks, Tree and Recreation Advisory Board. (Approved) 2) To approve continuation of the American Red Cross Shelter Agreement and to authorize the completion of the agreement. (Approved) 3) Introduction of new board member Dylan Esquivel to fulfill position vacated by Jamie Le Jambre, term expires December 2016. (Approved) 4) Presentation of Raj Patel's donation for trees in honor of his grandparents to be planted on Boulder Drive medians adjacent to the new Laramie High School. (Approved) 5) To discuss an Administrative Policy and Procedure for Naming/Renaming City of Laramie, Parks & Recreation Department Parks and/or Facilities and forward to City Council for acknowledgment. (Postponed)

**Administrative or Policy Goal:**

*Council Goals:* Preserve park land, open space, and public trails for future generations. Continue public relations outreach to engage residents in municipal government.

**Background:**

Minutes from the July 20, 2016 Parks, Tree and Recreation Advisory Board meeting.

**Legal/Statutory Authority:**

N/A

**Budget/Fiscal Information:**

**Responsible Staff:**

Todd Feezer, Director, Parks & Recreation Department
(307) 721-5260, tfeezer@cityoflaramie.org

**Attachments:** PTR Advisory Board Minutes 7.20.16

**CITY OF LARAMIE**
**PARKS, TREE & RECREATION ADVISORY BOARD**
**July 20, 2016**
**Minutes of Meeting**

MEMBERS PRESENT: Amy Williamson, Jacque Stonum, Larry Foianini, Helen Coates, Chris Dixon, Dave Hammond, Steve Ropp, Marius Favret, Dylan Esquivel
MEMBERS NOT PRESENT:
COUNCIL LIASON: Paul Weaver
GUESTS: Raj Patel
CITY STAFF PRESENT: Todd Feezer, Director; Randy Overstreet, City Arborist; Inez Wildenborg, Administrative Coordinator

The regular meeting was called to order by Madam Chair Stonum at 6:37 pm.

**Consent Agenda:**

1. To approve the minutes from the June 8, 2016 regular meeting of the Parks, Tree and Recreation Advisory Board. (Feezer, pages 2-3)
2. To approve continuation of the American Red Cross Shelter Agreement and to authorize the completion of the agreement. (Feezer, pages 4-7)

Motion by Williamson, seconded by Hammond, that the consent agenda be approved and that each specific action on the consent agenda be approved as indicated within the staff reports. Motion carried 9-0.

**Regular Agenda:**

1. Introduction of new board member Dylan Esquivel to fulfill position vacated by Jamie Le Jambre, term expires December 2016. (Feezer, pages 8-14)

Director Feezer introduced new Parks, Tree, and Recreation Advisory Board Member, Dylan Esquivel. Esquivel gave a brief introduction of his background.

2. Presentation of Raj Patel's donation for trees in honor of his grandparents to be planted on Boulder Drive medians adjacent to the new Laramie High School. (Overstreet, pages 15-17)

This beautification project progressed rapidly early this summer by an offer from Mr. Raj Patel to donate funds for planting trees in a city maintained and highly visible location, on Boulder Drive medians adjacent to the new Laramie High School, in honor of his Grandparents. Soon after Mr. Patel presented his offer, a group project opportunity was made known by University of Wyoming RA's who wanted to participate in a community service project. The tree planting will take place on August 22, 2016.

3. To discuss an Administrative Policy and Procedure for Naming/Renaming City of Laramie, Parks & Recreation Department Parks and/or Facilities and forward to City Council for acknowledgment. (Feezer, pages 18-21)

Motion by Williamson, seconded by Foianini, that the Parks, Tree & Recreation Advisory Board approve the Administrative Policy and Procedure for naming City of Laramie, Parks & Recreation Department Parks and Facilities and forward to City Council for acknowledgement of the adopted policy. Motion tabled.

There was a continued discussion related to an administrative policy and procedure for naming City of Laramie, Parks & Recreation Department Parks and Facilities. This was a second reading and discussion of this proposed policy.

Motion by Williamson, seconded by Foianini, to recommend further open discussion and postponement to future meetings in order to accomplish a renaming policy. Motion carried 9-0.

**Staff Reports FYI:**

- Director Feezer presented Manager's Report

**Upcoming Items:**

None at this time.

**Other Business:**

Hammond thanked Madam Chair Stonum for her dedicated service to the Parks, Tree, and Recreation Advisory Board.

**Advisory Board Open Items:**

1. Administrative Policy and Procedure for Naming/Renaming City of Laramie, Parks & Recreation Department Parks and/or Facilities.

*Next Regular Meeting Date: Wednesday, August 10, 2016 at 6:30pm

**Public Comments:**

None

Meeting adjourned at 7:37pm.

Respectfully Submitted,

Inez Wildenborg

Inez Wildenborg
Administrative Coordinator
Parks and Recreation, City of Laramie

# CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016

**Agenda Item: Agreement**

**Title:** Authorize the Mayor and City Clerk to sign State Revolving Loan Fund (SRF) documents for the Grand Avenue Water Line Replacement Project 13th to 15th

**Recommended Council MOTION:**

"I move that Council approve the State Revolving Loan Fund (SRF) documents for the Grand Avenue Water Line Replacement Project 13th to 15th and authorize the Mayor and City Clerk to sign."

**Administrative or Policy Goal:**

This project will support the citywide infrastructure improvement program as adopted within the Water Fund Capital Plan.

**Background:**

In November 2015, City Council authorized the submittal of an SRF application to the Office of State Lands and Investments (SLIB) for the Grand Avenue water line replacement project. Staff subsequently completed all necessary loan application documents and submitted them to SLIB. At their February 4, 2016 meeting, the State Loan and Investment Board approved the City's DWSRF loan application in the amount of $1,650,000 with a $550,000 match from the City of Laramie for a total project cost of $2,200,000. The loan requires an origination fee of $8,250 and an interest rate of 2.5%. User fees would be used to repay the loan.

Prior to final completion of the loan process, the City is required to sign a number of documents. These documents are:

- Loan Agreement
- Promissory Note
- Assignment and Pledge of Revenues
- Amortization Schedule
- DUNS Number Form

All documents have been reviewed and are consistent with the loan application previously approved by City Council.

**Legal/Statutory Authority:**

This is a qualifying SRF project.

## BUDGET/FISCAL INFORMATION:

### REVENUE

| Source | Amount | Type |
|---|---|---|
| Fees/Charges for Service | | |
| Grants for Projects | | |
| Loans on Project | $1,650,000 | SRF award via the Office of State Lands and Investments |
| Other | | |
| Total | $1,650,000 | |

### EXPENSE

Proposed Project Cost.

| Project Budget | | Amount | Funds |
|---|---|---|---|
| Project Cost | | $2,200,000.00 | |
| Loans on Project | | $1,650,000 | SRF award via the Office of State Lands and Investments |
| Grants for Project | | | |
| City's Amount | | $550,000.00 | Adopted COL budget; Pg 111 of the Ent. Fund Budget |
| Contingency | 0% | | |
| Total Amount | | $2,200,000.00 | |
| | | | |

## Responsible Staff:

Earl Smith, P.E., Director of Public Works

Attachments:

- SLIB Cover Letter
- Loan Agreement
- Promissory Note
- Assignment and Pledge of Revenues
- Amortization Schedule
- DUNS Number Form

# WYOMING OFFICE OF STATE LANDS AND INVESTMENTS

122 West 25th Street
Cheyenne, WY 82002
Phone: 307.777.7331
Fax: 307.777.3524
slfmail@wyo.gov

MATTHEW H. MEAD
Governor

BRIDGET HILL
Director

July 28, 2016

City of Laramie
Earl Smith, Public Works Director
P.O. Box "C"
Laramie, Wyoming 82073

RE: DWSRF Loan #181, Phase II Grand Avenue Waterline Replacement Project

Dear Mr. Smith,

At the regularly scheduled meeting held February 4, 2016 the State Loan and Investment Board approved an application for a DWSRF Loan in the amount of $1,650,000.00 at 2.5% per annum for twenty (20) years for the City of Laramie. Enclosed please find a Loan Agreement, Promissory Note, Assignment and Pledge of Revenues, and a DUNS Number form for the above referenced DWSRF Loan.

EPA requires that repayment must begin not later than one (1) year after project completion. Once the project is complete our office will negotiate a repayment start date so it begins not later than one year after project completion. This new repayment start date will be reflected in an Amended Promissory Note.

Please complete the enclosed loan documents where necessary, secure the appropriate signatures, date and return the originals to: Rebecca Webb, Office of State Lands and Investments, Herschler Building, 3rd Floor West, 122 W. 25th Street, Cheyenne, Wyoming 82002-0600.

In accordance with W.S. 16-1-303(d); and State Rules and Regulations Chapter 16, Section 12. "Fees", as a condition to making a loan, a loan origination fee of one-half percent (0.5%) of the amount of the loan will be collected at loan closing. **The amount due from City of Laramie is $8,250.00. A check made out to the agency for this amount must be returned along with the completed loan documents as referred to above. This check must accompany the returned loan documents or finalization of the loan will be delayed.** If you have any questions or concerns, please contact me at (307) 777-6046.

Sincerely,

Rebecca Webb
Community Loan Officer

Enc:
- Loan Agreement
- Promissory Note
- Assignment and Pledge of Revenues
- Amortization schedule
- DUNS Number Form

*EFFECTIVELY MANAGING NATURAL RESOURCES AND FUNDS FOR CURRENT AND FUTURE GENERATIONS*

# Data Universal Numbering System (DUNS) Numbers

Per Federal requirements: The Office of State Lands and Investments require a DUNS number for all entity's requesting funding from our agency. DUNS number is the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. If you already have a DUNS number please make sure that your number is in "active" status.
http://fedgov.dnb.com/webform

DUNS No._____

Printed Name and Title: _____

Signature: _____ Date: _____

Attest: Printed Name and Title: _____

Attest: Signature: _____ Date: _____

DWSRF #181

# LOAN AGREEMENT

The State of Wyoming, acting by and through the Wyoming State Loan and Investment Board (hereinafter "Board"), on the 4th day of February, 2016, in the normal course of business, authorized a Drinking Water State Revolving Fund Loan (hereinafter the "Loan") in the amount of One Million Six Hundred Fifty Thousand Dollars and No/100 ($1,650,000.00) to the City of Laramie, Albany County, Wyoming (hereinafter "Borrower") for the purpose of funding the Borrower's Phase II Grand Avenue Waterline Replacement Project.

The Loan is to be secured by the Borrower with the pledge and assignment of revenues from the Borrower's water system user fees to be used for the annual loan payments which the Borrower will make to the Drinking Water State Revolving Fund (DWSRF). This assignment will be in effect for the "Loan Term" of twenty (20) years, commencing with the year 2017, or until the Loan secured hereby has been repaid in full. A copy of said Assignment and Pledge of Revenues is attached to this Agreement and incorporated herein by this reference. The pledge and assignment by the Borrower shall not be subordinate to any other pledge or assignment of such revenues.

Now, therefore, for and in consideration of the Loan by the Board, the Borrower agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein.

For value received, the Borrower agrees to pay to the order of the Board the principal sum of One Million Six Hundred Fifty Thousand Dollars and No/100 ($1,650,000.00) together with interest thereon at the rate of two and one-half percent (2.5%) per annum for a term of twenty (20) years. Upon completion of the project and prior to repayment of the loan, this loan shall be granted principal forgiveness up to forty and seventy-seven hundredths percent (40.77%) of the drawn loan funds, not to exceed Six Hundred Seventy-Two Thousand Eight Hundred Thirteen Dollars and No/100 ($672,813.00). The Borrower will be required to pay the accrued loan interest in full at the time of the principal forgiveness award. A copy of the Promissory Note setting forth specific conditions and terms is attached hereto and incorporated herein by reference and all references to this Loan Agreement herein shall be deemed to include the Note.

1. DBE Utilization Report.

The Borrower agrees to submit the DISADVANTAGED BUSINESS ENTERPRISE BIDDER GOOD FAITH EFFORT DOCUMENTATION and the DBE NOTIFICATION OF INTENT TO SUB-CONTRACT Forms to the Wyoming Water Development Office (WWDO), DWSRF Section. These forms must be submitted to the WWDO for approval prior to awarding the construction contract. These forms can be obtained by contacting the WWDO or the Department of Environmental Quality (DEQ).

2. Equal Employment Opportunity.

The Borrower must, at a minimum, include in contracts the seven equal employment clauses of the Presidential Executive Order No. 11246.

3. "Fair Share Goal".

The Borrower agrees to establish a "Fair Share Goal" percentage of not less than 3% of prime contract and subcontract awarded for this project with the Office of State Lands and Investments (OSLI), WWDO, and DEQ before the Borrower begins the process to award any contracts under this agreement.

The Borrower must, at a minimum, take the six affirmative steps to ensure to the fullest extent possible that at least the negotiated "Fair Share Goal" percentage of loan funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, and historically black colleges and universities.

The Borrower agrees to include in its bid documents a "3% Fair Share Goal" percentage and require all of its prime contractors to include in their bid documents for subcontracts a "3% Fair Share Goal" percentage.

4. Davis-Bacon Wage Act:

The Borrower covenants and agrees that all laborers and mechanics employed by contractors and subcontractors on the project, funded directly by or assisted in whole or in part by this Loan, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All pertinent information related to compliance with labor standards, including prevailing wage rates, may be obtained from the Department of Labor.

Documentation must be retained for three (3) years after project completion and made available to the OSLI, WWDO, and the DEQ, upon request. The Borrower must certify to the best of the Borrower's knowledge and belief that this project complies with section 1450(e) of the Safe Drinking Water Act, all laborers and mechanics employed by contractors and subcontractors during the reporting period were paid wages at rates not less than those listed on the prevailing wage rate contained in the contract documents and that all applicable provisions of the Davis-Bacon and Related Acts have been met. Such certification shall be obtained on loan draft request forms provided by the OSLI. The Borrower must acknowledge prior to the bidding of the project the receipt of the Guidance requirements provided by the DEQ at the following website: http://deq.state.wy.us/wqd/www/srf/index.asp to the OSLI. At the time of bidding the Borrower must confirm that all applicable Guidance requirements are being met.

5. American Iron and Steel.

The Borrower covenants and agrees that no funds from this Loan may be used for this project unless all of the iron and steel used in the project are produced in the United States, unless a waiver is provided to the recipient by the Environmental Protection Agency (EPA). The Borrower shall comply with all regulations and guidance issued by EPA, DEQ, and WWDC regarding this requirement.

6. Initiating of Operations /Substantial Completion Notification.

The Borrower must notify the OSLI, WWDO, and the DEQ in writing within thirty (30) days of the date of initiation of operations or substantial completion of construction under this Project. The Borrower must start repayment of the Loan within one (1) year of initiation of operations or substantial completion, whichever date occurs first.

7. Disbursement of Loan Proceeds.

The Loan proceeds shall be disbursed in minimum draws of $1,300. Requests for disbursement shall be submitted on a form provided by the OSLI. Requests for disbursement shall only be for project costs which have been incurred and shall be subject to review by OSLI, WWDO, and DEQ. The Borrower shall make payment for loan draft request invoices within ten (10) business days of receipt of reimbursement from the OSLI. If for any reason the Borrower is unable to comply, the Borrower must notify the OSLI immediately.

8. Source of Repayment Pledge.

The Borrower irrevocably pledges the source of repayment described in this Loan Agreement for the punctual payment of the principal and the interest on the Loan, and any and all other amounts due under this Loan Agreement.

9. Performance Under Loan Agreement.

The Borrower covenants and agrees (i) to maintain its drinking water system in good repair and operating condition and (ii) to cooperate with the OSLI and WWDO in its observance and performance of the respective duties, covenants, obligations and agreements of the Borrower under this Loan Agreement.

10. Completion of Project and Provisions of Moneys Therefore.

The Borrower covenants and agrees (i) to exercise its best efforts in accordance with prudent water system practice to complete the Project and to accomplish such completion on or before the estimated Project completion date set forth in the current Project schedule approved by the Project Engineer and hereby made a part hereof; and (ii) to provide from its own fiscal resources all moneys, in excess of the total amount of the Loan, required to complete the Project.

11. Disposition of Drinking Water System.

The Borrower covenants and agrees that it will not sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of its drinking water system or any other system which provides revenues for upkeep and maintenance of the drinking water system except on ninety (90) days' prior written notice to the OSLI, WWDO, and DEQ and, in any event, shall not sell, lease, abandon or otherwise dispose of the same unless the following conditions are met: (i) the Borrower, with the prior written approval of the Board, shall assign this Loan Agreement and its rights and interests hereunder in accordance with Exhibit A, Item 6 to the purchaser or lessee of the drinking water system which must be an eligible political subdivision as defined in the DWSRF Rules and Regulations, and such purchaser or lessee shall assume all duties, covenants, obligations and agreements of the Borrower under this Loan Agreement; and (ii) the Board, in its sole discretion, by appropriate action determines that such sale, lease, abandonment or other disposition will not adversely affect (A) the ability of the Borrower or its assignees to meet its duties, covenants, obligations and agreements under the Loan Agreement, (B) any agreement entered into by the Board, or any condition of any grant received by the Board from the United States of America which is related to any capitalization grant received by the Board under the Safe Drinking Water Act.

12. Records; Accounts.

The Borrower shall keep accurate records and accounts for its drinking water system (the "System Records") separate and distinct from its other records and accounts (the "General Records"). Such System Records shall be maintained in accordance with generally accepted government accounting standards and, at a minimum, the Borrower shall have annual financial statements prepared by an independent party. The OSLI may require system records to be audited annually by an independent accountant, in which case the audit may be part of the annual audit of the General Records of the Borrower. Such System Records and General Records shall be made available for inspection by the OSLI, WWDO, and DEQ at any reasonable time, and a copy of the financial statements or the independent annual audit, including all written comments and recommendations of such accountant, shall be furnished to the OSLI within 150 days of the close of the fiscal year. The Borrower agrees that if it expends an aggregate amount of Seven Hundred Fifty Thousand Dollars and No/100 ($750,000.00) or more in federal funds during its fiscal year, it must undergo an organization-wide financial and compliance single audit. The Borrower agrees to comply with the audit requirements of the U.S. General Accounting Office Government Auditing Standards and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. If findings are made which cover any part of this Loan, the Borrower shall provide one (1) copy of the audit report to the State and require the release of the audit report by its auditor be held until adjusting entries are disclosed and made to the State's records.

13. Inspections; Information.

The Borrower shall permit the OSLI, WWDO, and DEQ, and any party designated by any of such parties, to examine, visit and inspect, at any and all reasonable times, the property, including the drinking water system if any, constituting the project, and to inspect and make copies of any accounts, books and records, including (without limitation) its System Records, General Records, and any other records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the OSLI, WWDO and

DEQ may reasonably require in connection therewith. The Borrower shall inform the OSLI, WWDO, and DEQ of any changes, irregularities, and/or problems. These may include but are not limited to: change orders, Davis-Bacon related issues, contract interpretation issues, withholding liens, and scheduling alterations.

14. Cost of the Project.

The Borrower certifies that the cost of the Project, as listed in the Application for Financial Assistance, is a reasonable and accurate estimation and upon direction of the OSLI, WWDO, or DEQ, as the case may be, shall supply the same with a certificate from its engineer stating that such is a reasonable and accurate estimation, taking into account investment income to be realized during the course of the Project and other money that would, absent the Loan, have been used to pay the cost of the Project. Borrower acknowledges and agrees that loan funds are provided by the U.S. Environmental Protection Agency, Safe Drinking Water Act, CFDA #66.468, through the Drinking Water State Revolving Fund Loan Program, administered by the OSLI and Board. Borrower agrees to report receipt of such funds as Federal Funds pursuant to the Federal Single Audit Act, as amended, and revised OMB Circular A-133.

15. Reimbursement for Ineligible Costs.

The Borrower shall promptly reimburse the OSLI for any portion of the Loan which is funded, but which is subsequently determined to be a cost of the drinking water system which is not eligible for funding, from cash draws under the Drinking Water State Revolving Fund. Such reimbursement shall be promptly repaid to the OSLI upon written request of the OSLI.

16. Advertising.

The Borrower agrees not to advertise the project for bids until plans and specifications, including but not limited to, engineer's cost estimate, with bid extensions and detailed cost estimates, which should include estimated costs of major components for the project have been approved by WWDO and the DEQ.

17. User Charges.

The Borrower shall establish, levy and collect rents, rates and other charges for products and services provided by its drinking water system, which rents, rates, and other charges shall be at least sufficient: (A) to meet the operation and maintenance expenses of its drinking water system, including any reserve or replacement fund established by the Borrower for the sound fiscal management and/or for maintenance of the drinking water system, (B) to comply with all covenants pertaining thereto contained in, and all other provisions of, any bond resolution, trust indenture or other security agreement, if any, relating to any bonds, notes or other evidences of indebtedness issued by the Borrower or any other contractual obligations incurred by the Borrower, (C) to pay the debt service requirements on all other bonds, notes or other subordinated evidences of indebtedness whether now outstanding or incurred in the future issued to finance improvements to the drinking water system and to make any other payments required by law which are payable from funds pledged to the payment of the Loan Agreement, (D) to generate funds sufficient to fulfill the terms of all other contracts and agreements made by the Borrower, including, without limitation, this Loan Agreement, and (E) to pay all other amounts payable from or constituting a lien or charge on the funds pledged to the payment of the Loan. The Borrower also agrees that such system of user charges will be maintained at all times that this Loan Agreement is in effect.

During the Loan Term, the Borrower will establish a system of user charges to assure each recipient of drinking water system services from the drinking water system will pay such recipient's proportionate share of the cost of operation and maintenance, including replacement of the drinking water system and the Borrower also agrees that such system of user charges will be maintained.

18. Commencement of Construction.

Within twelve (12) months after the execution date of this agreement, the Borrower shall expeditiously initiate the project and complete construction in accordance with the approved schedule. The Borrower shall receive OSLI, WWDO, and DEQ written approval before implementing changes which delay the project schedule. In the event an extension is not approved or the project is not under construction within twelve (12) months after the execution date of this agreement, OSLI will give written notice that the commencement of construction has exceeded the period allowed and the Loan will be considered closed and repayments (if any) will start within one year of the notice.

19. Project Ending Date.

The Borrower covenants and agrees that it will draw all funds on this Loan by March 30, 2018. In the event the Borrower is unable to draw all the funds by this date, the Borrower may request an extension from OSLI, at least ninety (90) days prior to this date. If the Borrower fails to draw all of its eligible Loan funds by March 30, 2018, or received an extension from OSLI, then those funds will no longer be available and the Loan will be closed. Any remaining Loan funds will revert back to the Board.

20. Interest in Project Site.

As a condition of the Loan, the Borrower hereby warrants to the satisfaction of the OSLI, WWDO, and DEQ, before advertising for bids for construction, that the Borrower has or will have a fee simple or such other estate or interest in the site of the Project, including necessary easements and right-of-ways, as the OSLI, WWDO, and DEQ finds sufficient to assure undisturbed use and possession for the purpose of construction and operation of the Project for the estimated life of the Project.

21. Archaeological Artifacts.

In the event that archaeological artifacts or historical resources are unearthed during construction excavation, the Borrower shall stop, or cause to be stopped, construction activities and will notify the superintendent of the State Historic Preservation Office, DEQ, and WWDO of such unearthing and follow all applicable state and federal laws and regulations governing such occurrences. The Borrower may wish to hire a qualified archaeologist to monitor construction activities.

22. Operation and Maintenance of Drinking Water System.

The Borrower covenants and agrees that it shall, in accordance with prudent drinking water system practice, (i) at all times operate the properties of its drinking water system and any business in connection therewith in an efficient manner, (ii) maintain its drinking water system in good repair, working order and operating condition, (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterment and improvements with respect to its drinking water system so that at all times the business carried on in connection therewith shall be properly and advantageously conducted; provided, however, this covenant shall not be construed as requiring the Borrower to expend any funds which are derived from sources other than the operation of its drinking water system and provided further that nothing herein shall be construed as preventing the Borrower from doing so.

23. Binding Effect.

This Loan Agreement shall inure to the benefit of and shall be binding upon the Board and the Borrower, their respective successors and assigns.

24. Severability.

In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

25. Floodplain Management.

The Borrower will comply with the floodplain management standards of the National Flood Insurance program.

26. Additional Covenants and Requirements.

If necessary in connection with the Board's issuance of the Loan, additional covenants and requirements will be included on Exhibit A to, and hereby made part of, this Loan Agreement. The Borrower agrees to observe and comply with each such additional covenant and requirement, if any, included on Exhibit A on the date of the Loan Closing. The Borrower agrees to comply with all applicable Federal, State, and local laws related to this project and the Loan Agreement

INTENTIONALLY LEFT BLANK

27. Sovereign Immunity.

The State of Wyoming, the Wyoming Office of State Lands and Investments, and the Wyoming State Loan and Investment Board do not waive sovereign immunity by entering into this agreement, and specifically retain immunity and all defenses available to them as sovereign pursuant to Wyo. Stat. § 1-39-104(a) and all other state law.

IN TESTIMONY WHEREOF, I, Matthew H. Mead, President of the Wyoming State Loan and Investment Board, have executed these presents and caused the official seal of the Wyoming State Loan and Investment Board of the State of Wyoming to be affixed hereto at the City of Cheyenne, State of Wyoming, this _____day of _____, 2016.

WYOMING STATE LOAN AND INVESTMENT BOARD

BY:_____
GOVERNOR MATTHEW H. MEAD

ATTEST:

_____
BRIDGET HILL, DIRECTOR
OFFICE OF STATE LANDS AND INVESTMENTS

CITY OF LARAMIE

BY:_____
DAVID A. PAULEKAS, MAYOR

ATTEST:

_____
ANGIE JOHNSON, CITY CLERK

Attorney General's Office Approval as to Form:

Meg Nicholas
Megan Nicholas, Assistant Attorney General

## EXHIBIT A

## ADDITIONAL COVENANTS AND REQUIREMENTS

1. Certification from the engineer must be furnished prior to commencement of operation stating that the Project was constructed as shown in the plans submitted or a justification by the engineer and/or operating entity of any changes that were made.

2. The Borrower must comply with all applicable City and/or County regulations prior to construction.

3. The Borrower will comply with all requirements and mitigation efforts as called out or detailed in the environmental assessment documents.

4. The Borrower will immediately increase water rates as necessary to comply with the user charge covenant requirement of the Loan Agreement.

5. The Borrower, subsequent to bid opening and prior to initiating construction, shall submit to DEQ and WWDO a construction schedule with key construction dates.

6. Assignment by the City of Laramie. This Loan Agreement cannot be assigned by the Borrower for any reason, unless the following conditions shall be satisfied: (a) the Board shall have approved said assignment in writing; (b) the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Borrower's duties, covenants, agreements and obligations under the Loan Agreement; (c) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Borrower under the Loan Agreements; (d) the OSLI shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Board with, or condition of any grant received by the Board from, the United States of America which is related to any capitalization grant received by the Board under the Safe Drinking Water Act. No assignment under this paragraph shall relieve the Borrower from primary liability for any of its obligations under this Loan Agreement; and, in the event of such assignment, the Borrower shall continue to remain solely liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

Applicant:

City of Laramie

Project Name:

Grand Avenue Waterline Replacement (13th St. to 15th St.)

## PROJECT TIMELINE

| Task | Date | Actual/Estimate |
|---|---|---|
| 1. Contract documents submitted to SRF Staff for approval | 01/17/2017 | Estimate |
| a) Apply for DEQ Permit to Construct | 01/17/2017 | Estimate |
| b) All permits, easements, Right of Ways approved or finalized/signed | 01/17/2017 | Estimate |
| 2. Publish call for bids approved by SRF Staff | 03/01/2017 | Estimate |
| 3. Construction start date | 05/01/2017 | Estimate |
| 4. Substantial completion date | 09/01/2017 | Estimate |
| 5. Construction end date | 12/01/2017 | Estimate |

**DWSRF LOAN # 181**

**ASSIGNMENT AND PLEDGE OF REVENUES**

For value received, the City of Laramie, Albany County, Wyoming (hereinafter "Borrower") does hereby assign and pledge to the Wyoming State Loan & Investment Board at Cheyenne, Wyoming all revenues generated from the Borrower's water system user fees as reimbursement for the annual loan payments which the Borrower will make to the Drinking Water State Revolving Fund necessary to meet their amortized annual payment of principal and interest obligation as set forth in the schedule for repayment of this Promissory Note. This assignment will be in effect until the Drinking Water State Revolving Account Loan of One Million Six Hundred Fifty Thousand Dollars and No/100 ($1,650,000.00), has been paid in full or, if a lesser sum is actually borrowed, until such lesser sum, as secured hereby has been repaid in full. The Assignment and Pledge of Revenues granted by this Assignment shall not be subordinate to any other pledge or assignment of such revenues by the Borrower.

IN WITNESS, the City of Laramie, Albany County, Wyoming has caused this Assignment to be signed this _____ day of _____, 2016.

CITY OF LARAMIE

BY: _____
DAVID A. PAULEKAS, MAYOR

ATTEST:

_____
ANGIE JOHNSON, CITY CLERK

DWSRF LOAN #181

DRINKING WATER STATE REVOLVING LOAN NOTE

STATE OF WYOMING
WYOMING STATE LOAN & INVESTMENT BOARD
CHEYENNE, WYOMING

**PROMISSORY NOTE**

$1,650,000.00 _____, 2016

For value received, the City of Laramie, Albany County, Wyoming, (hereinafter "Borrower") promises to pay to the order of the Wyoming State Loan & Investment Board (hereinafter "Board") at Cheyenne, Wyoming, the sum of One Million Six Hundred Fifty Thousand Dollars and No/100 ($1,650,000.00) together with interest at a rate of two and one-half percent (2.5%) per annum, in the manner and from the revenue as is more particularly set forth below. Upon completion of the project and prior to repayment of the loan, this loan shall be granted principal forgiveness up to forty and seventy-seven hundredths percent (40.77%) of the drawn loan funds, not to exceed Six Hundred Seventy-Two Thousand Eight Hundred Thirteen Dollars and No/100 ($672,813.00). The Borrower will be required to pay the accrued loan interest in full at the time of the principal forgiveness award.

Annual repayment of principal and interest shall begin not later than one (1) year after substantial completion or initiation of operation of the "project" whichever date occurs first, as set forth and described in the Loan Agreement of even date with this Promissory Note (hereinafter "Note"). Said Loan Agreement being incorporated herein at this point as if fully set forth.

Attached hereto is a preliminary amortization schedule of the principal and interest payments due from the Borrower pursuant to this Note. Pursuant to the Loan Agreement, the Parties understand that the First Payment Due Date will be on or before a date which is one (1) year after substantial completion or initiation of operations of the "project" whichever date occurs first. Prior to the First Payment Due Date, the amount of principal forgiveness shall be applied to the Promissory Note amount and the Note and the amortization schedule shall be amended to reflect the amount of principal forgiveness. The amount of the first payment due under the Note will include accrued interest on disbursements. In the event the Borrower does not borrow the entire sum of One Million Six Hundred Fifty Thousand Dollars and No/100 ($1,650,000.00) the Parties agree to amend the Note and amortization schedule to reflect the principal sum actually borrowed by the Borrower with all of the other terms of Note remaining the same.

All or any portion of the principal due on this Note may be prepaid at any time. The Borrower shall have the right and privilege of making extra payments or pay the entire unpaid balance at any time without penalty. Extra payments shall be credited first to interest due and the balance to principal. Advance or extra payments on account of the principal shall not reduce the annual payments to be made but are to operate only to discharge the loan at an earlier date.

In the event the annual payment of principal and interest is not received on the specified due date of each year, the Borrower will be in default, and the Board may proceed against the revenues assigned and pledged by the Borrower pursuant to the loan Assignment and Pledge of Revenues as provided by law.

Failure to pay any installment or installments hereon when due shall entitle the holder hereof to declare the whole of the unpaid balance on this Note due and payable on demand.

The maker of this Note hereby accepts the conditions hereon and expressly waives presentment for payment and any claims presented pursuant to W.S. § 15-1-125, protest and notice of protest for nonpayment hereof and all defenses on the grounds of any extension of time of payment that may be given by the holder hereof.

In the event of suit to enforce payment of this Note for any installment, interest, or part thereof, the undersigned maker agrees to pay, in addition to the costs and disbursements provided and allowed by law, reasonable attorney's fees and costs.

CITY OF LARAMIE

BY:_____
DAVID A. PAULEKAS, MAYOR

ATTEST:

_____
ANGIE JOHNSON, CITY CLERK

# DWSRF LOAN #181

# CITY OF LARAMIE

STATE OF WYOMING
Office of State Lands and Investments
AMORTIZATED SCHEDULE DWSRF LOAN #181

| | | | |
|---|---|---|---|
| TERM-OF-LOAN (YRS): | 20 | INSTALLMENT-AMOUNT: | $105,842.76 |
| 1ST-INSTALL-DATE: | 4-01-2017 | LOAN AMOUNT: | $1,650,000.00 |
| INTEREST-RATE: | 2.5% | | |

| PAY# | YEAR | Amount | Interest | Principal | Total Principal | Total Interest | Balance |
|---|---|---|---|---|---|---|---|
| 1 | 1-Apr-2017 | $105,842.76 | $40,684.93 | $65,157.83 | $65,157.83 | $40,684.93 | $1,584,842.17 |
| 2 | 1-Apr-2018 | $105,842.76 | $39,078.30 | $66,764.46 | $131,922.29 | $79,763.23 | $1,518,077.71 |
| 3 | 1-Apr-2019 | $105,842.76 | $37,432.05 | $68,410.71 | $200,333.00 | $117,195.28 | $1,449,667.00 |
| 4 | 1-Apr-2020 | $105,842.76 | $35,745.21 | $70,097.55 | $270,430.55 | $152,940.49 | $1,379,569.45 |
| 5 | 1-Apr-2021 | $105,842.76 | $34,016.78 | $71,825.98 | $342,256.53 | $186,957.27 | $1,307,743.47 |
| 6 | 1-Apr-2022 | $105,842.76 | $32,245.73 | $73,597.03 | $415,853.56 | $219,203.00 | $1,234,146.44 |
| 7 | 1-Apr-2023 | $105,842.76 | $30,431.01 | $75,411.75 | $491,265.31 | $249,634.01 | $1,158,734.69 |
| 8 | 1-Apr-2024 | $105,842.76 | $28,571.54 | $77,271.22 | $568,536.53 | $278,205.55 | $1,081,463.47 |
| 9 | 1-Apr-2025 | $105,842.76 | $26,666.22 | $79,176.54 | $647,713.07 | $304,871.77 | $1,002,286.93 |
| 10 | 1-Apr-2026 | $105,842.76 | $24,713.92 | $81,128.84 | $728,841.91 | $329,585.69 | $921,158.09 |
| 11 | 1-Apr-2027 | $105,842.76 | $22,713.49 | $83,129.27 | $811,971.18 | $352,299.18 | $838,028.82 |
| 12 | 1-Apr-2028 | $105,842.76 | $20,663.72 | $85,179.04 | $897,150.22 | $372,962.90 | $752,849.78 |
| 13 | 1-Apr-2029 | $105,842.76 | $18,563.42 | $87,279.34 | $984,429.56 | $391,526.32 | $665,570.44 |
| 14 | 1-Apr-2030 | $105,842.76 | $16,411.33 | $89,431.43 | $1,073,860.99 | $407,937.65 | $576,139.01 |
| 15 | 1-Apr-2031 | $105,842.76 | $14,206.17 | $91,636.59 | $1,165,497.58 | $422,143.82 | $484,502.42 |
| 16 | 1-Apr-2032 | $105,842.76 | $11,946.64 | $93,896.12 | $1,259,393.70 | $434,090.46 | $390,606.30 |
| 17 | 1-Apr-2033 | $105,842.76 | $9,631.39 | $96,211.37 | $1,355,605.07 | $443,721.85 | $294,394.93 |
| 18 | 1-Apr-2034 | $105,842.76 | $7,259.05 | $98,583.71 | $1,454,188.78 | $450,980.90 | $195,811.22 |
| 19 | 1-Apr-2035 | $105,842.76 | $4,828.22 | $101,014.54 | $1,555,203.32 | $455,809.12 | $94,796.68 |
| 20 | 1-Apr-2036 | $97,134.13 | $2,337.45 | $94,796.68 | $1,650,000.00 | $458,146.57 | $0.00 |

# CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016

**Agenda Item: Agreement**

**Title: FAA Grant Agreement No. 3-56-0017-33-2016 for federal funding to Rehabilitate Commercial Apron (Phase II – Construction)**

**Recommended Council MOTION:**

I move to approve the FAA Grant Agreement No. 3-56-0017-33-2016 for federal funding to Rehabilitate Commercial Apron (Phase II – Construction) in the amount of $1,842,210 and authorize the Mayor and City Clerk to sign.

**Administrative or Policy Goal:**
Support of Laramie Regional Airport

**Background:**
The Laramie Regional Airport, a Joint Powers Board of the City of Laramie and Albany County, will be rehabilitating the concrete apron at the Airport that has been in place for more than 35 years and is in need of replacement.

The FAA Grant for this project is in the amount of $1,842,210 and is 93.75% of the project. Matches for grant are from the Wyoming State Aeronautics for $73,688.40 (3.75%) and from the Airport for $49,125.60 (2.5%). The Airport has funding in the budget for this project, but the FAA requires approval from both the City of Laramie and Albany County.

**Legal/Statutory Authority:**
WY Statutes authorize creation of the Joint Powers Board

## Responsible Staff:

David M Derragon 721-5304

Attachments: Letter from Airport; Letter from FAA; Grant Agreement

LARAMIE REGIONAL AIRPORT

LARAMIE REGIONAL AIRPORT - 555 GENERAL BREES ROAD - LARAMIE, WYOMING 82070 - (307) 742-4164

Dave Paulekas, Mayor
City of Laramie
406 Ivinson Ave.
Laramie, Wyoming 82070

August 8, 2016

Dear Dave:

Attached are (4) copies of FAA Grant Agreement No. 3-56-0017-33-2016 for federal funding to **Rehabilitate Commercial Apron (Phase II – Construction).** The concrete apron the Airport will be rehabbing has been in place for 35+ years and is in need of replacement.

This $1,842,210 FAA grant is a 93.75% federal grant matched by 3.75% from the Wyoming State Aeronautics -$73,688.40 - and 2.5% Local match - $49,125.60. The Airport has funding in our budget for this project, but the FAA requires approval from both the City of Laramie and Albany County.

I am requesting that this grant be approved and processed at the August 15th City Council meeting. The contractor would like to begin work on this project on August 22nd and the grant needs to be fully executed (signed) before work can begin. It is important that the Sponsor's attorney (City Attorney) sign and date the grant agreement **after** the Sponsor.

Thank you for your continued support of the Airport, and if you have any questions please give me a call.

Sincerely,

Jack Skinner
Airport Manager

U.S. Department
of Transportation
**Federal Aviation
Administration**

**Northwest Mountain Region**
Colorado, Idaho, Montana, Oregon,
Utah, Washington, Wyoming

**Denver Airports District Office**
26805 East 68th Avenue, Suite 224
Denver, Colorado 80249

Phone: (303) 342-1254
Fax: (303) 342-1260

July 28, 2016

Mayor Dave Paulekas
City of Laramie
406 Ivinson Ave.
Laramie, WY 82073

Chairman Tim Sullivan
County of Albany Board of Commissioners
525 E. Grand Ave.
Laramie, WY 82070

Chairman George Krell
Laramie Regional Airport Board
555 General Brees Rd.
Laramie, WY 82070

Dear Mayor Paulekas, Commissioner Sullivan, Chairman Krell:

We are enclosing four copies of the Grant Offer for Airport Improvement Program (AIP) Project No. 3-56-0017-033-2016 at the Laramie Regional Airport. Please read this letter and the Grant Offer carefully.

To properly enter into this agreement, you must do the following:

- The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- The sponsor's authorized representative must execute the grant, followed by the attorney's certification, no later than September 2, 2016, in order for the grant to be valid.
- The Sponsor's attorney must sign and date the grant agreement *after* the Sponsor.
- You may not make any modification to the text, terms or conditions of the grant offer.
- We ask that you return one executed copy of the Grant Offer. Please keep the other copies of the grant for your records.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

Please note Grant Condition No. 6 requires you to complete the project without undue delay. To ensure proper stewardship of Federal funds, **you are expected to submit payment requests for reimbursement of allowable incurred project expenses in accordance with project progress.** Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status which will impact future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and

- Performance Reports are due within 30 days of the end of a reporting period as follows:
    1. Non-construction project: Due annually at end of the Federal fiscal year.
    2. Construction project: Submit FAA form 5370-1, Construction Progress and Inspection Report at the end of each fiscal quarter.

Once the project is completed and all costs are determined, we ask that you close the project without undue delay and submit the final closeout report documentation as required by FAA's Denver Airports District Office.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend $750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards. **A copy of a "Single Audit Certification Form" is enclosed.** Please complete and return a copy to our office with the executed Grant Agreement. Please make a copy for your files.

Jeremiah Woodard is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. If you should have any questions, please contact Jeremiah Woodard at 303-342-1256.

We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,

John P. Bauer
Manager, Denver Airports District Office

Enclosures

U.S. Department
of Transportation
Federal Aviation
Administration

# GRANT AGREEMENT

## PART I – OFFER

| | |
|---|---|
| Date of Offer | July 28, 2016 |
| Airport/Planning Area | Laramie Regional Airport |
| AIP Grant Number | 3-56-0017-033-2016 (Contract No. DOT-FA16NM-1037) |
| DUNS Number | 06-903-0760 |

**TO:** City of Laramie and County of Albany, Wyoming and Laramie Regional Airport Board
(herein called the "Sponsor") (For Co-Sponsors, list all Co-Sponsor names. The word "Sponsor" in this Grant Agreement also applies to a Co-Sponsor.)

**FROM:** **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

**WHEREAS,** the Sponsor has submitted to the FAA a Project Application dated March 1, 2016, for a grant of Federal funds for a project at or associated with the Laramie Regional Airport, which is included as part of this Grant Agreement; and

**WHEREAS,** the FAA has approved a project for the Laramie Regional Airport (herein called the "Project") consisting of the following:

**Rehabilitate Commercial Apron (Phase II – Construction)**

which is more fully described in the Project Application.

**NOW THEREFORE,** according to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated March 2014, and the Sponsor's acceptance of this Offer, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided,

**THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES** to 93.75 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

## CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is $1,842,210.

   The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

   $-0- for planning

   $1,842,210 for airport development or noise program implementation

   $-0- for land acquisition.

2. **Period of Performance.** The period of performance begins on the date the Sponsor formally accepts this agreement. Unless explicitly stated otherwise in an amendment from the FAA, the end date of the project period of performance is 4 years (1,460 calendar days) from the date of formal grant acceptance by the Sponsor.

   The Sponsor may only charge allowable costs for obligations incurred prior to the end date of the period of performance (2 CFR § 200.309). Unless the FAA authorizes a written extension, the sponsor must submit all project closeout documentation and liquidate (pay off) all obligations incurred under this award no later than 90 calendar days after the end date of the period of performance (2 CFR § 200.343).

   The period of performance end date does not relieve or reduce Sponsor obligations and assurances that extend beyond the closeout of a grant agreement.

3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.

4. **Indirect Costs – Sponsor.** Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application and as accepted by the FAA to allowable costs for Sponsor direct salaries and wages.

5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies and procedures of the Secretary. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.

6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies and procedures of the Secretary. The Sponsor also agrees to comply with the assurances which are part of this agreement.

7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.

8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before September 2, 2016, or such subsequent date as may be prescribed in writing by the FAA.

9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount

of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

11. **System for Award Management (SAM) Registration And Universal Identifier.**

    A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at http://www.sam.gov).

    B. Requirement for Data Universal Numbering System (DUNS) Numbers

    1. The Sponsor must notify potential subrecipient that it cannot receive a contract unless it has provided its DUNS number to the Sponsor. A subrecipient means a consultant, contractor, or other entity that enters into an agreement with the Sponsor to provide services or other work to further this project, and is accountable to the Sponsor for the use of the Federal funds provided by the agreement, which may be provided through any legal agreement, including a contract.
    2. The Sponsor may not make an award to a subrecipient unless the subrecipient has provided its DUNS number to the Sponsor.
    3. Data Universal Numbering System: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866–606-8220) or the Internet (currently at http://fedgov.dnb.com/webform).

12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by $25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.

    The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1.

    The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.

    An informal letter amendment has the same force and effect as a formal grant amendment.

14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this grant.

15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

16. **Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to

be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

17. **Maximum Obligation Increase for Primary Airports.** In accordance with 49 U.S.C. § 47108(b), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
    A. may not be increased for a planning project;
    B. may be increased by not more than 15 percent for development projects;
    C. may be increased by not more than 15 percent for a land project.
18. **Audits for Public Sponsors.** The Sponsor must provide for a Single Audit in accordance with 2 CFR Part 200. The Sponsor must submit the Single Audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at http://harvester.census.gov/facweb/. The Sponsor must also provide one copy of the completed 2 CFR Part 200 audit to the Airports District Office.
19. **Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:
    A. Verify the non-federal entity is eligible to participate in this Federal program by:
        1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if non-federal entity is excluded or disqualified; or
        2. Collecting a certification statement from the non-federal entity attesting they are not excluded or disqualified from participating; or
        3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
    B. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
    C. Immediately disclose to the FAA whenever the Sponsor: (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debars a contractor, person, or entity.
20. **Ban on Texting When Driving.**
    A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
        1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
        2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
            a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
            b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
    B. The Sponsor must insert the substance of this clause on banning texting when driving in all subgrants, contracts and subcontracts
21. **Trafficking in Persons.**
    A. Prohibitions: The prohibitions against trafficking in persons (Prohibitions) that apply to any entity other than a State, local government, Indian tribe, or foreign public entity. This includes private Sponsors, public Sponsor employees, and subrecipients of private or public Sponsors (private entity). Prohibitions include:
        1. Engaging in severe forms of trafficking in persons during the period of time that the agreement is in effect;
        2. Procuring a commercial sex act during the period of time that the agreement is in effect; or

3. Using forced labor in the performance of the agreement, including subcontracts or subagreements under the agreement.

B. In addition to all other remedies for noncompliance that are available to the FAA, Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), allows the FAA to unilaterally terminate this agreement, without penalty, if a private entity –

1. Is determined to have violated the Prohibitions; or
2. Has an employee who the FAA determines has violated the Prohibitions through conduct that is either—
   a. Associated with performance under this agreement; or
   b. Imputed to the Sponsor or subrecipient using 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by the FAA at 2 CFR part 1200.

22. **Exhibit "A" Property Map.** The Exhibit "A" Property Map dated May 16, 2011, is incorporated herein by reference or is submitted with the project application and made part of this grant agreement.

23. **Co-Sponsor.** The Co-Sponsors understand and agree that they jointly and severally adopt and ratify the representations and assurances contained therein and that the word "Sponsor" as used in the application and other assurances is deemed to include all co-sponsors.

24. **Current FAA Advisory Circulars for AIP Projects:** The sponsor will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the *Current FAA Advisory Circulars Required For Use In AIP Funded and PFC Approved Projects*, dated December 31, 2015, and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

25. **Assurances:** The Sponsor agrees to comply with the Assurances attached to this offer, which replaces the assurances that accompanied the Application for Federal Assistance.

26. **Pavement Maintenance Management Program:** The Sponsor agrees that it will implement an effective airport pavement maintenance management program as required by Grant Assurance Pavement Preventive Management. The Sponsor agrees that it will use the program for the useful life of any pavement constructed, reconstructed, or repaired with federal financial assistance at the airport. The Sponsor further agrees that the program will

1. Follow FAA Advisory Circular 150/5380-6, "Guidelines and Procedures for Maintenance of Airport Pavements," for specific guidelines and procedures for maintaining airport pavements, establishing an effective maintenance program, specific types of distress and its probable cause, inspection guidelines, and recommended methods of repair;
2. Detail the procedures to be followed to assure that proper pavement maintenance, both preventive and repair, is performed;
3. Include a Pavement Inventory, Inspection Schedule, Record Keeping, Information Retrieval, and Reference, meeting the following requirements:
   a. Pavement Inventory. The following must be depicted in an appropriate form and level of detail:
      1) location of all runways, taxiways, and aprons;
      2) dimensions;
      3) type of pavement, and;
      4) year of construction or most recent major rehabilitation.
   b. Inspection Schedule.
      1) Detailed Inspection. A detailed inspection must be performed at least once a year. If a history of recorded pavement deterioration is available, i.e., Pavement Condition Index (PCI) survey as set forth in the Advisory Circular 150/5380-6, the frequency of inspections may be extended to three years.

2) Drive-By Inspection. A drive-by inspection must be performed a minimum of once per month to detect unexpected changes in the pavement condition. For drive-by inspections, the date of inspection and any maintenance performed must be recorded.

4. Record Keeping. Complete information on the findings of all detailed inspections and on the maintenance performed must be recorded and kept on file for a minimum of five years. The type of distress, location, and remedial action, scheduled or performed, must be documented. The minimum information is:
   a. inspection date;
   b. location;
   c. distress types; and
   d. maintenance scheduled or performed.
5. Information Retrieval System. The Sponsor must be able to retrieve the information and records produced by the pavement survey to provide a report to the FAA as may be required.

**27.** **Projects Which Contain Paving Work in Excess of $500,000:** The Sponsor agrees to:

a. Furnish a construction management program to the FAA prior to the start of construction which details the measures and procedures to be used to comply with the quality control provisions of the construction contract, including, but not limited to, all quality control provisions and tests required by the Federal specifications. The program must include as a minimum:
   1) The name of the person representing the Sponsor who has overall responsibility for contract administration for the project and the authority to take necessary actions to comply with the contract.
   2) Names of testing laboratories and consulting engineer firms with quality control responsibilities on the project, together with a description of the services to be provided.
   3) Procedures for determining that the testing laboratories meet the requirements of the American Society of Testing and Materials standards on laboratory evaluation referenced in the contract specifications (D 3666, C 1077).
   4) Qualifications of engineering supervision and construction inspection personnel.
   5) A listing of all tests required by the contract specifications, including the type and frequency of tests to be taken, the method of sampling, the applicable test standard, and the acceptance criteria or tolerances permitted for each type of test.
   6) Procedures for ensuring that the tests are taken in accordance with the program, that they are documented daily, and that the proper corrective actions, where necessary, are undertaken.

b. Submit at completion of the project, a final test and quality assurance report documenting the summary results of all tests performed; highlighting those tests that indicated failure or that did not meet the applicable test standard. The report must include the pay reductions applied and the reasons for accepting any out-of-tolerance material. Submit interim test and quality assurance reports when requested by the FAA.

c. Failure to provide a complete report as described in paragraph b, or failure to perform such tests, will, absent any compelling justification; result in a reduction in Federal participation for costs incurred in connection with construction of the applicable pavement. Such reduction will be at the discretion of the FAA and will be based on the type or types of required tests not performed or not documented and will be commensurate with the proportion of applicable pavement with respect to the total pavement constructed under the grant agreement.

d. The FAA, at its discretion, reserves the right to conduct independent tests and to reduce grant payments accordingly if such independent tests determine that sponsor test results are inaccurate.

**28.** **Agency Agreement:** The FAA, in tendering this Offer on behalf of the United States, recognizes the existence of an Agency relationship between the Sponsor, as principal, and the State of Wyoming, Division of Aeronautics, as

agent. The Sponsor agrees that it will not amend, modify, or terminate said Agency Agreement without prior written approval of the FAA or its designated representative.

29. **Final Project Documentation:** The Sponsor understands and agrees that in accordance with 49 USC 47111, and the Airport District Office's concurrence, that no payments totaling more than 97.5 percent of United States Government's share of the project's estimated allowable cost may be made before the project is determined to be satisfactorily completed. Satisfactorily complete means the following: (1) The project results in a complete, usable unit of work as defined in the grant agreement; and (2) The sponsor submits necessary documents showing that the project is substantially complete per the contract requirements, or has a plan (that FAA agrees with) that addresses all elements contained on the punch list.

#

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**UNITED STATES OF AMERICA**
**FEDERAL AVIATION ADMINISTRATION**

_____
*(Signature)*

**John P. Bauer**
*(Typed Name)*

**Manager, Denver Airports District Office**
*(Title of FAA Official)*

## PART II - ACCEPTANCE

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

I declare under penalty of perjury that the foregoing is true and correct.[1]

Executed this _____ day of _____, _____.

**CITY OF LARAMIE, WYOMING**
*(Name of Sponsor)*

_____
*(Signature of Sponsor's Authorized Official)*

**By:** _____
*(Printed Name of Sponsor's Authorized Official)*

**Title:** _____
*(Title of Sponsor's Authorized Official)*

**CERTIFICATE OF SPONSOR'S ATTORNEY**

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Wyoming. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ (location) this _____ day of _____, _____.

By _____
(Signature of Sponsor's Attorney)

[1] Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

I declare under penalty of perjury that the foregoing is true and correct.[2]

Executed this _____ day of _____, _____.

**COUNTY OF ALBANY, WYOMING**

_____
*(Name of Sponsor)*

_____
*(Signature of Sponsor's Authorized Official)*

**By:** _____
*(Printed Name of Sponsor's Authorized Official)*

**Title:** _____
*(Title of Sponsor's Designated Authorized Official)*

**CERTIFICATE OF SPONSOR'S ATTORNEY**

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Wyoming. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ (location) this _____ day of _____, _____.

By _____
(Signature of Sponsor's Attorney)

[2] Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

I declare under penalty of perjury that the foregoing is true and correct.[3]

Executed this _____ day of _____, _____.

**LARAMIE REGIONAL AIRPORT BOARD**

_____
*(Name of Sponsor)*

_____
*(Signature of Sponsor's Authorized Official)*

**By:** _____
*(Printed Name of Sponsor's Authorized Official)*

**Title:** _____
*(Title of Sponsor's Designated Authorized Official)*

**CERTIFICATE OF SPONSOR'S ATTORNEY**

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Wyoming. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ (location) this _____ day of _____, _____.

By _____
(Signature of Sponsor's Attorney)

[3] Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

# CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016

**Agenda Item: Original Ordinance - 3rd Reading**

**Title: Original Ordinance No. 1951, Amending Title 13, Division IV, Chapter 62 of the Laramie Municipal Code to Regulate Solid Waste Fees in the City of Laramie**

**Recommended Council MOTION:**

"I move to approve Third and Final Reading of Original Ordinance No. 1951, amending Title 13, Division IV, Chapter 62 of the Laramie Municipal Code to modify solid waste fees and to authorize the Mayor and City Clerk to sign."

**Administrative or Policy Goal:**

Maintain a sustainable revenue stream capable of supporting the Solid Waste Enterprise.

**Background:**

During the FY 16-17 and FY 17-18 Budget Work session on May 19th, 2016, Chris Bell of Bell & Associates presented City Council information concerning operating expenses, capital costs, and equipment needs related to the City's collection, disposal, and recycling costs for the biennium. The expenses and revenue requirements presented to Council indicate the need for a 9.3% increase in the revenue requirement in 2017 and an additional 4.1% increase in the revenue requirement for 2018. The revenue requirements are based upon detailed information collected by the new scale software at the landfill. The data was analyzed and utilized to determine an appropriate revenue requirement necessary to cover the cost of service for 2017 and 2018. The attached ordinance includes the above sited rate increases for household and commercial collection, disposal, and recycling fees as well as updated fees for the landfill.

The proposed fees for the upcoming biennium were develop based on good data collected at the scale and recent operating history of the collection, disposal, and recycling system. All capital costs are developed from the long range financial plan (LRFP) which anticipates a major permit modification allowing the volumetric increase to Stage 1 of the landfill for construction and demolition debris. The LRFP has also been revised to provide construction of the next 3 cells of the lined portion all at once. By building Stage 2 to include 3 cells at once we gain economies of scale and save roughly $2M over previous estimates.

Of note, the draft ordinance eliminates the outside City fee differential. The new fee structure assesses the same fee to all customers regardless of jurisdiction. This will allow for greater operational efficiency and creates a uniform, equitable rate.

**Legal/Statutory Authority:**

Laramie City Council has legal authority to modify solid waste rate.

## Responsible Staff:

Earl Smith, Public Works Director
Brooks Webb, Solid Waste Manager

Attachments: Ordinance No. 1951

**ORIGINAL ORDINANCE NO.: 1951** **INTRODUCED BY: Hanson**
**ENROLLED ORDINANCE NO.: _____**

# AN ORDINANCE AMENDING TITLE 13, DIVISION IV, CHAPTER 62 OF THE LARAMIE MUNICIPAL CODE TO REGULATE SOLID WASTE FEES IN THE CITY OF LARAMIE

## TITLE 13, DIVISION IV, CHAPTER 62, SOLID WASTE FEES

**SECTION 4**

**13.IV.62.010--Collection Fees -- Households—Generally**
**13.IV.62.020--Collection Fees -- Households – Basic Receptacles**
**13.IV.62.030--Collection Fees -- Households—Additional Receptacles**
**13.IV.62.040--Collection Fees -- Non-Single Kitchen Units or Businesses**
**13.IV.62.050--Collection Fees -- Petition for Waiver**
**13.IV.62.060--Collection Rate Schedule for City-Provided Receptacles**
**13.IV.62.070--Disposal Fees--Generally**
**13.IV.62.080--Tire Disposal Fees**
**13.IV.62.090--Community Clean-up Days Fee Waiver**
**13.IV.62.100--Miscellaneous Charges**

### 13.IV.62.010 Collection Fees – Households -- Generally

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

**A.** "Construction and demolition (c&d) debris" is debris that results from the construction, renovation and/or demolition of buildings, roads, bridges, fences or other structures. It includes (but is not limited to) brick, concrete, asphalt material, drywall, flooring, pipe, lumber, roofing, soil and rocks.

**B.** "Container" refers to any disposable bag, box, or similar item into which refuse is placed prior to being placed within a receptacle.

**C**. "Garbage" means and includes all kitchen refuse, rejected or waste food, meats, fish, fowl, offal, carrion or other refuse accumulation, use, cooking of or the dealing in or storing of meats, fish, fowl, fruits, vegetables or anything whatsoever which will or may decompose and become foul, offensive, insanitary or dangerous to health.

**D.** "Receptacle" means any non-disposable container used for the purpose of containing refuse.

**E.** "Refuse" means and includes all hay, straw, shavings, excelsior, paper, ashes, rubbish, containers, boxes, glass, cans, bottles and the residue from the burning or other destruction of all combustible material whatsoever, and all other material commonly known as rubbish or refuse of whatever kind or character or by whatever name known, except as excluded by this chapter.

**F.** "Kitchen Unit" - the main function of a kitchen unit serves as a location for storing, cooking and preparing food. A residential kitchen unit is typically equipped with a cooking appliance, a sink with running water, a refrigerator, counters and cabinets.

**13.IV.62.020 Collection Fees – Households -- Basic Receptacles**

**A**. Except in cases where contracts have been entered into with licensed haulers as provided in Section 8.16.110, all households utilizing automated collection within the city shall be charged the following fees for the supervision and regular once-per-week pickup of garbage and refuse, and bi-weekly pickup of curbside recyclables which shall be prorated on a weekly basis. (Ord. 522 § 1 (part), 1977: prior code § 15-9(a) (part)).

**B**. For all households utilizing automated collection, fees shall apply to once-per-week pickup

**C.** For automated refuse collection from January 1, 2017 to December 31, 2017, the basic fee of nine dollars and 16 cents ($9.16) per month shall be assessed for one city provided receptacle with a total capacity of ninety-six gallons, in addition to the landfill fees.

**D.** For automated refuse collection beginning January 1, 2018, the basic fee of nine dollars and 34 cents ($9.34) per month shall be assessed for one city provided receptacle with a total capacity of ninety-six gallons, in addition to the landfill fees.

**E.** For curbside recycling from January 1, 2017 to December 31, 2017, a fee of four dollars and 39 cents ($4.39) per month shall be assessed for one receptacle.

**F.** For curbside recycling beginning January 1, 2018, a fee of four dollars and 48 cents ($4.48) per month shall be assessed for one receptacle.

**G.** Automated trash and recycling containers must be placed a minimum of two feet from any object, i.e., vehicles, trailers, fences, poles, trees, other containers, etc., and be sure the area in front of the container (toward the street) is clear of obstructions. A Container Placement Fee of $5.00 may be charged each time a driver must exit the vehicle to move a container so it may be safely dumped without striking a nearby object. The fee will not apply if a container is blown over by the wind or other act of nature.

**13.IV.62.030 Collection Fees—Households—Additional receptacles**

**A**. For automated refuse collection from January 1, 2017 to December 31, 2017, the sum of nine dollars and 16 cents ($9.16) per month shall be assessed for each additional receptacle in addition to the landfill fees.

**B.** For automated refuse collection beginning January 1, 2018, the sum of nine dollars and 34 cents ($9.34) per month shall be assessed for each additional receptacle in addition to the landfill fees.

**C**. For curbside recycling from January 1, 2017 to December 31, 2017, a fee of four dollars and 39 cents ($4.39) per month shall be assessed for each additional receptacle.

**D.** For curbside recycling beginning January 1, 2018, a fee of four dollars and 48 cents ($4.48) per month shall be assessed for each additional receptacle.

**13.IV.62.040 Collection Fees—Non-Single Kitchen Units or Businesses**

Where there is more than one kitchen unit at one street address or in the same building, the owner must assume liability for the garbage fee for all the units. The fees for each city provided receptacle with a total capacity of ninety-six gallons shall be nine dollars and 16 cents ($9.16) per month plus a separate landfill disposal fee for each kitchen unit as provided in **13.IV.62.070,** from January 1, 2017 to December 31, 2017.

Where there is more than one kitchen unit at one street address or in the same building, the owner must assume liability for the garbage fee for all the units. The fees for each city provided receptacle with a total capacity of ninety-six gallons shall be nine dollars and 34 cents ($9.34) per month plus a separate landfill disposal fee for each kitchen unit as provided in **13.IV.62.070,** beginning January 1, 2018.

At the request of the owner, the city may provide curbside recycling services to places of business, hotels, motels, schools, institutions, trailer courts and residences or apartments containing more than two kitchen units and the fee shall be $4.39 per receptacle per month from January 1, 2017 to December 31, 2017, and shall be $4.48 per receptacle per month beginning January 1, 2018. Residences containing two or fewer kitchen units shall be required to utilize city refuse, collection, disposal and curbside recycling services.(Ord. 1518 § 3, 2007: Ord. 1490 § 3, 2006: Ord. 1464 § 3, 2005: Ord. 1391 § 3, 2002; Ord. 1364 § 3, 2001: Ord. 1319 § 3, 2000: Ord. 1068 § 2, 1992: Ord. 808 § 2, 1984: Ord. 753 § 4, 1983: Ord. 522 § 1 (part), 1977: prior code § 15-9(a)(3)).

**13.IV.62.050 Collection Fees—Petition for waiver**

Upon petition accompanied by an affidavit to the extent that any individual does not have the financial capacity to pay the fees for collection of garbage and refuse as they are set forth in this chapter, the City Manager may in its sole discretion, adjust or completely waive the fees therein contained. (Ord. 522 § 1 (part), 1977: prior code § 15-9(d)).

**13.IV.62.060 Collection Rate Schedule for City-Provided Commercial Receptacles**

**A**. The city will, upon request, provide receptacles for rental at the following monthly rates based upon receptacle size and frequency of collection as follows:

**MONTHLY COMMERCIAL COLLECTION RATES 2017**
**TWO CUBIC YARDS AND LARGER**

| RECEPTACLE SIZE | COLLECTIONS PER WEEK | | | | | |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 2 Cubic Yards | $38.03 | $60.83 | $83.59 | $106.39 | $129.16 | $151.94 |
| 4 Cubic Yards | $45.56 | $71.22 | $96.88 | $122.54 | $148.20 | $173.84 |
| 6 Cubic Yards | $52.50 | $81.62 | $110.15 | $139.87 | $168.33 | $198.04 |

**MONTHLY COMMERCIAL COLLECTION RATES BEGINNING 2018**
**TWO CUBIC YARDS AND LARGER**

| RECEPTACLE SIZE | COLLECTIONS PER WEEK | | | | | |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 2 Cubic Yards | $38.55 | $61.87 | $85.15 | $108.47 | $131.76 | $155.06 |
| 4 Cubic Yards | $46.60 | $73.30 | $100.00 | $126.69 | $153.39 | $180.07 |
| 6 Cubic Yards | $54.06 | $84.74 | $114.82 | $146.10 | $176.13 | $207.40 |

**B**. The above rates are based upon costs to the city for maintenance of receptacles, pickup, and hauling of garbage. (Ord. 1518 § 4, 2007: Ord. 1490 § 4, 2006: Ord. 1464 § 4, 2005: Ord. 1391 § 4, 2002: Ord. 1364 § 4, 2001: Ord. 1319 § 4, 2000: Ord. 1068 § 3, 1992: Ord. 808 § 3, 1984: Ord. 753 § 5, 1983: Ord. 522 § 1 (part), 1977: prior code § 15-9(b)).

**13.IV.62.070 Disposal Fees – Generally**

**A.** The following landfill fees will be charged to all in-city users:

**1.** The sum of seven dollars and 23 cents ($7.23) per month, for up to ninety- six gallons capacity for a household unit containing one kitchen unit serving one family group, from January 1, 2017 to December 31, 2017;

**2.** The sum of seven dollars and 82 cents ($7.82) per month, for up to ninety- six gallons capacity for a household unit containing one kitchen unit serving one family group, beginning January 1, 2018;

**3.** Where there is more than one kitchen unit at one street address or in the same building, the owner must assume liability for the landfill fees for all the units, and the fee shall be seven dollars and 23 cents ($7.23) per month for each kitchen unit from January 1, 2017 to December 31, 2017;

**4.** Where there is more than one kitchen unit at one street address or in the same building, the owner must assume liability for the landfill fees for all the units, and the fee shall be seven dollars and 82 cents ($7.82) per month for each kitchen unit beginning January 1, 2018;

**5.** Places of business, hotels, motels, schools, and institutions in the city which have commercial refuse collection by the city shall be assessed disposal fees according to volume; payable per month:

**MONTHLY COMMERCIAL DISPOSAL RATES –2017**
**TWO CUBIC YARD AND LARGER**

| CONTAINER SIZE | COLLECTIONS PER WEEK | | | | | |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 2 Cubic Yards | $30.51 | $61.01 | $91.54 | $122.04 | $152.56 | $183.06 |
| 4 Cubic Yards | $61.02 | $122.03 | $183.06 | $244.09 | $305.11 | $366.13 |
| 6 Cubic Yards | $91.61 | $183.06 | $274.60 | $366.13 | $457.67 | $549.20 |

**MONTHLY COMMERCIAL DISPOSAL RATES –BEGINNING 2018**
**TWO CUBIC YARD AND LARGER**

| CONTAINER SIZE | COLLECTIONS PER WEEK | | | | | |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 2 Cubic Yards | $32.60 | $65.19 | $97.79 | $130.38 | $162.99 | $195.58 |
| 4 Cubic Yards | $65.20 | $130.37 | $195.58 | $260.78 | $325.97 | $391.16 |
| 6 Cubic Yards | $97.86 | $195.58 | $293.37 | $391.16 | $488.96 | $585.75 |

**B.** If a commercial customer requests an extra collection the charge shall be ten dollars ($10.00) per cubic yard.

**C**. The fee imposed by this subsection shall apply to all private businesses which haul material to the city landfill for profit; to all residents and nonresidents whose loads are accepted by the solid waste manager for disposal; to all governmental entities other than the city of Laramie; and, to all private businesses which haul material to the city landfill incidental to other goods or services which they provide (such as construction trades).

Each person or business who hauls any material to the city landfill for disposal, shall pay a fee of sixty dollars ($60.00) per ton with a minimum charge of twelve dollars ($12.00) per entry from January 1, 2017 to December 31, 2017. All cash transactions at the landfill will be rounded to the nearest dollar ($1.00).

Each person or business who hauls any material to the city landfill for disposal, shall pay a fee of sixty-three dollars ($63.00) per ton with a minimum charge of twelve dollars ($12.00) per entry beginning January 1, 2018. All cash transactions at the landfill will be rounded to the nearest dollar ($1.00).

Compacted waste shall include any construction and demolition debris delivered to the landfill. Any person or business that fails, neglects, or refuses to pay the required fee shall be denied access to the landfill until the fee is paid.

If the scale at the Laramie Landfill is inoperable for any reason, the rate for each person or business shall be four dollars and 67 cents ($4.67) per cubic yard for un-compacted waste and sixteen dollars and 33 cents ($16.33) per cubic yard for compacted waste with a minimum charge of twelve dollars ($12.00) per entry. All cash transactions at the landfill will be rounded to the nearest dollar ($1.00).

**D.** The Solid Waste Manager or his designee shall impose a charge of ten dollars ($10.00) per ton with a ten dollar ($10.00) minimum, if in his opinion the load is not adequately secured or

contained to prevent the transported material from blowing or falling out of the vehicle. The fee established by this section is a charge to help with the cost of litter pickup and is not a criminal fine. (Ord. 1518 § 5, 2007: Ord. 1464 § 5, 2005: Ord. 1392 § 1, 2002: Ord. 1365 § 1, 2001: Ord. 1273 § 1, 1999: Ord. 1199 §§ 4, 5, 1996; Ord. 1068 § 4, 1992: Ord. 808 § 4, 1984: Ord. 753 § 6, 1983: Ord. 523 § 1, 1977: prior code § 15-24.1). (Ord. No. 1563, 8-4-2009)

**E.** The Solid Waste Manager or his designee may impose a charge of fifteen dollars ($15.00) per ton with a fifteen dollar ($15.00) minimum for items that require Special Handling. Waste materials that require special handling or take extra care when handling include but are not limited to large and bulky items such as mobile homes, campers and trailers. Stumps and branches over eighteen inches in diameter and/or more than eight feet long may require special handling. Items that require special attention and/or immediate cover such as asbestos, petroleum contaminated soils and dead animals shall be considered Special Handling.

**F**. The Solid Waste Manager may designate up to two days per calendar year as Free Compost Days. Limitations on quantities, businesses and City or County will be set dependent on the supply of finished compost.

**13.IV.62.080 Tire Disposal Fees**

**A.** In addition to all other charges provided by law, the following landfill fees will be charged to all users;

1. Automobile and light truck tires, four dollars ($4.00) each.
2. Heavy truck and light industrial tires, ten dollars ($10.00) each.
3. Heavy equipment tires, seventy-five dollars ($75.00) each.
4. Mounted, solid or foam filled tires will double the fee.

**B**. Tire disposal fees shall be collected from the person who brings tires to the city landfill at the time the tires are brought to the landfill.

**C**. Tires shall be placed at a location designated by the City Manager or designee and not at any other location.

**D**. Any person who disposes of a tire or tires without paying the required fee at the time of disposal, or who places tires upon property owned or controlled by the city in a location not designated for tire disposal is guilty of a violation of this section and upon conviction shall be punished as provided in the general penalty section of this code.

**13.IV.62.090 Community Clean-up Days Fee Waiver**

**A**. The City Manager, or designee, is authorized to waive such landfill fees for those events which are previously identified and approved by the office of the City Manager, and contribute to the overall cleanliness and appearance of the community including the following instances:

1. One day per year for all City and County residents. This day shall be coordinated with the Spring Time Community Clean-up Day.

2. Any community clean-up activity wherein a group wishes to collect trash, litter, and other debris, at a specified time and date with prior authorization for waiver of fees upon delivery of the collected refuse to the City sanitary landfill.

**B.** No waiver of fees shall occur to the County residents for the items for which the City incurs a cost of disposal beyond the limit of reimbursement from the County.

**C.** Local groups may apply for approval of community service events by contacting the office of the City Manager and completing the appropriate form. All fees for trash collected within the City limits on public property shall be waived for the approved event.

**13.IV.62.100 Miscellaneous Charges**

**A.** Disposal of refrigeration units - thirty dollars and no cents ($30.00).

**B.** Disposal of dead animals – the per ton fee shall be the same as disposal with a fifteen dollar ($15.00) minimum.

**C.** Collections – roll off service with 7 yard container: two hundred dollars ($200.00) per load (includes delivery, pickup and disposal), containers held over fourteen days will be assessed an additional fee of five dollars ($5.00) per day.

**D.** Short term/Special event polycart rental – five dollars ($5.00) per cart/per dump and a twenty five dollar ($25.00) delivery charge for up to 8 polycarts.

**E.** Business Electronic waste recycling –business rate is three hundred sixty dollars ($360.00) per ton.

**F.** Finished compost – fifteen dollars ($15.00) per cubic yard or twenty five dollars ($25.00) per ton with a one dollar ($1.00) minimum.

**G.** Single Stream Recycling Drop Off - the per ton fee shall be the same as disposal with a minimum charge of five dollars ($5.00).

**H.** No charge to residents:

1. Wood mulch
2. Green waste for recycling
3. Metal for recycling
4. Household hazardous waste
5. Residential electronic waste recycling

This ordinance shall become effective January 1, 2017 after passage, approval and publication.

_____
David Paulekas, Mayor and President
of the City Council of the City of
Laramie, Wyoming

ATTEST:

_____
Angie Johnson
City Clerk

Duly published in the *Laramie Daily Boomerang* this ____ day of _____, 2016.

| | |
|---|---|
| First Reading | July 5, 2016 |
| Second Reading | August 2, 2016 |
| Public Hearing | August 2, 2016 |
| Third/Final Reading | August 16, 2016 |

# CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016

**Agenda Item: Resolution**

**Title:** Resolution providing sponsorship of the Laramie Animal Welfare Society-Dog Day in the Park Event to be held on August 28, 2016.

**Recommended Council MOTION:**

I move that council approve Resolution 2016-_____ authorizing co-sponsorship of the Laramie Animal Welfare Society – Dog Day in the Park event and allowing for the use of associated parks, shelters, facilities and equipment for the event and authorize the Mayor and Clerk to sign.

**Administrative or Policy Goal:**

*Council Goals:* Preserve park land, open space, and public trails for future generations. Continue public relations outreach to engage residents in municipal government.

**Background:**

The LAWS – Dog Day in the Park event has been supported in part by the City of Laramie, Parks & Recreation Department and is held annually at Washington Park. This community event will provided activities and showcase products for pets and their owners; promote responsible pet ownership; introduce people to facilities available for pets in Laramie; provide low cost pet microchipping; pet photography; a pet agility course. There will be licenses food trucks providing service during the event.

This event has goals that are complimentary to the efforts of the City of Laramie, Animal Control and the Parks and Recreation Department in general and staff recommends approval. This sponsorship request is to waive the fees associated with parks, shelters, facilities and equipment rental. The Laramie Animal Welfare Society has provided the necessary insurance for the event.

**Legal/Statutory Authority:**

N/A

**Budget/Fiscal Information:**

**Responsible Staff:** Todd Feezer, Director, Parks & Recreation Department
tfeezer@cityoflaramie.org, 307-721-5260

**Attachments:** LAWS Dog Day Event Sponsor Resolution
LAWS Dog Day Event Sponsor Request Letter

_____ City Manager _____ City Attorney _____ Choose an item.

**RESOLUTION NO. 2016- ____**

**A RESOLUTION AUTHORIZING SPONSORSHIP OF THE LARAMIE ANIMAL WELFARE SOCIETY-DOG DAY IN THE PARK EVENT TO BE HELD ON AUGUST 28, 2016 AND ALLOWING FOR THE USE OF ASSOCIATED PARKS, SHELTERS, FACILTIES AND EQUIPMENT DUIRNG THE EVENT**

**WHEREAS,** fees for park shelters throughout the City are set by ordinance and authorized by City Council, and;

**WHEREAS,** the City has received a request to authorize the use of facilities for the Laramie Animal Welfare Society – Dog Day in the Park Event, and;

**WHEREAS,** the Laramie Animal Welfare Society is a non-profit organization that is dedicated to helping the animals of Laramie, Wyoming and assists the work of the Laramie Animal Shelter to promote responsible pet ownership., and;

**WHEREAS,** the Laramie Animal Welfare Society – Dog Day in the Park Event will use Washington Park between the band shell and wading pool, including the wading pool as the event's center of operations,

**NOW THEREFORE, THE CITY COUNCIL OF LARAMIE, WYOMING RESOLVES:**

**Section 1:** That the foregoing recitals are incorporated in and made a part of this resolution by this reference.

**Section 2:** That the City Council hereby approves the Resolution authorizing the sponsorship of the Laramie Animal Welfare Society – Dog Day in the Park Event to be held on August 28, 2016.

**PASSED AND APPROVED** this ___ Day of _____, 2016.

_____
David A. Paulekas, Mayor and President
City of Laramie, City Council

Attest:

_____
Angie Johnson, City Clerk

P. O. Box 514, Laramie, WY 82073
307-745-4586

August 6, 2016

Mr. Todd Feezer
Director, Parks & Recreation
City of Laramie
P. O. Box C
Laramie, WY 82073

Dear Todd,

I attach our application for the use of the west end of Washington Park to just east of the wading pool, together with our certificate of insurance and our check for the $300.00 damage deposit as we have done in past years. We are requesting the City to co-sponsor this event, as they have done for the past 6 years or more, as it is pretty widely attended and we are a nonprofit organization.

We would also request that, as in the past, the wading pool be available for the dogs to play in. I believe that is the last day it is open, and after the event it is drained, cleaned and winterized. It is a real highlight of the event—we have waiting lines of people with dogs eager to splash and chase balls and just get very, very wet!

If you need anything further from us in this regard, please let me know, and thank you for your consideration.

Sincerely,

Amy Williamson

Amy K. Williamson
Treasurer

Enclosures

# CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016

| | |
|---|---|
| LARAMIE 1868 | **Agenda Item: Original Ordinance - 2nd Reading**<br><br>**Title: Original Ordinance No. 1949 amending Title 15 of Laramie Municipal Code for the purpose of amending the Landscaping Requirements** |

**Recommended Council MOTION:**

Move to **approve** Original Ordinance No. 1949 amending LMC 15.14.050, Landscaping and Screening Standards, based on findings of fact and conclusions of law and note a public hearing was held on July 5, 2016.

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**Administrative or Policy Goal:**

"… this code should be regularly reviewed, evaluated and amended, if necessary, based on private and city economic conditions, vision for the community, changing planning and zoning principles, frequent difficulty in implementing or enforcing any specific standard(s), or changes in the state, federal or case law. All city or citizen initiated amendments must be adequately vetted through the public hearing processes identified in the code." (Sec. 15.02.050, LMC)

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**August 2, 2016 Update:**

At the June 21, 2016 City Council meeting the Council postponed this Ordinance to August 2, 2016 (8 yes, 0 no, 1 absent) and requested staff provide more information and schedule several site visits to allow Council members to see real life examples of the proposed changes. Please see the attached memorandum detailing sites visited.

**Background:**

The present amendment is initiated by the City of Laramie as part of the continual effort to keep the Unified Development Code (UDC) accurate, correct concerns, and remove potential avenues of confusion. All prior revisions to LMC Chapter 15 (Unified Development Code) can be found online at www.cityoflarmie.org/UDC.

Staff frequently receives complaints regarding our landscaping requirements- specifically that they are perceived as too burdensome and too costly for development to install and maintain. Staff analyzed the existing landscaping requirements and propose several amendments to address problems that frequently arise.

Notable changes are as follows:

- A reduction in the overall required landscaping from 20% of a development area (excluding building(s) or use footprint) to 15% of a lot or parcel area (excluding building(s) or use footprint). This effectively reduces landscaping you would see internal to the site and along the perimeter. (LMC 15.14.050.C.1)

- Addition of a Xeriscape/Water Conserving Landscaping option to allow for a low water use landscaping option in nonresidential development applications. (LMC 15.14.050.C.4)
- A reduction in the amount of required "living landscaping materials from 75% to 65% of the ground cover. This will result in less living landscape such as grass, bushes and shrubs and more hardscape such as rock, bark and decorative pavers. (LMC 15.14.050.C.5)
- Modification to the size requirements of plantings to reflect industry standards (LMC 15.14.050.D.2)
- Change the way perimeter lengths are calculated for required landscape units to exclude measurement for driveways and pedestrian connections. This results in less required planting and landscape units along a property line with a driveway or pedestrian connection. (LMC.15.14.050.F.3.a – page 8)
- Reduction in Site Perimeter landscaping units required based on development project size. The larger the development, the less landscape units required. (LMC.15.14.050.F.3.b – page 9)
- Reduction in bufferyard requirements, L2, L3 and L4 bufferyard widths and reduction in required landscape units for all bufferyards. (LMC Tables 15.14.050 2 and 3 – pages 9 and 10)

The above mentioned changes will ultimately have a reduction in the amount of required landscaping within and on the perimeter of development sites. The reduction in landscaping requirements and introduction of a Commercial xeriscape option will also result in lower irrigation costs for development.

The Planning Commission heard this item on June 13, 2016. Citizen comments were made at the meeting expressing concern that the sliding scale site perimeter landscaping requirements were unfair since they only benefitted larger developments. Additionally, a comment was received requesting that development targeting low income housing should be granted flexibility to have reduced landscaping standards.

At the meeting a motion to remove the sliding scale perimeter landscaping requirements for larger developments (proposed LMC 15.14.050.F3.b on page 9 of the Ordinance) failed due to a tie vote (3-3) vote. Ultimately, the Planning Commission recommend that the City Council approve the text amendment as recommended by staff (5 yes, 1 no, 1 absent).

The Planning Commission staff report is included. The attachment, the proposed Ordinance, has been removed because it is attached separately. Otherwise, no changes have been made.

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**Legal/Statutory Authority:**

- Laramie Municipal Code: Title 15 (Unified Development Code)
- Wyoming State Statutes: Title 15, Chapter 4, Article 3: Property, Financial Affairs, Contracts, Streets, Subdivisions and Utilities

## BUDGET/FISCAL INFORMATION:

**REVENUE**

| Source | Amount | Type |
|---|---|---|
| Fees/Charges for Service | $0.00 | Application Fee |
| Grants for Projects | | |
| Loans on Project | | |
| | | |
| Total | $0.00 | |

**Responsible Staff:**

Randy Hunt, AICP, Community Development Director, 721-5288

Charles W. Bloom, AICP, Principal Planner, 721-5232

Future dates are subject to change

| | |
|---|---|
| Work Session | |
| Advertised | |
| Public Hearing Held | July 5, 2016 |
| Pub. Hearing Advertised | June 18, 2016 |
| Introduction/1st Reading | June 21, 2016 |
| 2nd Reading | August 15, 2016 |
| 3rd Reading | September 6, 2016 |

Attachments:

Proposed Ordinance
August 16, 2016 Memorandum
June 13, 2016 Planning Commission Staff Report

ORIGINAL ORDINANCE NO.: 1949 INTRODUCED BY: Pearce
ENROLLED ORDINANCE NO.: _____

AN ORDINANCE AMENDING TITLE 15 OF LARAMIE MUNICIPAL CODE FOR THE PURPOSE OF AMENDING THE LANDSCAPING REQUIREMENTS

WHEREAS, on August 21, 2007, the City Council adopted the Laramie Comprehensive Plan which lists as one of its recommendations to create a unified development code that would combine the zoning and subdivision ordinances in into a single, unified document consisting of multiple parts or sections, including administrative procedures, zoning, subdivision regulations and improvement standards.

WHEREAS, on June 22, 2009 the Laramie Planning Commission affirmatively voted to recommend to the Laramie City Council adoption of the Unified Development Code subject to modifications;

WHEREAS, on March 2, 2010, the City Council adopted the unified development code with an effective date of July 1, 2010.

WHEREAS, 15.02.050 of the Laramie Municipal Code (LMC) calls for the Unified Development Code to be amended from time to time so as to become or remain consistent the Comprehensive Plan, and should be regularly reviewed, evaluated and amended, if necessary, based on private and city economic conditions, vision for the community, changing planning and zoning principles, frequent difficulty in implementing or enforcing any specific standard(s), or changes in the state, federal or case law.

WHEREAS, on June 13, 2016 the Laramie Planning Commission affirmatively voted to recommend to the Laramie City Council adoption of amendments to the Unified Development Code as shown in this ordinance;

WHEREAS, the Laramie City Council ~~shall hold~~ **HELD** a public hearing on July 5, 2016 to take and consider public comments;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LARAMIE:

**Section 1.** That LMC 15.14.050.A-F be **amended** as shown in Attachment A which is attached hereto and incorporated herein;

**Section 2**. That if any section, subsection, sentence, clause, phrase, graphic, or portion of this ordinance is for any reason held invalid or deemed unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall be deemed a separate and distinct and independent provision and such holding shall not affect the validity of the remaining provisions of this ordinance; and

**<u>Section 3</u>**. That this ordinance shall become effective after its passage, approval and its publication.

Passed and approved this _____ day of _____, 2016.

_____
David A. Paulekas, Mayor and President of the City Council

Attest:_____
Angie Johnson
City Clerk

First Reading: June 21, 2016
Public Hearing: July 5, 2016
Second Reading: August 15, 2016
Third Reading and Final Action: August September 6, 2016

Duly published in the *<u>Laramie Boomerang</u>* this _____day of _____, 2016

## 15.14.050.A. Purpose

The purpose of this chapter is to provide landscaping standards which: enhance and promote an improved image for the Laramie area; ensure that landscaping is an integral part of the site design and development process. This chapter's purpose also includes protecting the public health, safety and welfare by: improving parking lot traffic safety by guiding the circulation of cars and people and lowering traffic speeds; minimizing noise, air, water and visual pollution; increasing screening and buffering between incompatible land uses; reducing the amount of reflected glare and heat absorbed in and around developments; breaking up large expanses of parking lots; preserving residential neighborhoods by lessening the impacts of potentially incompatible uses; and providing screening from the wind.

## 15.14.050.B. Applicability

### 1. General Applicability

The provisions of this section are applicable to the following development types:

| | Single Family, Two Family and Multifamily Developments (Less than four dwelling units) | Multifamily (four or more dwelling units) and Mixed Use | Commercial, Institutional and Industrial |
|---|---|---|---|
| Landscape Area (15.14.050.C) | | ✓ | ✓ |
| Landscape Material (15.14.050.D) | | ✓ | ✓ |
| Residential Front-Yard Landscaping (15.14.050.E) | ✓ | | |
| Site Perimeter Landscaping (15.14.050.F) | | ✓ | ✓ |
| Off-Street Parking Lot (15.14.050.G) | | ✓ | ✓ |
| Screening (15.14.050.H) | | ✓ | ✓ |
| Off-Street Utility Dumpster, Recycling, Trash Handling and Recycling Facilities (15.14.050.I) | | ✓ | ✓ |

(Ord. 1596 § 50, 2011)

**2. Alternative Equivalent Compliance – Landscaping and Screening Applicability**

Alternative Equivalent Compliance provisions in subsection 15.06.060.K shall be available to satisfy landscaping standard requirements, provided that in addition to the requirements and criteria of subsection 15.06.060.K, the following specific procedures are followed:

**a.** Any and all plans and documents submitted shall be approved by a professional specialist with demonstrable expertise in landscaping, such as a landscape architect or landscape contractor. Such approval shall be in written form and shall state that the specialist has reviewed and approved the specific plans and documents presented.

**b.** In order to grant a request for alternative equivalent compliance, the decision-making entity shall find, in addition to the criteria in subsection 15.06.060.K.6, that the following criteria are met:

**(i)** The proposed alternative landscape design will conserve water and/or reduce long-term maintenance costs; and

**(ii)** The proposed alternative landscape design is compatible with the character and ambiance of vegetation and environmental design traditional to Wyoming and interior Western communities.

**15.14.050.C. General Provisions for Multifamily (Four or more Dwelling Units), Commercial, Institutional and Industrial Uses**

**1. Landscaping Area Requirements**

As identified in subsection 15.14.050.B, Applicability, most development sites, excluding single family, two family and multifamily developments (less than four dwelling units), shall be required to be landscaped pursuant to this subsection. A minimum of ~~20~~ 15 percent of the lot or parcel area, excluding the building(s) or use footprint, shall be landscaped in accordance with the requirements of this chapter (Equation: Landscaped area = .15~~20~~ × (lot area - primary building and use footprint)). For the purposes of this section, use footprint shall include any outdoor storage or display areas. At least 50 percent of the required landscape area shall be placed so that it abuts the adjoining public street rights-of-way, excluding alleys.

**2. Landscaping Treatments Not Counted**

No area required to be landscaped shall include any artificial trees, plants, or turf, impervious surfacing, or any carpeting designed as a visual substitute for lawn or other groundcover. Areas devoted to pasture, farm crops or undeveloped areas of a lot or parcel shall not be considered landscaped for the purpose of fulfilling any landscape requirements.

**3. Water-Conserving Landscaping**

Low-water, drought-tolerant plants shall be used for all new landscaping. Plant materials shall be selected from the plant list maintained by the city. The city plant list may be found in the Administrative Manual. Materials not on the list may be approved if it is determined that they are equally suitable for local soil conditions and climate and would provide the same level of visual benefits and have the desired growth habits.

**4. Xeriscape/Water Conserving Landscaping Option**

Xeriscaping improves aesthetic appearance and mitigates water usage. A xeriscape option is set forth as an alternative to conventional landscaping requirements. A Xeriscape plan shall include the following:

**a.** Low-water, drought-tolerant plant materials shall make up 85% of all plant materials used and shall be selected from the Recommended Trees and Shrubs for Laramie, Wyoming list maintained by the city. Alternative plant materials may be approved if it is determined through Alternative Equivalent Compliance (LMC 15.06.060.K) that the alternative plan satisfactorily meets the intent of this chapter, that proposed plantings are equally suitable for local soil conditions and climate, would provide the same level of visual benefits and have the same desired growth habits.

**b.** Shall be prepared and signed/sealed by a licensed Landscape Architect.

**c.** All required landscaped areas shall contain a minimum of 45% living organic landscape material and no more than 25% planted turf grass.

**~~4.~~5. Cover in Landscaped Areas**

All required landscaped areas shall contain:

**a.** ~~a~~ A minimum of ~~75~~ 65 percent living organic landscaping material, with a maximum of ~~25~~ 35 percent nonliving landscaping materials.

**b.** All required landscaping, living and non-living, shall be calculated cumulative for the whole site, unless landscaped in accordance with section 4 above.~~.~~

**c.** At a minimum, 25% of the required living landscaping shall be planted adjacent to each street frontage associated with the site. ~~The use of a mix of coniferous and deciduous trees is encouraged. Where low water use and drought-tolerant landscaping is proposed, the department may reduce the percentage of required organic landscape material. No more than 50 percent of the landscaped area shall be planted in turf grass.~~

**~~5.~~6. Irrigation Systems for Landscaped Areas**

All required landscaping and landscape areas shall include a permanently installed irrigation system unless the department determines that the planting and maintenance plan is not dependent on a permanent system. Such alternative determination shall be specifically approved by the department. Applicable irrigation plans shall be submitted with the site plan as required by subsection 15.06.060.O (Ord. 1671 § 21, 2014).

**~~6.~~7. Maintenance**

The responsibility for the maintenance of landscaping shall lie with the property owner, his/her successor and/or their agents. All landscaping elements shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with these standards. All required landscaped areas shall be kept free of weeds, debris, and litter. In addition, all walls and fences shall be maintained in good condition, and when necessary, be repaired or replaced. Any required landscape material, including any tree, grass or shrubs, that dies shall be replaced by ~~July~~ October 31 of each year. All required landscaping shall be cleared of all unplanned vegetation including weeds at least once each year prior to ~~July~~ October 31.

**~~7.~~8. Landscaping Plan Preparation**

For all multifamily (four or more units), commercial, institutional and industrial uses requiring Site Plan review and approval, a professional horticulturist, nurseryman, or design professional shall be consulted to determine the proper time to move and install all plant materials, so that stress to the plants will be minimized. All nursery stock shall generally conform to the ANSI standard for nursery stock.

**~~8.~~9. Installation and Final Inspection**

The planting of the required landscaping may be delayed for a period up to twelve (12) months after issuance of the temporary certificate of occupancy. Unless all such landscaping is installed, inspected and approved prior to issuance of the temporary certificate of occupancy, a financial security for one hundred twenty five (125) percent of the landscaping materials and labor costs shall be required to be posted by the developer to ensure the placement of the required landscaping. All landscaping for multifamily, commercial, institutional and industrial uses requiring Site Plan review and approval shall be installed, inspected and approved by the department prior to certificate of occupancy issuance, per Chapter 15.18 (Improvements) and other applicable section of this Title.

**~~9.~~10. Sight-Obscuring Fence**

Chain linkByzantine Antimachia Castle or wire fencing shall be prohibited where a sight-obscuring fence is required in a bufferyard or landscaped area. {Byzantine Antimachia Castle15.14.100, Fences and Walls.

~~10.~~11. **Utilities**

All utilities within the exterior property lines of the site shall be installed underground. Freestanding utility boxes shall be integrated into the landscaping as much as possible and screened from view pursuant to 15.14.050.H Screening Standards.

~~11.~~12. **Location of Landscaping and Measurement**

All landscaping shall be located so that it does not interfere with utilities, easements, street lighting, or fire hydrants. The placement and design of the landscaping shall be generally at the discretion of the developer, but shall be approved by the department. ~~which may require design changes as reasonably necessary to meet the standards established in this code or in keeping with the Laramie comprehensive plan.~~ The landscape area width is measured from the property line inward~~.~~, unless alternatively approved pursuant to LMC 15.14.050.F.2.d.~~specifically provided elsewhere in this Chapter and approved by the department.~~

~~12.~~13. **Retention / Detention Ponds**

Retention and Detention ponds shall be landscaped and approved by the applicable decision making body. Landscaping shall ensure aesthetic appearance and screening of the facility, provide suitable grass mixes or plantings (ground cover) within the pond, provide suitable ground cover outside the pond as needed to ensure long-term stability of the structure, and shall prevent invasive plant species from growing with the retention / detention pond. Native species of shrubs and trees indigenous to Laramie shall be preferred over exotic plant species. ~~Drought-tolerant plant species shall be preferred over species requiring irrigation for survival in all landscaping areas.~~

**15.14.050.D. Landscaping Material Standards**

**1. Plants to Conform**

Plants shall conform to the measurements specified in the plant schedule submitted with the landscaping plan. ~~(see plan requirements in the Laramie Administrative Manual).~~

**2. Size of Required Landscape Materials**

Required landscaping materials shall comply with the following minimum size standards at the time of planting, with caliper measurements taken ~~12~~ 6 inches above grade.

~~**a.** Minimum height for deciduous trees shall be eight feet.~~

~~**b.**~~**a.** Minimum size for deciduous trees shall be a 1 ½ inch caliper.

~~**c.**~~**b.** Minimum size for evergreen trees shall be ~~five~~ four feet in height.

~~**d.**~~**c.** Minimum size for shrubs shall be 1 gallon or #1 container for low and medium shrubs and 5 gallon or #5 container for tall shrubs.

~~e.~~**d.** Minimum sizes may be reduced at the discretion of the department where a developer proposes a reasonable alternative planting size and/or more landscaping or plantings than are required. ~~Generally, street frontage landscaping should not be reduced in size in commercial, institutional, or industrial developments.~~

**3. Trees**

A mixture of canopy and ornamental trees shall be permitted. Generally, street frontage trees shall be canopy trees unless impractical and other tree types are approved by the department.

**15.14.050.E. Residential Front Yard Landscaping**

**1. Applicability**

The front-yard areas between the building and back of curb within all new developments containing three or fewer dwelling units on lots or parcels less than 16,000 square feet in size shall be landscaped pursuant to this subsection. The landscaping shall be located within the entirety of the front yard between the front plane of the building or front fence(s), whichever is greater, and the roadway. For the purposes of calculating landscape area, driveways and sidewalks shall not be included (Ord. 1596 § 46, 2011).

**2. Landscape Plan**

A landscape plan shall be submitted with an application for a building permit and become part of the building permit. The landscape plan shall be approved prior to installation of the landscaping. Any modifications to the approved plan shall be reviewed and approved by the department. The plan shall include a calculation of landscaped areas and a list of proposed plant species. An underground irrigation system is recommended.

**3. Installation and Final Inspection**

The landscaping shall be completed by the developer, builder or property owner and inspected by the department prior to the issuance of a certificate of occupancy. The planting of the required landscaping may be delayed for up to 12 months past the certificate of occupancy. Failure to install the required landscaping within twelve months of issuance of a certificate of occupancy may result in a citation and fine issued by the city.

**4. Gardenscape Option**

**a.** The required landscaping shall consist of at least 75% living ground cover. Up to 50% of the living ground cover area may be used for flower or garden beds, shrubbery planters or other similar accent features. At least two trees shall be planted in the front yard area. Trees may be a combination of evergreen and/or deciduous. At planting time evergreen trees shall be at least ~~five~~ four feet tall. Deciduous trees shall be at least 1.5 inches caliper at breast height. Tree wells of 5-foot diameter or less may be excluded from calculating the 75% living groundcover requirement. It is recommended that tree wells and other exposed planter areas be covered with organic

material such as bark or mulch.

**b.** In order to reduce dust and soil erosion, any remaining area not covered by living groundcover shall be covered by materials such as bark, decorative rock or mulch.

**5. Xeriscape Option**

As an alternative to the gardenscape option identified above, xeriscape landscaping is permissible and shall be in compliance with the city's xeriscape guidelines. The design may include a mix of decorative rock, mulch, plants, and native grasses. A maximum of 50% of the front yard area may be without plants, but shall be covered with materials such as decorative rock, bark, or mulch. Plants species used shall be of appropriate variety to tolerate low watering and high altitude climate.

**6. Modifications After Initial Installation**

Landscaping may be modified by the property owner after initial installation without approval by the department, provided that the front-yard area remains landscaped, meets the purpose of this chapter and does not violate the provisions of Laramie municipal code chapter 8.28.

**15.14.050.F. Site Perimeter Landscaping**

**1. Applicability**

Site perimeter landscaping shall be provided along the perimeter property line of all multifamily (four or more dwelling units), commercial, institutional and industrial development sites except for approved points of pedestrian or vehicle access, in accordance with Table 15.14.050-2 (see Figure 15.14.050-1). Site perimeter landscaping ~~is not~~ shall not be defined as parking lot perimeter landscaping, which is provided for in subsection 15.14.050.G.

**Figure 15.14.050-1:** Site perimeter landscaping is required on site perimeter of any commercial, institutional, industrial or multifamily development exceeding three dwelling units.

**2. Exceptions**

**a.** Site perimeter requirements for ~~lots and parcels~~development in the DC (Downtown Commercial) District shall be required pursuant to subsection 15.08.030.E.2.c, Development Standards.

~~**a.**~~**b.** Site perimeter requirements for ~~lots and parcels~~development in the TO (Technology and Office) District shall be required pursuant to subsection 15.08.030.L.2.d, Landscaping and Screening.

~~**b.**~~**c.** Site perimeter requirements may be reduced up to 100 percent for projects on lots and parcels allowing setbacks less than the required site perimeter yard width through the Alternative Equivalent Compliance requirements of subsection 15.06.060.K. Reductions shall only apply to lots and parcels where ~~the primary~~ any given building setback is less than the specific required perimeter landscaping width as shown in Table 15.14.050.A. Reductions shall only apply to specific required site perimeter areas between the property line and proposed principal building. ~~A zero side setback requirement shall not be construed to allow a reduced rear yard setback.~~

~~**c.**~~**d.** ~~As part of alternative equivalent compliance review, t~~The city may consider landscaping in the adjacent public right-of-way as a substitution for some or all of the required onsite street frontage landscaping, where in the ~~opinion~~ judgment of the department the proposed public right-of-way landscaping meets the intent of this chapter. Any property owner requesting to landscape the public right-of-way as an alternative shall be required to maintain the landscaping into perpetuity unless the landscaped area is accepted for maintenance by the city. Such acceptance shall be reviewed and approved pursuant to LMC 15.06.060.K, Alternative Equivalent Compliance. In addition to substituting for street frontage landscaping, public right-of-way landscaping may be substituted for other required landscaping if approved by the department. This may include the landscaping of public right-of-way or public lands within the city on a separate unrelated site in some cases where in the ~~opinion~~ judgment of the department the public landscaping proposed will have significantly greater community benefit.

### 3. Specifications for Site Perimeter Landscaping

**a.** In any area where site perimeter landscaping is required according to Table 15.14.050-2, the planting requirements in Table 15.14.050-3 shall apply. The amount of landscaping required in Table 15.14.050-3 shall be measured per linear foot of property line or street frontage. Access driveways and ~~walkways~~pedestrian connections shall ~~not~~ be subtracted from the linear frontage in calculations of the amount of landscaping required. ~~If there are driveways along the frontage or property line, required landscaping shall be condensed into the remaining site perimeter landscaping area.~~

**b.** In any area where site perimeter landscaping is required according to Table 15.14.050-2, the planting requirements in Table 15.14.050-3 shall apply. The amount of required landscaping units required in Table 15.14.050-3 shall be reduced on each perimeter length as follows:

(i) 15% reduction in required units for sites 2-5 acres in size.

(ii) 20% reduction in required units for sites 5-10 acres in size.

(iii) 25% reduction in required units for sites 10 acres in size or greater

**TABLE 15.14.050-2: APPLICABILITY OF SITE PERIMETER LANDSCAPING**

| District of Proposed Development | Required Level of Site Perimeter Landscaping (Level 1, 2 or 3) Adjacent to the Following Zoning Districts or Streets: | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | AG, RR, O | LR, R1, R2, R2M | R3 | NB, B1, B2 | DC, C2 | LM, IP, I1, AV AE | I2 | Freeway | Collector, Arterial, Expressway |
| **AG, RR, O** | N/A | L1~~2~~ | L1~~2~~ | L3 | L4 | L2~~3~~ | L4 | L4 | L2 |
| **LR, R1, R2, R2M** | L1~~2~~ | L1 | L1 | L2~~1~~ | L2 | L3 | L4 | L4 | L2 |
| **R3** | L3 | L2 | L1 | L1 | L1~~2~~ | L3 | L4 | L3~~4~~ | L2 |
| **NB, B1, B2** | L3 | L2~~3~~ | L2~~3~~ | L1 | L1 | L2~~3~~ | L3~~4~~ | L2~~4~~ | L2 |
| **DC, C2** | L3 | L3 | L2~~3~~ | L2~~3~~ | L1 | L2 | L3~~4~~ | L2~~4~~ | L2 |
| **LM, IP, I1, AV, AE** | L3 | L3 | L3 | L2~~3~~ | L2 | L1 | L1~~2~~ | L2~~4~~ | L2 |
| **I2** | L4 | L4 | L4 | L3~~4~~ | L3~~4~~ | L2 | L1~~2~~ | L2~~4~~ | L2 |
| **Non-residential use in R zone** | L3 | L2 | L1~~2~~ | L1~~2~~ | L1~~2~~ | L2~~3~~ | L3~~4~~ | L2~~4~~ | L2 |

| TABLE 15.14.050-3: SPECIFICATIONS FOR SITE PERIMETER LANDSCAPING | | | | |
|---|---|---|---|---|
| **Requirement** | **L1 Edge Treatment** | **L2 Buffer** | **L3 Separation** | **L4 Screening [2]** |
| Planting Area Width (minimum average) [1] | 3 ft | ~~8~~ 5 ft | ~~15~~ 10 ft | ~~30~~ 20 ft~~.~~ |
| Planting Area Width (minimum at any point) [1] | 3 ft | ~~8~~ 5 ft | ~~12~~ 8 ft | ~~20~~ 15 ft |
| Total Landscape Units[4] Required per linear foot of property line or street frontage | ~~0.30~~0.20 units per linear foot | ~~0.40~~0.30 units per linear foot | ~~0.6~~0.40 units per linear foot | ~~1.0~~ 0.65 units per linear foot |
| Minimum number of landscape units that shall be trees | none | 25% of the total required units, | 35% of the total required units, | 40% of the total required units, |
| Minimum number of landscape units that shall be evergreen trees | none | none | 20% of the total required units, | 30% of the total required units, |
| Minimum number of landscape units that shall be shrubs | 20% of the total required units, either hedge or fence | 5% of the total required units, | 10% of the total required units, | 10% of the total required units, |

**Additional Standards:**
[1] Minimum width of planting area shall be measured as the width of the planting beds between the back of edge curbing. Where there will be vehicle overhang along any curb edge, add two feet to the required minimum width.
[2] Existing natural vegetation in any required L4 Screening perimeter landscaping area shall not be disturbed, provided that, if that vegetation does not meet the standards for L4 Screening, screening landscaping shall be planted. Existing vegetation cannot be disturbed to achieve the screening standard through supplemental plantings. If disturbed, it shall be restored.
[3] Landscape units are identified in Table 15.14.050-4 Landscape Units Awarded. (Ord. 1625 § 26, 2012; Ord. 1622, § 4, 2012; Ord. 1596 § 51, 2011).

### 4. Landscape Units Awarded

To provide for flexibility, allow design creativity, encourage use of larger trees, and retention of natural vegetation, the required amount of planting material for site enhancement, site perimeter, parking lot or tree retention landscaping shall be based on a "landscape units" point system. The number of units awarded to each landscaping element shall be as follows:

**TABLE 15.14.050-4: LANDSCAPE UNITS AWARDED**

| Landscape Material | Landscape Units Awarded | |
|---|---|---|
| | Newly Installed | Existing Retained [1] |
| Landmark or Signature Tree | n/a | 16.0 |
| Evergreen Tree, >10 ft high | ~~8~~10.0 | 14.0 |
| Evergreen Tree, >8 – 10 ft high | 8.0 | 11.0 |
| Evergreen Tree, 6 – 8 ft high | 6.0 | 9.0 |
| Deciduous Tree, > 8" caliper | n/a | 14.0 |
| Deciduous Tree, >4 – 8" caliper | n/a | 11.0 |
| Deciduous Tree, >2.5 – 4" caliper | 7.0 | 7.0 |
| Deciduous Tree, 1.5" – 2.5" caliper or multi-stem | 4.0 | 4.0 |
| Shrubs, 36" high | 1.0 | 1.2 |
| Shrubs, 24" high | 0.8 | 0.9 |
| Shrubs, 18" high | 0.5 | 0.6 |
| Perennials/ground cover | 1 per 400 sq ft | |
| Annual flower bed | 1 per 400 sq ft | |
| Lawn Grass | 1 per 800 sq ft | |
| Flower Basket Support | 0.2 per basket | |
| Earthen Berm, minimum 18" high | 0.05 per linear foot | |
| **Hardscape Material** | **Units Awarded** | |
| Decorative (Ornamental) Fence | 0.2 per linear foot | |
| Screening (Opaque) Fence (6 ft high or greater) | 0.4 per linear foot | |
| Shredded bark or 3"+ rock mulch such as river rock | 1.0 per 500 sq ft | |
| Ornamental pavers/Decorative Concrete | 1.0 per 250 sq ft | |
| *Landscape* Boulders, 3' or greater in height | 1.0 per boulder | |
| Seating | 0.4 per linear foot | |
| Landscape lighting, sculpture, art, water feature, and/or sheltering structure/landmark | As determined by department | |
| **Retained Existing Vegetation Mass [1]** | **Bonus Landscaping Units Awarded** | |
| 300+ square feet with a minimum of 3 deciduous trees (4" caliper or greater), 3 evergreen trees (minimum six feet high) or any combination thereof | 15% | |
| 500+ square feet with a minimum of 5 deciduous trees (4" caliper or greater), 5 evergreen trees (minimum six feet high) or any combination thereof | 20% | |
| 800+ square feet with a minimum of 8 deciduous trees (4" caliper or greater), 8 evergreen trees (minimum six feet high) or any combination thereof | 25% | |

[1] Points may only be applied in the buffer area along the same lot line or street frontage where the vegetation is found.

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# MEMORANDUM

**Date:** **August 15, 2016**

**To:** **City Council**

**From:** **Charles Bloom, AICP, Principal Planner**

**Subject:** **Proposed Landscaping Changes**

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**General Information:**

How is Perimeter Landscaping Calculated?

Landscaping is calculated by assigning a unit value based calculated based on street frontages. Special provisions exist for parking areas adjacent to residential zone districts / uses or streets. Table 15.14.050-3 shows how these "edge" treatments are calculated. Table 15.14.050-4 provides a "menu" of plantings/materials that can be used to satisfy required units.

Tour of Representative Sites

Staff's guided tour on Thursday July 28th toured several sites that that demonstrate compliance with the City's landscaping standards. This included: Laramie High School (1710 Boulder Drive) and Laramie Church of Christ (720 Regency Drive) and Regal Fox Theater (520 20th Street). Incorporated in the high school's approval was a 10% reduction that was approved through the Minor Administrative Modification process.

In evaluating existing landscaping and potential reductions, staff has essentially made a "best educated guess" as to what a developer would utilize to minimize costs. For example, if the proposed changes allowed for a reduction in units that are required for trees, staff has assumed that trees will be removed. If removal of trees results in additional units being required, staff has assumed that the developer will make up any required units by using shrubs/bushes due to their lower cost.

**Evaluation of Select Sites:**

Staff has chosen to compare elements of several existing sites to help citizens and Councilors better understand what is presently required, what is actually planted on the ground, what landscaping would entail under the proposed changes, and what landscaping would entail provided that the "sliding scale" provision was removed. In the analysis it indicates that certain bufferyards may be able to be reduced in based on lesser unit requirements. In this case staff has used trees as the chosen reduction from the bufferyard although reductions could come from other elements found in Table 15.14.050-3. Below is a summary of those site elements.
Regal Fox Theater Bufferyard (1900 Block of Rainbow Street)

The Regal Fox Theater has been included to demonstrate a newly planted bufferyard conforming to City bufferyard standards. The Wallace Theater Group recently completed landscaping improvements in conjunction with a significant addition to the existing building. Since the theater's addition was greater than 20% of the building's previous footprint full compliance with the Unified Development Code's development standards was required. Through the Alternative Equivalent Compliance process alternative design was incorporated in reducing landscaping in the north, east and west bufferyards. This alternative resulted in additional landscaping in the south bufferyard, installation of the mural and installation of new movie themed bicycle racks which will be located near the entrance to the theater.

For the purposes of this memo, staff will be reviewing only the 8'-wide Rainbow Street bufferyard. This bufferyard is composed of approximately 16 deciduous trees, 22 shrubs/grasses, 2,543 sq. ft. of river rock mulch, 60 sq. ft. of ornamental pavers and 27 boulders.

- *Current Code*- This L3 bufferyard generally meets the present landscaping requirements. It exceeds the required tree plantings by 2 trees and its width is deficient by 4'.
- *Proposed Amendment*- As proposed the bufferyard width is acceptable and trees would be reduced by 10 and bushes / shrubs could be increased by 2.
- *Proposed Amendment without Sliding Scale*- This site would not be eligible for the sliding scale since it is less than 2 acres.
- *Other Note*- The groundcover provided here would generally satisfy the proposed reduction in L4 standards if an additional 7' of bufferyard width was provided.

<u>Reynolds Crossing (15th and Reynolds)</u>

The Reynolds Crossing Development, which consists of Snowy's Convenience Store, UniWyo FCU, Peak Wellness, Acre Company and a variety of professional offices; was constructed at the southeast corner of 15th and Reynolds Streets in the early 2000s. Enrolled Ordinance No. 1323 created a new zoning district, the Neighborhood Business (NB) District which had increased landscaping standards to ensure businesses located within the development would be compatible with neighboring uses. Ultimately, the landscaping requirements of the NB District were considered the basis to today's landscaping requirements found in the Unified Development Code. Development pads still exist within the complex and new development has occurred as recently as 2014.

For the purposes of this memo, staff has evaluated the entirety of the site which is surrounded by residential uses on 3 sides and an institutional use (old high school) on the west. This project features mature landscaping that has been established for over a decade and landscaping elements that are found in today's plans. This site is approximately 13 acres in size and qualifies for the proposed 25% reduction in perimeter landscaping. Only included in the calculations are landscaped areas.

*Reynolds Street Bufferyard*
This bufferyard is composed of approximately 12 deciduous trees, 28 shrubs/grasses, 1,932 sq. ft. of grass and 3,860 sq. ft. of river rock mulch.

- *Current Code*- This L3 bufferyard is deficient based on current requirements. The developer would have to make up approximately 146 units to satisfy the unit requirements. Approximately 22 more trees (one additional tree per 19') could be used to satisfy the deficiency. Alternative other materials would be needed.
- *Proposed Amendment*- As proposed the bufferyard width is acceptable and approximately 55 units would not be required. This could result in a reduction of 5-6 trees, approximately 18 shrubs or any other combination of landscape units per Table 15.14.050-3.
- *Proposed Amendment without Sliding Scale*- Without the sliding scale, the landscaping would be deficient by approximately 70 units which could be satisfied by the planting of approximately 7 trees or any other combination of landscape units per Table 15.14.050-3.

*19th Street Bufferyard*

This bufferyard is composed of approximately 16 deciduous trees, 8 pine trees, 55 shrubs/grasses, 11,040 sq. ft. of grass and 1,520 sq. ft. of river rock mulch.

- *Current Code*- This L3 bufferyard is deficient based on current requirements. The developer would have to make up approximately 185 units to satisfy the unit requirements. Approximately 28 more trees (one additional tree per 28') could be used to satisfy the deficiency. Alternative other materials would be needed.
- *Proposed Amendment*- As proposed the bufferyard width is acceptable and approximately 159 units would not be required. This could result in a reduction of 5-6 trees, approximately 18 shrubs or any other combination of landscape units per Table 15.14.050-3.
- *Proposed Amendment without Sliding Scale*- Without the sliding scale, the landscaping would be deficient by approximately 47 units. Approximately 7 trees or any other combination of landscape units per Table 15.14.050-3 could satisfy this deficiency.

*Shield Street Bufferyard*

This bufferyard is composed of approximately 16 deciduous trees, 5 pine trees, 36 shrubs/grasses, 3,510 sq. ft. of grass and 2,430 sq. ft. of river rock mulch.

- *Current Code*- This L3 bufferyard is deficient based on current requirements. The developer would have to make up approximately 31 units to satisfy the unit requirements. With 2.5" caliper deciduous trees satisfying 7 units and 6-8' pines satisfying 6 units; approximately 5 more trees would be necessary or any other combination of landscape units per Table 15.14.050-3. Alternative other materials would be needed.
- *Proposed Amendment*- As proposed the bufferyard width is acceptable an approximately 104 units would not be required. This would result in a reduction of 13-15 trees, approximately 46 shrubs or any other combination of landscape units per Table 15.14.050-3.
- Without the sliding scale, the landscaping would exceed the requirements by 23 units.

*15th Street Bufferyard*

This bufferyard is composed of approximately 7 deciduous trees, 3 pine trees, 23 shrubs and 9,675 sq. ft. of grass.

- *Current Code*- This L3 bufferyard is deficient based on current requirements. The developer would have to make up approximately 31 units to satisfy the unit requirements. Approximately 5 additional trees or any other combination of landscape units per Table 15.14.050-3 could be used to satisfy the deficiency trees.
- *Proposed Amendment*- As proposed the bufferyard width is acceptable and approximately 75 units would not be required. This could result in a reduction of 9 trees, approximately 20 shrubs or any other combination of landscape units per Table 15.14.050-3.
- *Proposed Amendment without Sliding Scale*- Without the sliding scale, the landscaping would exceed the requirements by 11 units.

Development Cost

At the June 21st meeting it was stated that past leadership once had indicated that allocating 2% of a project cost to landscaping was viewed as an acceptable standard Staff has evaluated this percent-requirement and has not found any specific nationally set recommendations for overall percent landscaping. Although not specifically identified as a national standard, the percentage of a development cost to landscaping is a relative percentage that can change over time due to ever changing development costs. Ultimately the percentage breakdown is based on costs, and judging by existing landscape requirements fall between 1 and 3% for Laramie.

Costs associated with development can vary from community to community due to numerous factors including supply and demand and availability of skilled workers to complete projects. In Laramie developers have indicated development costs are significantly higher than surrounding communities such as Ft. Collins and Cheyenne due to limited supply, materials and increased costs to mobilize crews.

Staff has put together the table below which highlights total project costs (as provided on the building permit) with known landscaping quantities (either through financial security or applicant statement). Staff notes that the higher percentage value for the Regal / Fox Theater is due to the fact that their addition triggered full site compliance.

| **Development** | **Total Cost** | **Landscaping Cost** | **Percent of Overall Cost** |
|---|---|---|---|
| Laramie High School | $87,000,000 | $1,100,000 | 1.26% |
| Regal / Fox Theater Addition | $1,130,000 | $35,000 | 2.69% |
| Laramie Church of Christ | $1,940,450 | $57,000 | 2.94% |
| UL Building | $3,417,040 | $35,884 | 1.05% |
| Tungsten | $2,935,924 | $66,589 | 2.27% |

Overall, landscaping cost vary from project to project. Staff cannot necessarily pinpoint an ideal percentage of landscaping as part of an overall project cost because project valuation can value immensely based on the level of technical elements in a building. Construction costs for a high school have a higher level cost per square foot as compared to that of an office building.

Summary

In summary staff believes that changes to the landscaping requirements are warranted. Staff is cognizant of the introduction of a sliding scale does introduce a perceived inequality by treating larger developments differently than smaller developments. If the Council desires to remove the sliding scale elements from the proposed changes a simple amendment deleting proposed LMC subsection LMC 15.14.050.F.3.b.

Staff reminds the Council that all developments are eligible for Minor Administrative Modifications which can administratively grant up to a 20% reduction in required landscape units provided the requested deviation is necessary to address some practical difficulty or some unusual aspect of the site of the proposed development not shared by landowners in general; or accommodate an

alternative or innovative design practice that achieves to the same or better degree the objective of the existing standard to be modified.

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**LARAMIE PLANNING COMMISSION**
**JUNE 13, 2016**
**STAFF REPORT**

| | |
|---|---|
| **FILE:** | **TA-16-05 Amending LMC 15.14.050, Landscaping and Screening Standards** |
| **REQUEST:** | An amendment to LMC Sections 15.14.050 Landscaping and Screening Standards |
| **APPLICANT:** | City of Laramie |
| **PURPOSE:** | To reduce specific landscaping standards associated with development |
| **PREPARED BY:** | Charles W. Bloom, AICP, Principal Planner |

## RECOMMENDED MOTION:

Move to recommend that the City Council **approve** amendments to LMC 15.14.050 (Landscaping and Screening Standards) for the purposes of reducing landscaping requirements associated with development as recommended by staff.

## APPLICABLE CODE SECTION(S):

Text Amendments must be reviewed by the Planning Commission and City Council. Planning Commission action is forwarded to the City Council as a recommendation.

- Laramie Municipal Code Title 15, Unified Development Code
- Wyoming State Statutes Title 15 Cities and Towns, Article 5 Planning
- Wyoming State Statutes Title 15 Cities and Towns, Article 6 Zoning
- Laramie Comprehensive Plan

## BACKGROUND AND SUMMARY:

The present amendment is initiated by the City of Laramie as part of the continual effort to keep the Unified Development Code (UDC) accurate, correct concerns, and remove potential avenues of confusion. All prior revisions to LMC Chapter 15 (Unified Development Code) can be found online at www.cityoflarmie.org/UDC.

Beginning in early 2015 City staff began what has been dubbed the “Laramie Economic Initiative” (LEI) with the intent to address perceptions that elements of Laramie Municipal Code’s Unified Development Code (Title 15) were prohibiting development due to development costs. In response, City staff has been working on three components of the

LEI. Component 1 involved modifications to the fee schedule which was presented to the Planning Commission on May 9, 2016 and at the drafting of this staff report, is set for City Council consideration on June 7, 2016. Components 2 and 3 involved modifications to the "Landscaping and Screening" standards (LMC 15.14.050 and "Parking and Off-Street Loading" standards (LMC 15.14.040). This amendment focuses on Component 2, "Landscaping and Screening Standards".

The proposed amendments have been presented to the Laramie Chamber Business Alliance's Community Development Liaison Committee (CDLC) for review. The CDLC has indicated support of the reduction in landscaping requirements.

Proposed Landscaping Revisions:

Staff frequently receives complaints regarding our landscaping requirements. Specifically that they are perceived as too burdensome and too costly for development to install and maintain. Staff analyzed the existing landscaping requirements and propose several amendments to address problems that frequently arise.

Notable changes are as follows:

- A reduction in the overall required landscaping from 20% of a development area (excluding building(s) or use footprint) to 15% of a lot or parcel area (excluding building(s) or use footprint). This effectively reduces landscaping you would see internal to the site and along the perimeter. (LMC 15.14.050.C.1)
- Addition of a Xeriscape/Water Conserving Landscaping option to allow for a low water use landscaping option in nonresidential development applications. (LMC 15.14.050.C.4)
- A reduction in the amount of required "living landscaping materials from 75% to 65% of the ground cover. This will result in less living landscape such as grass, bushes and shrubs and more hardscape such as rock, bark and decorative pavers. (LMC 15.14.050.C.5)
- Modification to the size requirements of plantings to reflect industry standards (LMC 15.14.050.D.2)
- Change the way perimeter lengths are calculated for required landscape units to exclude measurement for driveways and pedestrian connections. This results in less required planting and landscape units along a property line with a driveway or pedestrian connection. (LMC.15.14.050.F.3.a – page 8)
- Reduction in Site Perimeter landscaping units required based on development project size. The larger the development, the less landscape units required. (LMC.15.14.050.F.3.b – page 9)
- Reduction in bufferyard requirements, L2, L3 and L4 bufferyard widths and reduction in required landscape units for all bufferyards. (LMC Tables 15.14.050 2 and 3 – pages 9 and 10)

The above mentioned changes will ultimately have a reduction in the amount of required landscaping within and on the perimeter of development sites. The reduction in landscaping requirements and introduction of a Commercial xeriscape option will also result in lower irrigation costs for development.

Note: The attached Ordinance only shows subsection of the LMC 15.14.050, Landscaping and Screening Standards that are proposed for modification (subsections A-F). LMC 15.14.050 subsections G-I are not included because they remain unchanged.

**PUBLIC COMMENTS:**

This amendment was legally advertised in the Laramie Boomerang on May 28, 2016. Staff has received no comments regarding this proposed amendment to Laramie Municipal Code.

**FINDINGS OF FACT:**

The amendment is found to be in accordance with substantive and procedural requirements and necessities in City of Laramie code and best planning practice.

**CONCLUSIONS OF LAW:**

The amendment is proceeding in accordance with applicable law, including LMC Title 15.

**STAFF RECOMMENDATION:**

Staff recommends that the Planning Commission recommend that the City Council **approve** amendments to LMC 15.14.050 (Landscaping and Screening Standards) for the purposes of reducing landscaping requirements associated with development as shown in Attachment A.

**ATTACHMENTS:**

1. ~~Attachment A - Proposed Ordinance~~ (See Ordinance)

# CITY OF LARAMIE COUNCIL REGULAR MEETING August 16, 2016

**Agenda Item: Agreement**

**Title:** Grant Agreement between the Wyoming Business Council and the City of Laramie for the Business Ready Communities Award for Bright Agrotech

**Recommended Council MOTION:**
Move to approve the Grant Agreement between the Wyoming Business Council and the City of Laramie for the Business Ready Communities Award for Bright Agrotech and authorize the Mayor to sign.

**Administrative or Policy Goal:** Strategic Partnerships for Economic Growth & Development

**Background:** During its March 10, 2016 meeting, council passed Resolution 2016-24 authorizing the submittal of a BRC, Business Committed grant and loan application to the Wyoming Business Council in support the construction of a 12,150 square foot corporate headquarters in the Laramie River Business Park for Bright Agrotech. Following a preliminary approval by the board of directors for the Wyoming Business Council during its May 2016 meeting, the State Lands and Investment Board granted final approval of a $2,685,750 *grant* and a $209,250 *loan* during its June 2017 meeting. **NOTE**: The Agreement under consideration here relates only to the $2,685,750 grant award. A separate Agreement for the $209,250 loan will follow at a later date. All grant funds must be exhausted before loan funds are utilized.

No City of Laramie funds will be used for the match for this grant or for any portion of the project, however, a significant amount of staff time has been utilized for the preparation of the application and will continue to be invested the in the construct ruction management and grant administration. Moreover, the $209,250 loan will be a debt to the city which will be repaid over a ten year period at two percent (2%) interest using lease payments from Bright Agrotech. As stipulated in the Project Development Agreement between the City of Laramie, Laramie Chamber Business Alliance (LCBA) and Bright Agrotech, which was executed on March 10, 2016 (and included in the grant/loan agreement with the Wyoming Business Council as Attachment B), the City of Laramie will own the project during construction. At the conclusion of construction, ownership will be transferred to LCBA, and simultaneously, LCBA will execute a mortgage, including assignment of rents, with the city to guarantee the full repayment of the loan to the Wyoming Business Council.

Upon satisfaction of the loan to the Wyoming Business Council, LCBA will reinvest will reinvest 80% of net lease proceeds into economic development projects and 20% into operations. Then, upon the sale of the building, LCBA will allocate 50% of proceeds to economic development projects within the Cirrus Sky Technology Park, 25% to operations and 25% returned to the Wyoming Business Council.

Bright Agrotech projects hiring 40 additional employees within three years, with wages ranging from $14 for entry level positions to $40 per hour for skill positions. Additionally, the company will lease the building for $42,535 in its first year, and by year ten of the lease, payment will increase to $85,050. The Wyoming Business Council estimates a 4.33% return on investment.

## REVENUE

| Project Budget | Amount | Funds |
|---|---|---|
| Project Cost | $ | |
| Loans on Project | $ 209,250.00 | BRC, Business Commited, repayable over 10 years @ |
| Grants for Project | $ 2,685,750.00 | BRC, Businss Committed |
| City's Amount | $ - | None |
| Other | | |
| Total Amount | $ 2,895,000.00 | |

**EXPENSE**

**Proposed Project Cost.**

| Project Budget | Amount | Funds |
|---|---|---|
| Project Cost | $ | |
| Loans on Project | $ 209,250.00 | BRC, Business Commited, repayable over 10 years @ |
| Grants for Project | $ 2,685,750.00 | BRC, Businss Committed |
| City's Amount | $ - | None |
| Other | | |
| Total Amount | $ 2,895,000.00 | |

**Legal/Statutory Authority:** This is a qualifying BRC project and the City is an eligible applicant.

**Responsible Staff:** City Manager Jordan, x5226, City Attorney, Jason Loos, x5319, Administrative Analyst, Sam Farstad, x5361 and Grant Analyst, Sarah Reese, x5201

_____ City Manager _____ City Attorney _____ Choose an item.

ORIGINAL
156021

# BUSINESS READY COMMUNITY GRANT AND LOAN PROGRAM GRANT AGREEMENT BETWEEN THE WYOMING BUSINESS COUNCIL AND THE CITY OF LARAMIE - BRIGHT AGROTECH HEADQUARTERS BUSINESS COMMITTED PROJECT

1. **Parties.** The parties to this Grant Agreement (Agreement) are the Wyoming Business Council (Council), whose address is 214 West 15th Street, Cheyenne, Wyoming 82002, and the City of Laramie (Grantee), whose address is 406 Ivinson Street; P.O. Box C, Laramie, WY 82073.

2. **Purpose of Agreement.** The Council shall provide Business Ready Community Grant and Loan Program (BRC) Business Committed funds to Grantee in the amount set forth in Section 4, and Grantee shall undertake and complete materials, projects and/or services (collectively, the Project) described in Attachments A, B, C, and D which are attached hereto and incorporated herein by this reference. Performance by Grantee of the requirements of this Agreement and compliance with all BRC program rules and regulations is a condition of this Grant.

3. **Term of Agreement and Required Approvals.** This Agreement shall commence upon the date the last signature is affixed hereto. All construction services shall be completed by June 30, 2018, unless an extension is approved by Council. This Agreement shall terminate on June 30, 2021, unless otherwise amended or terminated in accordance with the terms and conditions specifically provided herein. This Agreement may be extended when, in the sole discretion of the Council, circumstances require an extension. Any extension shall be done by written amendment.

4. **Payment.** Council agrees to pay the Grantee for performance of the Project, as invoices are submitted for work done in connection with the Project, completed in accordance with the requirements of this Agreement and the BRC program. The total payment to Grantee under this Agreement shall not exceed two million six hundred eighty-five thousand seven hundred fifty dollars ($2,685,750) (Grant). Payment will be made following Grantee's delivery to Council of invoices detailing services performed in connection with the Project in a form acceptable to Council. Payment shall be made from Council's BRC budget pursuant to the schedule shown on Attachment A. No payment shall be made for any services performed in connection with the Project prior to the date upon which the last required signature is affixed to this Agreement.

5. **Responsibilities of Grantee.** The Grantee agrees to its responsibilities described in Attachment A, B, C, and D.

6. **Responsibilities of Council.** The Council will, at its discretion, assist in providing Grantee access to information, including without limitation information concerning BRC program requirements, rules, statutes, and regulations, the Council will cooperate with Grantee whenever possible. Council shall have no obligations, other than those specifically set forth herein, regarding the Project or its performance.

7. **Special Provisions.**

A. **Budget.** The budget for the Project is described in the Project Grant Expenditure Schedule (Budget) in Attachment A.

(i) Grantee agrees it will not exceed any of the line item totals listed in the Budget in Attachment A by more than twenty percent (20%) without prior approval from Council. Such changes will not result in any change in the total Project costs, or a change in the Grant amount.

(ii) In the Budget, "Non Construction Costs" include: appraisal, architectural, engineering, and Project inspection fees; "Construction Costs" include: site work, materials, labor, utilities, and contingencies.

(iii) This Agreement is incrementally funded as costs are incurred accordingly to the Budget in Attachment A.

(iv) Grantee shall submit one (1) reimbursement request per monthly cycle or one (1) request every thirty (30) days. If more than one request is received during that monthly cycle, the Council may return each additional request to Grantee for submittal in the next appropriate monthly cycle.

(v) The Council will release funds only after payment vouchers or invoices approved by the Grantee are submitted to the Council. After receipt of cash requests and billing documentation, the Council will pay the amounts of invoices at one hundred percent (100%). Verification of all in-kind contributions must be submitted to the Council.

(vi) If actual costs of the Project are more than the Budget indicated in Attachment A, Grantee agrees to pay the difference in the amount of funds awarded through the BRC Program and the actual costs of the completed Project. If there is additional funding for the Project, the Grantee must provide the Council with all necessary information regarding the funding.

B. **Default and Remedies.** In the event the Grantee or any subgrantee of the Grantee under this Agreement defaults or is deficient in the performance of any term of this Agreement or any requirements of the BRC program rules and regulations, then Council shall have the right to exercise all remedies provided by law or in equity, including without limitation:

(i) Immediately terminating this Agreement without further liability or obligation of Council;

(ii) Issuing a letter of warning advising Grantee of the deficiency and putting the Grantee on notice that additional action will be taken if the deficiency is not corrected or is repeated;

(iii) Recommending, or requesting Grantee to submit proposals for corrective actions, including the correction or removal of the causes of the deficiency;

(iv) Advising Grantee to suspend disbursement of funds for the deficient activity;

(v) Advising Grantee to reimburse any amounts improperly expended and reprogram the use of the funds in accordance with applicable requirements;

(vi) Changing the method of payment to Grantee; and/or

(vii) Reducing, withdrawing, or adjusting the amount of the Grant.

C. **Extension of Construction.** Council may, at its discretion, by amendment to this Agreement, extend the construction services date if Grantee provides written justification for the extension and that the completion of construction services will not exceed six (6) months from the construction services date established herein. A construction services date extension of six (6) months or less will not change the termination date established herein.

D. **Monitor Activities.** The Council shall have the right to monitor all Project related activities of the Grantee. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe personnel in every phase of performance of the Project.

E. **No Finder's Fees.** No finder's fee, employment agency fee, broker fee or other such fee related to this Agreement shall be paid by either party.

F. **Non-Supplanting Certification.** Grantee hereby affirms that BRC Grant funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose.

G. **Operations and Maintenance.** Grantee will be required to provide an operations and maintenance plan for the Project commencing upon the completion of construction and for a minimum of five years thereafter. The Project Operation and Maintenance Plan is more particularly described in Attachment D.

H. **Performance Measures.** Grantee will be required to provide information as requested by the State of Wyoming, by and through the Council, about construction of the building, job creation, revenue recapture, additional sales and additional investments.

I. **Procurement Requirements.** Grantee will be required to provide a letter from a qualified engineer certifying the construction completion of the Project and that all required construction standards were adhered to during the construction of this Project. Upon completion of construction of this Project, Grantee will be required to provide the Council a letter from Grantee's attorney confirming:

(i) Grantee has followed all procurement standards as per W.S. § 15-1-113 and W.S. § 16-6-101 et. seq.

(ii) Grantee has followed the Wyoming Preference Act (W.S. § 16-6-201 through 16-6-206);

(iii) Grantee has provided certified cost estimates from a qualified engineer.

J. **Publicity.** Any publicity given to the Project or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee, shall identify the Council as a funder. Grantee shall advertise BRC funded property and/or buildings on WyomingSites.com, and will be responsible for updating information every ninety (90) days.

K. **Reporting.** Within fifteen (15) calendar days at the conclusion of each calendar quarter during the Term of this Agreement, Grantee shall furnish Council with a progress report. Each progress report shall set forth, in narrative form, the Project work accomplished under the Agreement during the quarter or any other information requested by Council. At the end of the term of this Agreement, Grantee shall furnish Council with a comprehensive report of the Project accomplishments, a cumulative detailed financial report reflecting total grant expenditures, cash and in-kind match expenditures, and private funds leveraged pursuant to this Agreement. Grantee shall provide a letter from a qualified engineer certifying the completion of the Project and that all required construction standards were adhered to relative to the construction of this Project.

L. **Retention of Records.** Grantee agrees to retain all records related to the Project which are required to be retained pursuant to this Agreement or the BRC program rules and regulations for ten (10) years following Council's date of notice to Grantee of closeout of the Grant, provided all audit requirements have been fulfilled.

M. **Revenue Recapture.** Grantee's intention to return recaptured revenue to the Council does not bind, encumber, be chargeable, or create a debt of any kind on the behalf of or against Grantee, the city's assets, general obligation funds, or any other revenues or properties whatsoever. In the event of default with respect to the terms and conditions of this Agreement, or with respect to the terms and conditions of any related Project agreements between any of the parties, neither the Council nor any other party shall have the right to seek re-capture from Grantee. The Revenue Recapture Plan is more particularly described in Attachment C to the Agreement.

8. **General Provisions**

A. **Amendments.** Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon in writing by the parties hereto shall be incorporated by written instrument, signed by all parties to this Agreement.

B. **Applicable Law/Venue.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and venue for any action shall be in the First Judicial District, Laramie County, Wyoming.

C. **Assignment.** Certain duties and responsibilities of the Grantee may be delegated to the Laramie Chamber Business Alliance (LCBA), whose address is 800 South 3rd Street, Laramie, WY 82070, pursuant to the Project Development and Administration Agreement shown in Attachment B. Those duties include, but are not limited to construction and property management, and project management of the Project funded by this Agreement. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the prior written consent of the other party. Grantee shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of Council. Any assignment to LCBA as permitted by the preceding sentence will not relieve Grantee of its responsibility to perform or cause to be performed all duties under this Agreement.

D. **Assumption of Risk.** The Grantee shall assume the risk of any loss of state funding, due to the Grantee's failure to comply with state requirements. The Council shall notify the Grantee of any state determination of noncompliance.

E. **Audit/Access to Records.** The Council and any of its representatives shall have access to any books, documents, papers, and records of the Grantee that are pertinent to this Agreement.

F. **Availability of Funds.** Each payment obligation of the Council is conditioned upon the availability of government funds that are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Grantee, the Agreement may be terminated by the Council at the end of the period for which the funds are available. The Council shall notify the Grantee at the earliest possible time of the services that will or may be affected by a shortage of funds. No penalty shall accrue to the Council in the event this provision is exercised, and the Council shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Council to terminate this Agreement to acquire similar services from another party.

G. **Award of Related Agreements.** The Council may undertake or award supplemental or successor agreements for work related to this Agreement. The Grantee shall cooperate fully with other grantees and the Council in all such cases.

H. **Compliance with Laws.** The Grantee shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.

I. **Entirety of Agreement.** This Agreement, consisting of nine (9) pages, and Attachment A, consisting of four (4) pages, Attachment B, consisting of twenty-two (22) pages, Attachment C, consisting of two (2) pages, and Attachment D, consisting of one (1) page, represent the entire and integrated Agreement between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral.

J. **Extensions.** Nothing in this Agreement shall be interpreted or deemed to create an expectation that this Agreement will be extended beyond the term described herein. This Agreement may be renewed by agreement of both parties in writing, provided that there is no right or expectation of renewal or extension beyond the Term, and any renewal or extension will be determined at the discretion of Council and subject to any necessary Council approval. Any agreement to extend this Agreement shall include, but shall not be limited to: an unambiguous identification of the Agreement being extended; the term of the extension; a statement that all terms and conditions of the original Agreement shall, unless explicitly delineated in the exception, remain as they were in the original Agreement; and, if the duties of either party will be different during the extension than they were under the original Agreement, a detailed description of those duties.

K. **Indemnification.** Each party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

L. **Independent Contractor.** Grantee shall function as an independent contractor for the purposes of this Agreement, and shall not be considered an employee of Council for any purpose. Grantee shall assume sole responsibility for any debts or liabilities that may be incurred by the Grantee in fulfilling the terms of this Agreement, and shall be solely responsible for the payment of all federal, state and local taxes, which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing Grantee or its agents and/or employees to act as an agent or representative for or on behalf of Council, or to incur any obligation of any kind on the behalf of Council. Grantee agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to Council employees will inure to the benefit of Grantee or Grantee's agents and/or employees as a result of this Agreement.

M. **Kickbacks.** The Grantee certifies and warrants that no gratuities, kickbacks 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. If the Grantee breaches or violates this warranty, the Council may, at its discretion, terminate this Agreement without liability to the Council, or deduct from the Agreement or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

N. **Nondiscrimination.** The Grantee shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. §27-9-105 et seq.), the Americans with Disabilities Act, (ADA), 42 U.S.C. §12101, et seq., and the Age Discrimination Act of 1975 and/or any properly promulgated rules and regulations related thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, origin, or disability in connection with the performance under this Agreement.

O. **Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular U.S. mail or delivery in person. Delivery shall be deemed to have occurred three (3) days following deposit in the U.S. mail or upon delivery in person.

P. **Ownership of Documents/Work Product/Materials.** All documents, records, field notes, data samples, specimens, and materials of any kind resulting from performance of this Agreement are at all times the property of the Council.

Q. **Prior Approval.** This Agreement shall not be binding upon either party, no services shall be performed under the terms of this Agreement, and the Wyoming State Auditor shall not draw warrants for payment on this Agreement, until this Agreement has been reduced to writing and approved as to form by the Office of the Attorney General.

R. **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

S. **Sovereign Immunity.** The State of Wyoming and Council do not waive sovereign immunity and Grantee does not waive governmental immunity by entering into this Agreement, and each specifically retains all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. § 1-39-101, et seq., and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

T. **Taxes.** Grantee shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to social security taxes, workers' compensation, unemployment insurance and sales taxes in connection with performance of the Project and this Agreement.

U. **Termination of Agreement.** The Council may terminate this Agreement immediately for cause if the Grantee fails to perform in accordance with the terms and conditions of this Agreement. Should the Grantee fail to perform in a manner

consistent with the terms and conditions set forth in this Agreement, payment under this Agreement may be withheld until such time as the Grantee performs its duties and responsibilities.

V. **Third Party Beneficiary Rights.** 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 this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

W. **Time is of the Essence.** Time is of the essence in the performance by Grantee all provisions of the Agreement.

X. **Titles Not Controlling.** Titles of sections are for reference only, and shall not be used to construe the language in this Agreement.

Y. **Unused/Misused Funds.** The Council shall be entitled to recover from the Grantee any full or partial payment made under this Agreement for: 1) any payments used for purposes not authorized, or performed outside this Agreement, 2) any payments for services the Grantee is unable to provide, 3) any payments for services the Grantee did not provide but was required to provide under the terms of this Agreement.

Z. **Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach.

**THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK**

9. **Signatures.** By signing this Agreement, the parties represent and warrant that they have read and understood it, that they agree to be bound by the terms of the Agreement, that they have the authority to sign it, and that they have received a signed and dated copy of the Agreement.

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

**WYOMING BUSINESS COUNCIL**

| | |
|---|---|
| Shawn Reese<br>Chief Executive Officer | Date |
| Julie Kozlowski, Interim Director<br>Investment Ready Communities | Date |

**CITY OF LARAMIE**

| | |
|---|---|
| Dave Paulekas, Mayor<br>City of Laramie | Date |

**ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM**

| | |
|---|---|
| Marion Yoder<br>Senior Assistant Attorney General | Date |

# ATTACHMENT A TO THE BUSINESS READY COMMUNITY GRANT AND LOAN PROGRAM GRANT AGREEMENT BETWEEN THE WYOMING BUSINESS COUNCIL AND THE CITY OF LARAMIE - BRIGHT AGROTECH HEADQUARTERS BUSINESS COMMITTED PROJECT

| | City of Laramie - Bright Agrotech | | | | |
|---|---|---|---|---|---|
| Purpose | The city of Laramie requests a $2,685,750 Business Committed grant and a $209,250 Business Ready Community (BRC) loan for the construction of a 12,150 square-foot building to house Bright Agrotech's headquarters and manufacturing space. | | | | |
| Project Budget | Projected Grant Expenditure Schedule | | | | |
| | Description | BRC | Match | | Total |
| | | | Cash (Loan) | In-Kind | |
| | Land | $ - | $ - | $ 670,824 | $ 670,824 |
| | Non-Construction Costs | $ 524,199 | $ 40,841 | $ - | $ 565,040 |
| | Construction Costs | $2,161,551 | $ 168,409 | $ - | $ 2,329,960 |
| | Total Project Cost | $2,685,750 | $ 209,250 | $ 670,824 | $ 3,565,824 |
| | Percentage BRC of all cash | | 100% | | |
| Performance Measures | Measure | | Quantity | Notes | |
| | Businesses Assisted | | 1 | | |
| | Return on Investment | | 4.33% | | |
| | Loan Repayment | | $ 233,022 | 10 year term, 2% interest | |
| | Revenue Recapture | | $ 633,670 | 25% of building sale (estimated) | |
| | County Median Wage | | $ 14.07 | | |
| | Median Wage of Jobs Created | | $ 21.00 | | |
| | Jobs to be Created (3 Year Projection) | | 40 | | |
| | Jobs to be Retained | | 29 | | |
| | Additional Investment | | $400,000 | Equipment and furnishings | |
| Project Infrastructure | Acres Developed | | 3.85 | | |
| | New Building Construction | | 12,150 SF | | |

## Project Description

The city of Laramie requests a $2,685,750 Business Ready Community (BRC), Business Committed grant and a $209,250 BRC loan for the construction of a 12,150 square-foot building to house Bright Agrotech's headquarters and manufacturing space. The Laramie Chamber Business Alliance (LCBA) will provide a 3.85- acre lot in the Laramie River Business Park. The company, a graduate of the Wyoming Technology Business Center (WTBC) on the University of Wyoming campus, develops, manufactures, assembles, sells and installs its patented ZipGrow indoor vertical farming equipment, as well as management software and services to optimize the growing system.

## The Business

Nate Storey conceived Bright Agrotech during a doctoral research project and founded the company in a garage in 2010 in Laramie. The business has been growing since. In 2011, Storey was awarded a UW Ellbogen scholarship, which allowed him to rent space and receive mentoring services at the WTBC. After graduating from the incubator, Bright Agrotech partnered with Allsop (a Laramie company that manufactures computer accessories such as mouse pads, wrist rests and CD Jewel cases) to rent space and share delivery and shipping needs.

This partnership worked well but Bright Agrotech requires additional space to expand again, which Allsop does not have. Available lots in the Cirrus Sky park were considered. Although there is a technology component to Bright Agrotech, the warehousing nature of this business is incompatible with the Cirrus Sky tech zoning. The lot identified by the company and the LCBA is across the street from the Allsop building, which will allow the two companies to continue their established partnership.

Bright Agrotech offers growing systems and software packages to farmers in the U.S. (approximately 70% of sales) and around the world (30% of sales). It provides education and customer service through a network and online university the company founded and manages (Upstart Farmers Network and UpStart University), giving farmers the tools necessary to be successful.

The company currently employs 29 people and draws heavily from the University of Wyoming graduate pool. Approximately 38% of the staff hold technical positions and the remaining staff are in manufacturing. Bright Agrotech offers bonuses based on company performance.

Bright Agrotech has received a significant amount of coverage this past year in traditional media and trade industry reports. Here is a link to a recent article about the importance of technology in Bright Agrotech's design and engineering process.

The company's product was also featured during last year's Milan World Fair.

**Project Goals and Benefits**

Bright Agrotech projects hiring 40 additional employees within three years. The entry level positions will start at $14.03 per hour with technical positions paying $20 - $40 per hour. The company does not yet offer benefits but hopes to start offering stock options to employees by the end of 2016. Many employees will be hired through an internship-to-employment pipeline from the University of Wyoming that allows students to gain work experience while pursuing degrees.

This project provides job opportunities, the influx of new payroll into the community and increased sales tax revenue. For every job created at Bright Agrotech, .22 jobs in the community are indirectly supported in the community. Payroll has a larger impact. For every $1 of payroll, and additional 48 cents of payroll is indirectly supported in the community. Finally, for every $1 of new sales created by Bright Agrotech, an additional 22 cents of sales are supported in the local economy.

The LCBA will collect an estimated $695,000 in recaptured lease payments that will be invested in additional local economic development opportunities.

**Timeline**

The applicant estimates the project will be complete by May 2017.

## Funding

The total project cost is $3,565,824, of which $2,685,750 represents a BRC Business Committed grant, $209,250 a BRC loan and the in-kind value of the land, $670,824 (established by a broker's opinion). Justin Larson, a licensed Wyoming architect, provided cost estimates. Cost per square foot is $233.

| Sources | |
|---|---|
| BRC Grant amount | $2,685,750 |
| Cash Match (BRC Loan) | $ 209,250 |
| In-Kind Match | $ 670,824 |
| **Total eligible project cost** | **$3,565,824** |
| BRC % of total eligible project costs | 75% |
| Local % of total eligible project costs | 25% |
| **Uses** | |
| **Land Value** | |
| Land Value (In-Kind Match) | $ 670,824 |
| **Non-Construction Costs** | |
| Architectural and Engineering fees | $ 400,000 |
| Other fees (surveys, tests, etc.) | $ 140,040 |
| Project inspection fees | $ 25,000 |
| **Construction Costs** | |
| Site work | $ 450,000 |
| *Building Components:* | |
| Electrical Systems | $ 198,000 |
| Mechanical, plumbing, HVAC systems | $ 245,000 |
| Landscaping | $ 68,000 |
| Foundation and/or Structural Framing system | $ 825,000 |
| Interior Finishes | $ 248,000 |
| Fire Protection | $ 39,600 |
| Contingencies (10%) | $ 256,360 |
| **Total Uses** | **$3,565,824** |

## Loan Terms

Total Project: $3,565,824

Total Loan: $209,250

BRC Grant: $2,685,750

Collateral: Building to be constructed

Repayment: The loan will be repaid from lease payments (from Bright Agrotech to LCBA). It will be amortized over the 10-year term of the loan and LCBA will make annual payments to the WBC.

Term: 10 years

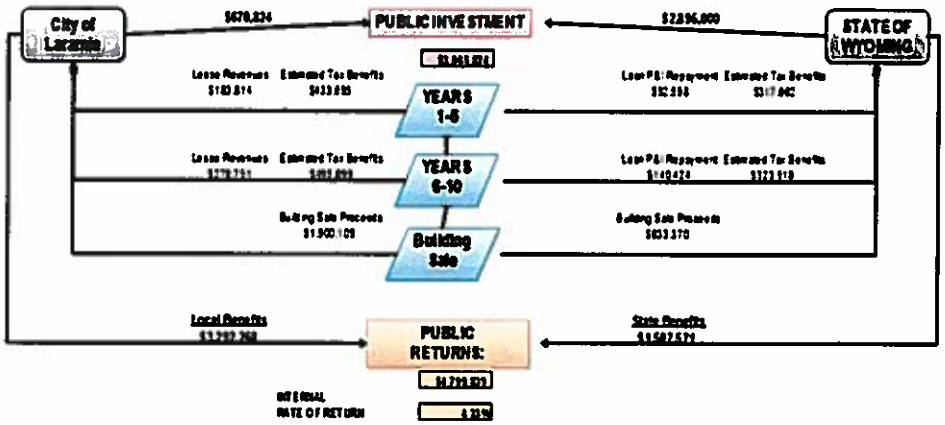
Interest Rate: 2%

Fees: .5% loan fee (not to exceed $5,000)

Other fees (i.e. loan documentation, appraisal, filing, etc.) are the responsibility of the city of Laramie, LCBA and Bright Agrotech.

The city of Laramie/LCBA will repay the BRC Program $233,022 in principal and interest.

LCBA will have a mortgage on the facility. The WBC will take an assignment of that mortgage and lease payments.



**Lease and Revenue Recapture**

The LCBA will deed the property to the city of Laramie during construction of the building. The property and building will be owned by the LCBA when the project is complete. Bright Agrotech will lease the building for $42,525 in the first year with the rate escalating to a year-ten amount of $85,050 (with years seven through 10 being at market rate). Lease payments will be used to make the BRC loan payments.

Bright Agrotech will be responsible for the payment of all taxes, insurance and utilities. Bright Agrotech will also be responsible for all fixtures and equipment estimated at $400,000.

The company has the option to purchase the property after year three. Should the business exercise the option to purchase, the purchase price will be the actual final construction cost increased by 1.5 percent compounded annually. If the business has met the agreed upon job creation and payroll projection goals, the purchase price will be the final construction cost less lease payments paid.

Proceeds from the sale of the building will be handled as follows:

- 50 percent to the LCBA for continued economic development efforts including infrastructure needs for ongoing LCBA projects, marketing and operations and maintenance.
- 25 percent to be retained by the LCBA as matching funds for future grant requests with the Wyoming Business Council.
- 25 percent to the BRC program.

**Attorney General Opinion**

The Attorney General has reviewed the loan request and finds that it comports with applicable rules and municipal statutes. Whether the project comports with Article 16, Section 6 of the Wyoming Constitution is still under review.

**WBC Deliberation**

Cactus Covello chaired the discussion as Megan Goetz declared a potential conflict. The board heard from the company's founder, Nate Storey. The board and Mr. Storey discussed his patented technology, the challenges of doing business in Wyoming, competitors, the ability for the business to purchase the building, if business does not succeed Laramie still has an asset to market and the composition of employees. The board further discussed the importance of the project as an agriculture business and the software support and management aspects of this business.

**WBC Recommendation**

The WBC recommends funding as a $2,685,750 Business Committed grant and a $209,250 BRC loan. Performance measures include the construction of the building, job creation, additional sales and additional private investment. (14 ayes with Ms. Goetz abstaining)

**State Loan and Investment Board Action:** APPROVED UNANIMOUSLY JUNE 16, 2016.

# ATTACHMENT B TO THE BUSINESS READY COMMUNITY GRANT AND LOAN PROGRAM GRANT AGREEMENT BETWEEN THE WYOMING BUSINESS COUNCIL AND THE CITY OF LARAMIE - BRIGHT AGROTECH HEADQUARTERS BUSINESS COMMITTED PROJECT

## *City of Laramie – LCBA – Bright Agrotech*
## PROJECT DEVELOPMENT AND ADMINISTRATION AGREEMENT

THIS PROJECT DEVELOPMENT AND ADMINISTRATION AGREEMENT (this "Agreement") is made and entered into by and between the **City of Laramie**, a Wyoming municipal corporation and political subdivision of the State of Wyoming ("City of Laramie"), the **Laramie Chamber Business Alliance**, a Wyoming non-profit corporation and statutorily-authorized community development organization ("LCBA") and **Bright Agrotech, LLC**, a Wyoming Limited Liability Company ("Bright Agrotech").

### RECITALS

(A) The City of Laramie will apply for a Wyoming Business Committed Grant/Loan (the "Grant/Loan") from the Wyoming Business Council ("WBC") and will distribute the money from that Grant/Loan pursuant to the terms of that Grant/Loan according to Wyoming state law and pursuant to the terms of this Agreement, to allow for the construction of a building and necessary infrastructure on 3.85 acres of property in the City of Laramie, Albany County, Wyoming (the "Property") for purposes of effectuating Bright Agrotech, LLC, a Wyoming Limited Liability Company, to retain its corporate headquarter and manufacturing facilities in Laramie, Wyoming. Specifically, the Property is located at and on approximately 3.8 acres of land located at Block 2, Lot 5B of the Laramie Rivers Business Park I in Laramie which is owned by LCBA (formerly known as Laramie Economic Development Corporation);

(B) Bright Agrotech is the business committed with respect to the above-described Grant/Loan. Bright Agrotech has committed to building its corporate headquarters and manufacturing facilities ("the Facility") on the LCBA Property. The Facility will be initial new construction of an approximate 12,150 square foot code compliant building with 5,500 square feet of shop space and 5,000 square feet of improved office space, and 1,650 square feet of indoor growing/product demonstration area, along with associated site work;

(C) Bright Agrotech, LLC was founded in 2010 in Laramie, Wyoming. It has been growing quickly in response to a growing market for indoor and high-density hydroponic growing equipment. It is among the largest manufacturer and installer of indoor farming equipment in the world, due to quality products combined with effective marketing and partnership-style support of its customers.

Bright Agrotech, LLC manufactures its patented products both domestically and internationally for domestic and international markets. The company has an annual revenue growth between 300% and 800% in a market sector that is estimated to have $9 billion in potential revenue.

In 2014, the company grew from a 4 -person organization to a 12-person organization, tripling in size and their ability to amplify their efforts. Bright Agrotech has added four more employees in the first quarter of 2015, with several other positions to be filled before the end of the year.

(D) The City of Laramie and LCBA are aware that the construction and operation of the Bright Agrotech Facility would promote the sound economic growth of the City of Laramie and Albany County, Wyoming area through, among other things, the creation of new jobs, improvement of the tax base, and creation of other resources in Albany County, Wyoming area, all of which constitute a public purpose;

(E) The program under which the Grant/Loan is given authorizes project administration by a community development organization other than the Grant/Loan applicant, pursuant to a written agreement between the applicant and the community development organization;

(F) The City of Laramie is to be the Grant/Loan applicant;

(G) LCBA is a community development organization;

(H) The complex nature of the project will require significant expenditure of time and resources for project administration by both parties;

(I) It is of a definable benefit to the City of Laramie, in the savings of City resources, and reasonably necessary to City of Laramie, based upon the expertise of LCBA and given that LCBA is the legal owner of the Property upon which the Facility will be constructed, that LCBA participate in the administration of the project in full partnership with the City of Laramie.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## 1. PROJECT DESCRIPTION:

The project at issue will involve the construction of a building of approximately 12,150 square foot metal building with 5,500 square feet of shop space and 5,000 square feet of improved office space, and 1,650 square feet of indoor growing/product demonstration area, along with associated site work of approximately twenty four thousand (24,000) square feet (the "Project") for leasing and ultimate sale to and purchase by Bright Agrotech from LCBA. The design and development of the Project and the construction thereof will be funded by the Grant/Loan. Total Project costs for the Project is Two Million Eight Hundred Ninety Five Thousand Dollars ($2,895,000), of which $2,685,750 of the request will constitute a Grant and $209,250 will constitute a Loan, per Attachment C. The parties intend to apply to the WBC for the full Project costs to be awarded in Grant/Loan monies, however otherwise subject to Section 2.A(iv) below. The terms and requirements of the Grant/Loan are by this reference incorporated herein.

A 6-member Selection Committee composed of two individuals from the LCBA, two individuals from the City of Laramie, and two individuals from Bright Agrotech shall select a qualified design and construction firm to develop plan and specifications for the construction of

the Project and the Facility in accordance with City of Laramie procurement policies. Each entity shall appoint one of the two members as the voting members for all Selection Committee decisions requiring a vote or approval of the Committee (total of three (3) voting members). Except as provided herein, a majority vote is required for all decisions and/or approvals requiring a vote.

The delivery of the Project shall be managed by a two-member Project Administration Committee, which shall serve as the decision making body for the Project and shall be in charge of implementation of the Wyoming Business Council grant and loan and the construction of the Facility. The Project Administration Committee shall be comprised of one individual from LCBA and one individual from the City of Laramie. In the event the two members of the Project cannot agree on a decision and are deadlocked, they shall consult with an individual designated by Bright Agrotech to participate in the decision as the tie-breaker. If the contested decision requires construction work outside the original contract scope, written cost responsibility will have to be accepted by all parties prior to work commencing. This Project Administration Committee shall meet weekly during the course of this project to manage the Project, to review payouts and draws, and to review and approve any changes to the Project that may arise. The Project Administration Committee shall direct the conduct of the Project in all respects, through the city's designated project manager and within all pertinent City of Laramie policies, who shall manage the day-to-day operations and report to the Project Administration Committee weekly, or as special circumstances may require.

Following execution of this Agreement, the Project Administration Committee shall have an initial meeting to review the Project and establish a schedule for regular meetings for the purpose of reviewing and discussing the Project status and any issues impacting the progress of the Project including conflicts, delays, and their causes and potential claims.

Following execution of this Agreement and within 45 days following execution of grant agreement with the Wyoming Business Council ,the Selection Committee shall select a design and construction firm to prepare preliminary plans and specifications for the construction of the Project (the "Preliminary Plans") in accordance with the specifications and criteria set forth on Exhibit "C" attached hereto (the "General Specifications"), together with a budget showing that the Project will be completed in accordance with such Preliminary Plans at a cost not to exceed the amount of the Grant/Loan, which is attached hereto as Exhibit "D." Upon the Selection Committee's completion and final approval of the preliminary construction drawings and specifications (the "Final Plans") and the budget (the "Final Budget") for the Project, LCBA and the City of Laramie shall be responsible for constructing the Project in accordance with the Final Plans and the Final Budget through the Project Administration Committee.

## 2. OBLIGATIONS OF LCBA:

2.A. LCBA, as is set forth in and contemplated by the Grant/Loan and using the Grant/Loan funds, shall coordinate with the City of Laramie in all phases of Grant/Loan management and assist with the administration of the Project, including, without limitation, construction of the Project by designating an individual to serve on

the Project Administration Committee. In this capacity, LCBA shall, among other things perform as necessary the following tasks to manage and construct the Project:

2.A (i). LCBA shall participate in the selection of a qualified design and construction firm to develop plans and specifications for the construction of the Project and the Facility in accordance with City of Laramie procurement policies by appointing two individuals to participate on the Selection Committee. At its own cost and using its organizational resources, LCBA shall also obtain all necessary zoning, subdivision, land development and building permits and approvals necessary to develop the Project (collectively, the "Development Approvals") if grant resources are insufficient to cover these expenses.

2.A (ii). Working with in partnership with the City of Laramie through the Project Administration Committee, LCBA shall achieve Substantial Completion of the Project (as hereinafter defined) on or about May 31, 2017 or twelve (12) months from the date on which the WBC and the City of Laramie execute the Grant/Loan agreement (the "Completion Date"), whichever is later. To the extent that LCBA experiences delays in achieving Substantial Completion by said date, LCBA shall be entitled to an extension of Substantial Completion when the delay is caused by weather, acts of God, labor strikes or shortages, change orders to the Project, fire, flood, unusual delays in deliveries, unavoidable causalities or other causes beyond LCBA's control, then the date for Substantial Completion shall be extended by the length of time of the delay in question. The Project shall be deemed to be substantially completed ("Substantially Completed" or "Substantial Completion") on the day when all of the following have occurred:

(a) The Project has been completed in accordance with the Final Plans and all applicable laws, rules and regulations, except for minor "punch list" items, the completion or repair of which will not interfere with Bright Agrotech's use and occupancy of the Project and Facility, and in accordance with, the Lease & Purchase Agreement (as hereinafter defined);

(b) the Project is available for Bright Agrotech to utilize for its intended purpose without material interference with Bright Agrotech's business activities by reason of completion of LCBA's work, including (without limitation), by reason of completion of "punch list" items;

(c) LCBA shall have obtained and delivered to Bright Agrotech a copy of a certificate of occupancy relating to the Project issued by the City of Laramie, which certificate of occupancy shall be of the type customarily issued by the municipality in which the Project is located and which is adequate to permit Bright Agrotech to legally occupy the Project for its intended purposes (the "Certificate of Occupancy"); and

(d) LCBA and Bright Agrotech shall have completed a joint inspection of the Project and have:

(i) confirmed in writing that the Project has been completed in accordance with the Final Plans, except for minor "punch list" items, and

(ii) compiled a written list of minor "punch list" items that do not interfere with Bright Agrotech's business activities (the "Punch list Items"). LCBA shall cause all contractors and subcontractors to complete all punch list items no later than sixty (60) days after the date of Substantial Completion unless a delay prevents completion within 60 days.

(e) Neither LCBA nor Bright Agrotech shall commence with any modification to completed building without approval by the City during the lease period.

2.A (iii). Keep separate and complete accounting records of transactions relative to the Grant/Loan.

2.A (iv) Provide to the City of Laramie a guaranty agreement by which LCBA will guarantee repayment of indebtedness (the "Loan") incurred by the City of Laramie for purposes of partial funding of construction of the Facility. The amount of the Loan shall not exceed Two Hundred Nine Thousand Two Hundred Fifty and 00/100 Dollars ($209,250.00) with the WBC, and will be subject to the minimum following terms:

1. Simultaneous to the City of Laramie transferring ownership of the Project as referenced in 3. A (vi), execute a mortgage, including assignment of rents, with the City of Laramie to guarantee the full repayment of the loan to the City of Laramie to the Wyoming Business Council;
2. Receipt of funding as provided for and described by the Grant by the WBC in an amount not less than $2,895,000.00. LCBA intends to apply for the total project costs, including "cash match" to be funded by the Grant in an amount of $2,685,750.00.
3. A Loan in a principal amount not to exceed $209,250.00;
4. A Loan interest rate not to exceed 2% or less per annum;
5. Monthly principal and interest payments as calculated by a standard amortization schedule for the term in question;
6. Term of 20 years; and
7. No prepayment penalty.

The parties agree that they shall mutually endeavor to acquire the maximum amount of funding in the form of a Grant/Loan from the WBC as is possible. The parties intend to apply to the WBC for full funding for the Project and Facility in the Grant/Loan. Should the WBC not award the City full Project construction costs and monies in and by the Grant/Loan, the parties shall seek to

endeavor acquisition of the remaining monies necessary for funding the Project by the Loan either from a LCBA revolving loan fund or private lenders, subject to the terms described herein. The parties shall first draw down and exhaust any Grant/Loan monies awarded before incurring additional indebtedness in the form of a Loan.

The parties recognize that the obligations and responsibilities herein are expressly contingent upon the Project being fully funded and should a Loan with the WBC not be possible nor can LCBA obtain a private loan with manageable terms and conditions, LCBA has the option to be relieved of all of its responsibilities hereunder.

2.A (v). Participate in weekly meetings between representatives of all parties, along with designated City staff, the purpose of which is to keep all parties informed of all matters regarding the Project and Facility. Such reports shall be given as often as the City of Laramie and Bright Agrotech request and, at the option of the City of Laramie and/or Bright Agrotech, may be verbal or written.

2.A (vi). In a timely fashion, provide to the City of Laramie complete documentation needed to complete all reporting requirements for the Grant/Loan as requested, including but not limited to publishing notices, submitting reports and the prompt submission of reimbursement of Grant/Loan eligible expenditures to the City of Laramie and provide all receipts and documentation necessary to satisfy the Grant/Loaning agency.

2.A (vii). Subject to completion of construction, satisfaction of Grant/Loan terms and approval by the City, enter into a ten (10) year Lease & Purchase Agreement with Bright Agrotech in a form substantially as set forth on Exhibit "A" hereto, for the continued operation and maintenance of the Property and Facility, said lease to charge a basic monthly rental amount as set forth by Exhibit "A," and with the conditions of purchase of the Property and Facility in accordance with the terms of Exhibit "A." Lease agreement payments will be utilized by LCBA to cover any ownership and property management costs, as well as any potential Loan repayment costs of the Property and Facility which are not otherwise paid by Bright Agrotech pursuant to Exhibit A. Any additional monies remaining after ownership and property management costs and Loan repayment costs, including any purchase monies acquired by LCBA upon sale by LCBA to Bright Agrotech, shall be used by LCBA in accordance with the Revenue Recapture Plan attached herein as Exhibit "B." Lease agreement will be assignable solely to the City of Laramie until such time as Loan indebtedness obligations are fully satisfied. LCBA will provide an assignment of rents as the sole collateral to secure repayment of the Loan.

2.A (viii). LCBA agrees that it shall not dissolve or cause the dissolution of its corporate charter and community development organization status during the reporting period and term of the WBC Grant/Loan. Specifically, LCBA shall maintain its current non-profit corporate and community development organization status for purposes of the Project. In the event LCBA fails to maintain its corporate charter, dissolves, or fails to maintain its status as an economic development organization pursuant to the provisions of Wyoming Statute § 9-12-301, et seq. the City shall have the right to declare a breach of the agreement and require that LCBA remedy such breach by restoring the charter of LCBA or assigning its obligations under this Agreement to another qualified community development organization. In the event of a failure by LCBA to cure any such breach within thirty (30) days of receipt of notice and opportunity to cure, then title to the Property, whether real, personal or mixed, shall be transferred to the City upon demand. LCBA shall comply with the demand for transfer within 30 days after the cure period expires. Any transfer of the Property by LCBA to the City in accordance with the terms of this paragraph shall not affect Bright Agrotech's rights under this Agreement or Exhibit "A".

2.A.(ix) Upon completion of the Grant/Loan, participate in the City's public hearing and provide evidence and testimony regarding satisfaction of the Grant/Loan terms and the economic benefits and economic development impacts provided to the community by Bright Agrotech.

2.B. LCBA shall contribute up to 3.85 acres of real property (the "Property") located at Block 2, Lot 5B of the Laramie Rivers Business Park I in Laramie, Wyoming for construction of the Facility. The value of the Property as part of the Project for Bright Agrotech shall be set at $670,824.00, or $4.00/square foot. This value and in-kind contribution shall be used for purposes of the match requirement for obtaining the Grant/Loan. Upon approval of the Grant/Loan, LCBA agrees to dedicate the entirety of the Property to the exclusive use and benefit of the Project. LCBA shall execute and deliver all such documentation evidencing the value of the Property as may reasonably be required by the City of Laramie and the WBC.

2.C Appoint an individual to the Project Administration Committee and two individuals to the Selection Committee.

2.D. In performance of its obligations under this Agreement, LCBA shall, as is reasonably practicable under the circumstances, conform its conduct so that the City can meet its statutory obligations in relation to obtaining and carrying out the Grant/Loan.

2.E. If LCBA is for some reason unable to serve as the community development organization, the City shall assume administration of this Agreement to assure Substantial Completion of the Facility. If the City assumes administration of

the Project, such action shall not alter any other terms of this Agreement; all parties hereto shall retain its rights and obligations hereunder.

2.F. Except as provided herein, LCBA may not terminate this Agreement before the successful completion of this Agreement. Following such completion, LCBA may terminate this Agreement at any time upon giving the City of Laramie sixty (60) days prior notice.

2.G. Coordinate and champion the Project for Bright Agrotech to the City of Laramie, Albany County, WBC, elected officials, press, other governing bodies and the public generally. LCBA will assist Bright Agrotech in employment opportunities for the partners, spouses and children of Bright Agrotech's management employees. To the extent that other training programs, services or Grant/Loans are available for Bright Agrotech, LCBA will manage such and endeavor to make such options available to Bright Agrotech. LCBA will additionally assist in coordinating Bright Agrotech recruitment relocations to the Laramie area by establishing contacts and relationships with local real estate agents, financial residential lending institutions and school district introductions.

2.H. Comply with any other term, responsibility, acknowledgment, duty or obligation of LCBA as may otherwise be specifically stated and provided for or contained within this Agreement herein.

2.I. Agree to City of Laramie audit of all applicable project related records as requested.

## 3. OBLIGATIONS OF THE CITY OF LARAMIE:

3.A. The City of Laramie shall:

3.A(i). Apply for the Grant/Loan at the soonest possible date that City staff, in consultation with the Wyoming Business Council, determines sufficient information and materials have been delivered by LCBA and Bright Agrotech. The Parties acknowledge that the application for Grant/Loan funding by the WBC requires the City of Laramie as applicant to solicit citizen input through a published public hearing before submission of an application and resolution passed by the City Council. In the event the City Council does not pass a resolution supporting the application by the City of Laramie to the WBC for Grant/Loan funds for this Project, the City shall consult and confer with LCBA and immediately endeavor to refer the Grant/Loan application to another qualified sponsoring entity. If the City of Laramie or LCBA are unable to find another qualified sponsoring entity, any party hereto shall have the right to declare this Agreement null and void and of no further force or effect, whereupon the parties shall be released from performing all obligations,

covenants, and promises contained in this Agreement, and each party shall bear and be solely responsible for the payment of all costs and expenses of any kind or nature that it has incurred pursuant to this Agreement.

The parties further agree that nothing in this Agreement shall be construed to mean that the City and/or LCBA are obligated to proceed with the Project if they do not receive the requested funding from the WBC nor shall anything be construed to mean the City or LCBA is obligated to expend funds for the Project in excess of the funds received from the WBC, unless LCBA and/or Bright Agrotech provides appropriate assurances of payment of such excess amounts.

3.A(ii). Appoint an individual to the Project Administration Committee and two individuals to the Selection Committee.

3.A(iii). Forward any and all relevant documentation received from WBC or others regarding this Project to LCBA in a timely manner.

3.A(iv). Receive, review and submit to the WBC in a timely fashion Grant/Loan reports and requests for Grant/Loan reimbursements.

3.A(v). Forward all Grant/Loan reimbursements received from WBC appropriate contractors to the Project Administration Committee in a timely fashion for all appropriate expenses allowable under the Grant/Loan.

3.A(vi). In consideration of LCBA providing the total cash in-kind contribution towards the Grant/Loan in the form of up to 3.85 acres of LCBA-owned real property for the Project (with a value of $670,824), the project management and oversight responsibilities incurred, the guaranteed liability for any Loan indebtedness associated with the Project, economic developments and impact in the community and other good and valuable consideration, the City of Laramie shall convey by a Bill of Sale and a Quitclaim Deed all of its right, title, interest and ownership of and in the Facility and the Property, if any, to LCBA within thirty (30) days of Substantial Completion of the Facility. In the event lease payments are made by Bright Agrotech prior to conveyance of said ownership by the City of Laramie to LCBA, said lease payments shall be made payable to LCBA and all lease payments and proceeds shall be accounted for in accordance with Section 2.A(viii) and Exhibit "B."

3.B. Comply with any other reasonable term, responsibility, acknowledgment, duty or obligation of the City of Laramie as may otherwise be specifically stated and provided for or contained within this Agreement herein.

**4. OBLIGATIONS OF Bright Agrotech:**

4.A. Bright Agrotech shall:

4.A(i). Appoint two (2) individuals to the Selection Committee.

4.A(ii). Pursue timely and efficient communications with LCBA regarding the planning, design and implementation of the Project.

4.A(iii). Retain and move its corporate headquarters and manufacturing facilities to the Facility in Laramie, Wyoming at the Property by April 2017 or Substantial Completion, whichever is later.

4.A.(iv). Employ, maintain and increase full-time employment and cumulative payroll in accordance with the projections and timelines/years as provided for and outlined by the attached Exhibit "E."

4.A(v). Enter into a Lease & Purchase Agreement as set forth by Exhibit "A."

4.A(vi). Provide in a timely fashion, all necessary job, wage information, and additional investments to City of Laramie and/or LCBA which is required for the submission of reports to the WBC. Project reporting will be required during the term of the Lease & Purchase Agreement.

4.A(vii). Be responsible for any cost associated with Project changes that are completed at the written request of Bright Agrotech (a "Change") that exceeds the amount of the Project cost defined herein in Sections 1 and 2.A(iv) and total Project costs defined at an amount of Two Million Eight Hundred Ninety-Five Thousand Dollars ($2,895,000). No Change shall be performed, and no cost associated with Project in excess of the $2,895,000 (collectively "Excess Costs") shall be incurred or allowed, without the prior written authorization, in each instance, of Bright Agrotech. Such Change and/or such Excess Costs shall be performed by LCBA upon the written approval and consent of Bright Agrotech as defined herein.

4.B. Comply with any other term, responsibility, acknowledgment, duty or obligation of Bright Agrotech as may otherwise be specifically stated and provided for or contained within this Agreement herein.

## 5. CONTINGENCIES:

As may have already been described herein or otherwise, this Agreement is made specifically with the following contingencies:

5.A. That the WBC and SLIB (Wyoming State Land and Investment Board) award and approve the Grant/Loan;

5.B. That any and all other City code, zoning and/or other requirements that may be imposed on the parties by the City of Laramie, County or otherwise are reasonable and can be accommodated; and

5.C. That the City of Laramie is capable of and does agree to incur the indebtedness of the Loan through the WBC, subject to the guarantee and repayment thereof by LCBA.

## 6. BREACH AND REMEDIES:

Any party believing that another is in material breach of the provisions of this Agreement shall notify the defaulting party in writing of the alleged breach, including within such notice the facts of the conduct constituting the breach and the steps believed necessary to cure the breach. Any notice of breach shall be sent to all parties to this Agreement. All parties to the Agreement shall meet within five (5) working days of such notice to discuss and attempt to resolve the breach. If, within fifteen (15) working days after the notice of breach, the breach has not been cured, or, if the breach cannot reasonably be cured within such time, if steps have not been undertaken to reasonably cure the breach, then the non-defaulting party or parties may take the steps reasonably necessary to enforce their rights under this Agreement by referring the matter to non-binding mediation. Should the parties not be able to arrive at a mutually agreed upon mediator and conduct the mediation in 30 days from the breach (unless otherwise extended by agreement of the parties), then either party can elect to initiate litigation.

This Agreement will be construed under the laws of the State of Wyoming and the appropriate venue and jurisdiction for any injunctive relief to enforce the terms hereof or any cause of action shall lie in the District Court, Second Judicial District in Albany County, Wyoming. Any mediation shall be conducted in Laramie, Wyoming.

## 7. REPRESENTATIVES/NOTICES:

The City of Laramie designates Janine Jordan, City Manager as its "Representative," Bright Agrotech designates Nate Story, President as its "Representative," and LCBA designates Daniel Furphy, CEO as its "Representative." All notices and invoices required in this Agreement shall be in writing, properly addressed to the Representative as follows:

<u>To City of Laramie:</u>

Janine Jordan, City Manager
City of Laramie
PO Box C
Laramie, WY 82073
307-721-5226 (telephone)
307-721-5211 (facsimile)

To Bright Agrotech:

Nate Storey, President/CEO
Bright Agrotech, LLC.
1461 Commerce Drive
Laramie, WY 82070
307-288-1188 (telephone)

To LCBA:

Daniel G. Furphy, CEO
Laramie Chamber Business Alliance
800 S. 3rd Street
Laramie, WY 82070
307-745-7339 (telephone)
307-745-4624 (facsimile)

Any notice to be given herein shall be deemed given three days after the same is placed in the U.S. Mail, certified, return receipt requested, to the last known address of the addressee, or on the date such notice is actually delivered, if delivered by any means other than by certified mail.

When dealing with each other in the performance of this Agreement, the parties may assume without verification that the designated Representative is acting with authority with respect to all dealings between the parties. Conversely, only the designated Representatives have authority to represent and bind the parties relative to all matters regarding the performance of this Agreement, except that the parties understand that the Mayor and/or the City Manager of the City of Laramie do not have authority to bind the City of Laramie to this Agreement without an affirmative vote of the City's Governing Body.

## 8. REPRESENTATIONS AND WARRANTIES OF BRIGHT AGROTECH:

Bright Agrotech represents and warrants that:

8.A. LLC Status. Bright Agrotech is a limited liability company duly organized, validly existing, and in good standing under the laws of Wyoming and shall maintain good standing with the laws of Wyoming

8.B. Corporate Power. Bright Agrotech has full power and authority to enter into and perform this Agreement. The execution and delivery of this Agreement and the

performance and observance of its terms, conditions, and obligations, have been duly authorized by all necessary company action by Bright Agrotech. This Agreement is a valid and binding obligation of Bright Agrotech, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting enforcement of creditors' rights generally and by general principles of equity (whether applied in a proceeding at law or in equity).

8.C. Non-breach of other Agreements. The execution and delivery of this Agreement and the consummation of the transactions contemplated herein will not conflict with the certificate of incorporation, operating/shareholders agreement, or other organizational or governing documents of Bright Agrotech, or any mortgage or lien to which Bright Agrotech is a party or is subject or by which Bright Agrotech or its properties are bound or affected, or in any material respect of any, agreement, instrument, order, judgment, decree, law, rule, regulation, or any other restriction of any kind or character to which Bright Agrotech is a party or is subject or by which Bright Agrotech or its properties are bound or affected. No consent, approval, authorization, or order of, and no notice to or filing with, any court or governmental authority or third party is required in connection with the execution, delivery, or performance by Bright Agrotech of this Agreement or to consummate any transactions contemplated hereby or thereby, except as specifically provided in this Agreement.

8.D. No Pending Lawsuits. There are no actions, suits, or proceedings against Bright Agrotech pending or, to the knowledge of Bright Agrotech threatened before any court or by or before any governmental instrumentality, which could have a material adverse effect on the ability of Bright Agrotech to perform its obligations under this Agreement.

8.E. No Default in Court Orders or Similar Agreements. There exists no default by Bright Agrotech with respect to any order, writ, injunction, decree, or demand of any court or governmental instrumentality against it, and Bright Agrotech is not in default of any agreements similar to the Agreement set forth herein with any other state, city, governmental agency, or any other party.

8.F. Signatory Authority. Each and any person signing this Agreement on behalf of Bright Agrotech has the full authority to sign on behalf of and bind Bright Agrotech to this Agreement.

## 9. REPRESENTATIONS AND WARRANTIES RELATING TO THE PROPERTY:

LCBA, as the legal and record owner of the Property, represents and warrants that:

9.A. Hazardous Materials. To the best of LCBA's knowledge: (i) no Hazardous Waste (as defined herein), has been used, generated, released, stored or disposed of on the Property or sub-soil thereof, other than fertilizers and pesticides used in connection with normal landscape, livestock or agricultural activities; (ii) no petrochemical tanks or tanks containing Hazardous Materials have been located on or below the surface of the Property, (iii) the Property is not subject to any federal, state or local "Superfund" lien, proceeding, claim, liability or action, for the cleanup, removal or remediation of any such Hazardous Waste used, generated, released, stored or disposed of on the Property. For purposes of this Agreement, "Hazardous Waste" means those wastes which are defined in the Wyoming Environmental Quality Act in Section 35-11-103(d)(vii).

9.B. Other Interests. Neither LCBA nor any other owner of the Property, if any, have any contract with any third party holding any option to purchase, right of first refusal or right to purchase the Property or any portion thereof, except for the option of Bright Agrotech to purchase the Property and the improvements thereon as provided in the Lease & Purchase Agreement.

9.C. No Leases or Contracts. Other than the Lease & Purchase Agreement by LCBA to Bright Agrotech, there are no leases or other agreements (whether oral or written), other than those disclosed in writing to and approved by City of Laramie, affecting or relating to the right of any party with respect to the possession of the Property or any portion thereof which are obligations which will affect the Property or any portion thereof. There are no maintenance, service, operation, development or other contracts or agreements (whether oral or written) affecting or relating to the Property which are obligations which will affect the Property or any portion thereof.

9.D. Existing Land Use Restrictions and Permits. To the best of LCBA's knowledge, the Property is currently zoned to permit the operation and business of Bright Agrotech such as that contemplated for operation on the Project, the Facility and Bright Agrotech's business operations. To the extent any re-zoning, certification or permitting is required, the City of Laramie and Bright Agrotech agree to cooperate and extend their respective good faith and best efforts to effectuate the change(s) necessary. The City of Laramie joins the representations and warranties of this paragraph 9.D.

## 10. NECESSARY ACTS AND FURTHER ASSURANCES:

The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement or to show the ability to carry out the intent and purposes of this Agreement.

## 11. BENEFICIARIES:

This Agreement is negotiated for the exclusive benefit of the parties hereto. There are no intended third party beneficiaries of this Agreement.

## 12. NO WAIVER OF IMMUNITIES:

Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be read to constitute or to require a waiver of any rights, defenses, limitations or privileges of the City of Laramie under the doctrines of sovereign or governmental immunity nor shall it in any way be deemed a waiver of any of the requirements or immunity provided by the Wyoming Governmental Claims Act.

## 13. AVAILABILITY OF FUNDS:

The obligations of the parties are conditioned upon the availability of funds appropriated or allocated for use for the Project under this Agreement from the WBC. Funds include monies available and distributed in the amounts and subject to the terms for Grant/Loan and Loan monies as defined in other Sections herein. If funds are not allocated and available as needed for the parties to perform this Agreement, then this Agreement shall terminate and shall be of no further force or effect. Each party shall notify the other party at the earliest possible time if the Agreement will or may be affected by a shortage of funds. No penalty shall accrue to any party in the event this provision is exercised, and no party shall be obligated or liable for any future payments due or damages as result of termination under this section.

## 14. COMPLIANCE WITH LAWS:

LCBA and Bright Agrotech shall comply with all applicable municipal, state, and federal ordinances, laws, rules and regulations as they are now or as they are enacted, and shall not engage in any practice which may have the effect of discriminating against any person or entity on the basis of disability, age, sex, race, creed, color, national origin, ancestry, or religion.

## 15. CONTRACTUAL MATTERS:

15.A. Performance Matters. With respect to the performance of this Agreement, the parties agree as follows:

15.A(i). Nondiscrimination. LCBA shall comply with Presidential Executive Order 11246 entitled "Equal Employment Opportunity," as amended by Presidential Executive Order 11375, and as supplemented in the Department of Labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 et. seq.), and the Americans with Disabilities Act (hereinafter referred to as "ADA"), 42 U.S.C. 12101, et seq. LCBA shall assure that no person is discriminated against based on the grounds of sex, race, religion, national origin or disability in connection with the performance of this Agreement.

15.A(ii). Publicity. Any publicity given to the program or services provided herein including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for relative to the construction of the Project, shall identify LCBA, the City of Laramie and WBC as the sponsoring agencies.

15.B. Local Public Hearing and Approval. The Parties acknowledge that the application for Grant/Loan funding by WBC requires the City of Laramie as applicant to solicit citizen input through a published public hearing before submission of an application, and a resolution passed by the City of Laramie. In the event the City of Laramie does not pass a resolution supporting the application by the City of Laramie to WBC for Grant/Loan funds for the Project, the City of Laramie shall have the right to declare this Agreement null and void and of no further force or effect, except as may be required by and provided in paragraph 3.A above.

15.C. Audit. The City of Laramie and any of its representatives shall have access to any books, documents, papers, and records of LCBA which are pertinent to this Agreement and which are not legally privileged. Additionally, LCBA shall abide by all regulations imposed by funding sources or governmental agencies, such as auditing requirements, payroll affidavits, and other documentation or verification.

15.D. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of a 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 this Agreement, and shall

inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties to this Agreement intend and expressly agree that only signatories to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

15.E. Supplanting. WBC Committed Grant/Loans must be used to supplement existing funds for program activities and cannot replace, or supplant, nonfederal funds that have been appropriated for the same purpose.

15.F. Force Majeure. No party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the non-performing party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other parties of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

15.G. Ownership of Documents/Work Product/Materials. All construction documents including but not limited to the plans, CADs, and specifications for the Facility, whether complete or incomplete, and any other, reports, records, field notes, data, samples, specimens, arid materials of any kind related to the construction of the Facility shall be considered all times to be the property of LCBA unless Bright Agrotech pays the Architect as agreed to and approved by LCBA or upon acquiring ownership of the Facility pursuant to the Lease & Purchase Agreement, in which event the plans and specifications prepared by the Architect shall be considered the property of Bright Agrotech. Nothing in this Agreement shall be construed to prevent or deny the City of Laramie or LCBA, their agents, employees, officers, representatives or officials from reviewing or having access to all construction documents. Notwithstanding anything else in this paragraph to the contrary, if Bright Agrotech exercises its option to purchase the Property in accordance with the terms set forth in Exhibit "A", Bright Agrotech shall become the sole owner of all plans, CAD's, and specifications for the Facility. LCBA shall provide Bright Agrotech with all plans, CAD's, and specifications for the Facility at any closing held to complete the purchase of the Property by Bright Agrotech.

15.H. Independent Contractor Relationships. It is specifically understood and agreed that the relationship of the parties is that of independent contractors and that the officers, employees and agents of one party are not acting as the officers, employees or agents of the other. No party hereto shall make any representation of being the officer, agent, or employee of the other.

15.I. Entire Agreement. This Agreement and the documents/exhibits referenced herein contain all the terms and conditions agreed to by the parties and constitutes the sole agreement between them regarding the subject matter of this Agreement and supersedes all understandings and agreements, whether oral or in writing, previously entered into by them with respect thereto.

15.J. Successors and Assigns. Neither LCBA nor Bright Agrotech shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the prior written consent of the City of Laramie. Bright Agrotech shall not use the Facility, the Property or this Agreement, or any portion thereof, for collateral for any financial obligation without the prior written consent of the City of Laramie and LCBA. The terms of this Agreement shall bind the parties hereto and their permitted successors and assigns. The reference above to permitted successors and assignees is not intended to constitute consent to any assignment of this Agreement but has reference only to those instances in which specific written consent may have been given by the City of Laramie and/or LCBA.

15.K. Modification. This Agreement may be amended or modified only in a writing signed by all the parties hereto.

15.L. Paragraph Headings. Paragraph headings are inserted primarily for convenience, and where they conflict with the text in the construction of this Agreement, the text shall control.

15.M. Waiver and Failure to Declare a Default. The failure of any party to declare a default or to enforce its respective rights under this Agreement shall not be construed as a waiver by such party of this right to do so for any such subsequent default or violation.

15.N. Interpretations. Whenever in this Agreement the singular is used and the plural would be applicable, then such usage of the singular shall be deemed and considered to include the plural, and vice versa. Whenever a particular gender is used and another gender is applicable, then such usage shall be deemed to consider and include the other, actually applicable gender.

15.0. Invalid Provisions. It is understood and agreed that any term or provision of this Agreement which is invalid or unenforceable shall be ineffective only to the extent of such invalidity or unenforceability without invalidating the remaining provisions hereof.

15.P. Attorneys' Fees and Costs. In the event any party is required to enforce the conditions or breach of any term contained herein, the prevailing party or parties shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and costs.

15.Q. Facsimile Signatures and Counterparts. This Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same agreement. Also, this Agreement may be executed by facsimile, provided that the parties shall forthwith circulate and sign no less than four (4) copies of an original and one (1) signature page.

**16. INDEMNITY:**

LCBA shall indemnify, defend and hold the City of Laramie and Bright Agrotech harmless from and against any and all claims of any nature whatsoever arising from or having connection with the performance of any duties by LCBA related in any way to this Agreement. Bright Agrotech shall indemnify, defend and hold the City of Laramie and LCBA harmless from and against any and all claims of any nature whatsoever arising from or having connection with the performance of any duties by Bright Agrotech related in any way to this Agreement.

DATED AND EFFECTIVE this 10th day of March, 2016.

**CITY OF LARAMIE, WYOMING**

Date: March 10, 2016

By: _____
Dave Paulckas, Mayor

(SEAL)

Attest:

_____
Angie Johnson, City Clerk

**LARAMIE CHAMBER BUSINESS ALLIANCE**

Date: 3-4-16 By: _____
Nancy Stutzman, Chair of the Board

Date: 3/4/16 By: _____
Daniel Furphy, CEO

Attest:

_____
Amy Shoales, Secretary of the Board

**BRIGHT AGROTECH, LLC**

Date: 3/8/2016

By: _____
Nate Story, Managing Member,
President & CEO

## *INDEX OF ATTACHED AND INCORPORATED EXHIBITS*

| EXHIBIT | DESCRIPTION |
|---|---|
| A | Lease & Purchase Agreement |
| B | Revenue Recapture Plan |
| C | Facility General Specifications / Preliminary Plans |
| D | Final Budget |
| E | Bright Agrotech Job & Wealth Creation |
| F | Operations & Maintenance Plan |
| ** | ** Grant/Loan Documents |

# ATTACHMENT C TO THE BUSINESS READY COMMUNITY GRANT AND LOAN PROGRAM GRANT AGREEMENT BETWEEN THE WYOMING BUSINESS COUNCIL AND THE CITY OF LARAMIE - BRIGHT AGROTECH HEADQUARTERS BUSINESS COMMITTED PROJECT

## Exhibit B to the Project Development Agreement

## Recapture & Reinvestment Plan, Bright Agrotech

The Laramie Chamber Business Alliance (LCBA) has developed a comprehensive reinvestment plan that accounts for the full recapture of net lease or sale proceeds paid by Bright Agrotech, LLC (Bright). Annual Lease payments are currently projected to be $42,525 in the first year, and escalating to a year ten annual lease amount of $85,050, which will be retained by the LCBA and reinvested in accordance with this plan. Reinvestment of such proceeds will occur upon satisfaction of debt service, taxes, and property maintenance/management or other expenses.

**LEASE PERIOD**

Recaptured funds from the project, during the lease, will be accounted for, and held separately, from the LCBA general operating fund. The LCBA will utilize a portion of the lease payments to satisfy the annual debt service to the WBC for the loan on the project. Annual debt service is projected to be approximately $11,550. Following this annual payment, it is the intent of the LCBA to re-investment the remaining Revenue Recapture Funds and to promote greater self-sufficiency of the organization. As such, the LCBA will re-invest 80% of the net revenue generated from the lease payments to fund economic development including infrastructure, project-specific marketing, grant match, and other projects as needed. The remaining 20% will be re-invested into the LCBA to fund its operations, thus ensuring future economic development goals are met. All uses of revenue that is recaptured are subject to CEO and LCBA Board of Directors approval.

**UPON SALE OF PROPERTY**

Should Bright exercise their option to purchase the property, as called out in the Project Development Agreement (PDA), the LCBA will handle the net proceeds as follows;

- 50% used by the LCBA to fund economic development project-specific marketing infrastructure, and other projects as needed.
- 25% to be returned the Wyoming Business Council in an effort to support the self-sustainability of their grant programs.
- 25% will be retained by the LCBA to be utilized as matching dollars for future grant projects with the Wyoming Business Council.

Net Revenue is defined as the sale of the building according to the terms called out in the executed Lease/Purchase Agreement.

The LCBA recognizes that funds recaptured from the project may only be used for economic development purposes and wish to maintain some flexibility in how those funds are reinvested. The organization also strives for greater self-sufficiency so that it can be responsive to unforeseen economic opportunities. However, the LCBA has identified the following priorities for reinvestment:

- Continued Cirrus Sky Development
- Cash match for future WBC grants

- **Other Economic Opportunities**

**While continued Cirrus Sky Development is the primary investment priority for Sale proceeds, the LCBA will reserve the option to use recapture funds to respond to other economic development opportunities as they might arise. Such opportunities include, but are not limited to, infrastructure extension, economic incentives, marketing, public enhancements, property acquisition or development, and working capital for new business growth.**

**ATTACHMENT D TO THE**
**BUSINESS READY COMMUNITY GRANT AND LOAN PROGRAM**
**GRANT AGREEMENT BETWEEN THE WYOMING BUSINESS COUNCIL AND**
**THE CITY OF LARAMIE - BRIGHT AGROTECH HEADQUARTERS**
**BUSINESS COMMITTED PROJECT**

## Exhibit F to the Project Development Agreement

## Operations & Maintenance Plan, Bright Agrotech, LLC

**Background:**

The Operations and Maintenance Plan (O&M) covers the operation and maintenance for the facility being built for the purposes of leasing, with option to purchase, to Bright Agrotech, LLC, and owned by the Laramie Chamber Business Alliance (LCBA) in the unlikely case that the company should no longer occupy the building.

Laramie Chamber Business Alliance has experience owning and operating properties for economic development purposes. Currently the organization owns vacant property, the HiViz facility, and the South Laramie Rail Spur. In conjunction with these holdings, the LCBA was in a partnership with the City of Laramie for the Laramie Technology Building, as well as partners with the City of Laramie in the development of Cirrus Sky Technology Park.

The LCBA has a staff member, the Vice President of Economic Development, who is responsible for property management, specifically monitoring activity on the properties and performing routine inspections, addressing any items needing attention.

The depth of LCBA staff and board members provides the organization with the ability manage a projects and properties. In conjunction with this the LCBA has a broad range of financial institutions that stand ready to assist should the project encounter any unforeseen obstacles.

**Commitment:**

Should the property become vacated, LCBA commits to pay for:

- property insurance
- liability insurance
- debt service to the Wyoming Business Council
- repairs
- utilities
- maintenance
- marketing the property

Dan Furphy, CEO

Laramie Chamber Business Alliance

# CITY OF LARAMIE COUNCIL REGULAR MEETING August 8, 2016

**Agenda Item: Contract**

**Title: Design and Pre-Construction Contract for Bright Agrotech Corporate Office and Manufacturing Facility**

## Recommended Council MOTION:

I move to approve the Design and Pre-Construction Contract for construction of the Bright Agrotech Corporate Office and Manufacturing Facility with Haselden Wyoming Constructors in an amount not to exceed $ (to be provided with signed contracts at the 8.15.16 meeting) and authorize the Mayor and City Clerk to sign.

## Administrative or Policy Goal:

Support business and economic development in the community.

## Background:

During the March 10, 2016 meeting, Council passed Resolution 2016-24 authorizing the submittal of a Business Ready Community application to the Wyoming Business Council to support the construction of a building in the Laramie River Business Park to support the expansion of Bright Agrotech. This request was supported by the Wyoming Business Council Board, and a final funding decision was made by the State Loan and Investment Board during their June, 2016 meeting.

A Request for Qualifications (RFQ) was advertised on June 17th, and 24th in the Laramie Boomerang. A mandatory pre-submittal meeting was held on July 11th, 2016. 17 firms including constructors and consultants were in attendance at the meeting.

RFQ written responses were received and distributed to selection committee members on Thursday, July 21st. Six responses were received from: Haselden Wyo Constructors, Sampson Construction Co. Inc., Arcon Inc., FCI, Shepard Construction, and Spiegelberg Lumber and Building Co. The selection committee members individually met and reviewed the RFQ proposals. Committee members ranked the six written proposals based on criteria set forth in the RFQ document. Due to the narrow spread in the scoring averages the committee decided to interview all six firms. This method of ranking provides that the highest score is desired; the proposal ranking produced the following numbers:

1. Haselden 94.5
2. Sampson 93.5
3. Speigelberg 87
4. Arcon 86.6
5. FCI 86
6. Shepard 86

Interviews were conducted on Monday, August 1st. The same ranking methodology was used based on RFQ criteria. The interview ranking produced the following numbers:

1. Haselden 93
2. Sampson 90
3. Arcon 90.6
4. Speigelberg 83.8

5. Shepard 80.8
6. FCI 78

The contractor selection recommendation is based on the aggregate proposal + interview scores which are as follows:

1. Haselden 93.75
2. Sampson 91.75
3. Arcon 88.6
4. Speigelberg 85.4
5. Shepard 83.4
6. FCI 82

The Request for Qualifications is designed to select the best overall contractor as determined by the committee through the scoring process. The process is not driven by fees, but rather overall qualifications to complete the project scope through multiple criteria and ranking. Based on the final score, Haselden Wyoming Constructors is recommended as the Design Builder for this project. At this time the design and pre-construction contract is recommended for approval; a contract amendment establishing the Guaranteed Maximum Price will be submitted for your consideration following the design and final pricing.

**Legal/Statutory Authority:**

Public improvements projects such as this are authorized under Wyoming Statutes.

## BUDGET/FISCAL INFORMATION:

Revenue for building construction comes from a Wyoming Business Council (WBC), Business Committed grant and loan combination. The WBC grant amount approved in June is in the amount of $2,685,750 the WBC loan amount will be $209,250 which will be repaid through lease proceeds from the committed business over a ten year period.

**REVENUE**

| Source | Amount | Type |
|---|---|---|
| Fees/Charges for Service | | |
| Grants for Projects | $2,685,750.00 | Wyoming Business Council Business Committed Grant |
| Loans on Project | $209,250.00 | Wyoming Business Council Business Committed Loan |
| Other | | |
| Total | $2,895,000.00 | |

**EXPENSE**

Proposed Project Cost.

| Project Budget | | Amount | Funds |
|---|---|---|---|
| Project Cost | | $2,750,250.00 | Pre-construction, Design, Engineering, Testing, Constructio |
| Loans on Project | | | |
| Grants for Project | | | |
| Other/Outside Projects | | | |
| City's Amount | | $0.00 | |
| Contingency | 5% | $144,750.00 | |
| Total Amount | | $2,895,000.00 | |

## Responsible Staff:

Sam Farstad 721-5361

Attachments: Contract DBIA 2009 Form 525 Design Build, and DBIA 2009 Form 535 General Conditions

# Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

*This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.*

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This **AGREEMENT** is made as of the _____ day of _____ in the year of 20_____, by and between the following parties, for services in connection with the Project identified below.

**OWNER:**
*(Name and address)*

**DESIGN-BUILDER:**
*(Name and address)*
**Haselden**

**PROJECT:**
*(Include Project name and location as it will appear in the Contract Documents)*

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.


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## Article 1
### Scope of Work

**1.1** Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

## Article 2
### Contract Documents

**2.1** The Contract Documents are comprised of the following:

**.1** All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2009 Edition) ("General Conditions of Contract");

**.2** The Basis of Design Documents, including the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;

**.3** This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder (List for example, performance standard requirements, performance incentive requirements, markup exhibits, allowances, or unit prices);

**.4** Written Supplementary Conditions, if any, to the General Conditions of Contract;

**.5** The General Conditions of Contract; and

**.6** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract

## Article 3
### Interpretation and Intent

**3.1** Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

**3.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving


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precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design Builder's Proposal.

**3.3** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

**3.4** If Owner's Project Criteria contain prescriptive/design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the prescriptive/design specifications and its compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate prescriptive/design specification.

**3.5** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

**3.6** In the event of an ambiguity in the Contract Documents, the parties shall be deemed to have jointly authored them, and as such, nothing shall be construed against or in favor of one party based on its being deemed the sole author.

## Article 4
## Ownership of Work Product

**4.1** **Work Product**. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

**4.2** **Owner's Limited License Upon Project Completion and Payment in Full to Design Builder.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 herein.

**4.3** **Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

**.1** Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 herein; and

**.2** Owner agrees to pay Design-Builder the additional sum of _____


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Dollars ($ _____) as compensation for the right to use the Work Product to complete the Project and subsequently use the work Product in accordance with this Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

**4.4 Owner's Limited License upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

**4.5 Owner's Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

## Article 5
## Contract Time

**5.1 Date of Commencement.** The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

**5.2 Substantial Completion and Final Completion**

**5.2.1** Substantial Completion of the entire Work shall be achieved no later than _____to be determined with GMP finalization_____ (_____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

**5.2.2** Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

**5.2.3** All of the dates set forth in this Article 5 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

**5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**5.4 Liquidated Damages.** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by _____ (_____) days after the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay Owner _____ Dollars ($ ____0_____) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

**5.5** Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential,


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and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates or Final Completion.

# Article 6
## Contract Price

**6.1 Contract Price.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars ($ _____) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**6.2 Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

**.1** For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design Builder shall receive a Fee of _____ _____ percent (_____%) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit _____ hereto.

**.2** For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include: No additional reduction to account for Design-Builder's Fee or any other markup.

**6.3 Allowance Items and Allowance Values**

**.1** Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in an Exhibit hereto.

**.2** Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Item. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

**.3** No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

**.4** The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.

# Article 7


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## Procedure for Payment

**7.1 Progress Payments**

**7.1.1** Design-Builder shall submit to Owner on the last day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

**7.1.2** Owner shall make payment within ten (~~3~~10) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

**7.2 Retainage on Progress Payments**

**7.2.1** Owner will retain Five percent (10~~5~~%) of each Application for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project. Retainage will be held in a joint deposit account as required by Wyoming State Statute.

**7.2.2** Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract and (b) Owner shall have the right to withhold all amounts to which Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

**7.4 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of One percent (1%) per month until paid.

**7.5 Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. If Owner desires to retain an accountant and/or auditor that is not an employee of Owner (the "Third Party Accountant") to review the accounting records, then such Third Party Accountant shall be a certified public accounting firm licensed to practice in ~~Colorado~~Wyoming.


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# Article 8
## Termination for Convenience

**8.1** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

**.1** All Work executed and for proven loss, cost or expense in connection with the Work;

**.2** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

**.3** Overhead and profit in the amount of _____ percent (_____%) on the sum of items .1 and .2 above.

**8.2** In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

**.1** If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price.

**.2** If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (_____%) of the remaining balance of the Contract Price.

**8.3** If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

***(The following Article 9 should be used only if the Owner and Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.)***

# Article 9
## Representative of the Parties

**9.1 Owner's Representatives**

**9.1.1** Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Sam Farstad
Administrative Analyst
406 Ivinson St.
Laramie WY, 82070
307-721-5361 office
970-531-7576 cell


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**9.1.2** Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

**9.2 Design-Builder's Representatives**

**9.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

**9.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

## Article 10
## Bonds and Insurance

**10.1 Insurance.** Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

***(Check one box only. If no box is checked, then no bond is required.)***

☒ Required; ☐ Not Required


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Payment Bond.

***(Check one box only. If no box is checked, then no bond is required)***

☒ Required; ☐ Not Required

## Article 11
### Other Provisions

**11.1** Other provisions, if any, are as follows: None.


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In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

| **OWNER:** | **DESIGN-BUILDER:** |
|---|---|
| City of Laramie WY | |
| *(Name of Owner)* | *(Name of Design-Builder)* |
| | |
| *(Signature)* | *(Signature)* |
| | |
| *(Printed Name)* | *(Printed Name)* |
| Mayor and President of City Council | |
| *(Title)* | *(Title)* |
| Date: | Date: |

**Attest:**

Angie Johnson
City Clerk

Signature

Date

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**Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.**


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# Standard Form of General Conditions of Contract Between Owner and Design-Builder

*This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.*

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# Article 1
## General

### 1.1 Mutual Obligations

**1.1.1** *Owner and Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

### 1.2 Basic Definitions

**1.2.1** *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder Lump Sum* (2009 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2009 Edition).

**1.2.2** *Basis of Design Documents* are as follows: For DBIA Document No. 530, Standard Form of Agreement Between Owner and Design-Builder, Cost Plus Fee With an Option for a Guaranteed Maximum Price, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents." For DBIA Document No. 525, Standard Form of Agreement Between Owner and Design-Builder – Lump Sum, the Basis of Design Documents are the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any.

**1.2.3** *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

**1.2.4** *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**1.2.5** *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

**1.2.6** *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

**1.2.7** *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 of the General Conditions of Contract and the submission of all documents set forth in Section 6.7.2 of the General Conditions of Contract.

**1.2.8** *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

**1.2.9** *General Conditions of Contract* refer to this DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2009 Edition).

**1.2.10** *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, Standard Form of Agreement Between Owner and Design-Builder, Cost Plus Fee With an Option for a Guaranteed


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Maximum Price, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

**1.2.11** *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, Standard Form of Agreement Between Owner and Design-Builder, Cost Plus Fee With an Option for a Guaranteed Maximum Price.

**1.2.12** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**1.2.13** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

**1.2.14** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements, prescriptive specifications, and LEED ® or other sustainable design criteria and other Project-specific technical materials and requirements.

**1.2.15** *Site* is the land or premises on which the Project is located.

**1.2.16** *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

**1.2.17** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.18** *Substantial Completion* or Substantially Complete means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

**1.2.19** *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

# Article 2
## Design-Builder's Services and Responsibilities

### 2.1 General Services

**2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

**2.1.2** Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies,


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conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

**2.1.3** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

## 2.2 Design Professional Services

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

## 2.3 Standard of Care for Design Professional Services

**2.3.1** The standard of care for all design and engineering professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design and engineering professions practicing under similar conditions at the same time and locality of the Project

**2.3.2** Notwithstanding anything to the contrary contained in the Contract Documents, the aggregate liability of the Design-Builder under the Contract Documents in the relation to the breach of (or failure to comply with) the standard of care (as expressed in Section 2.3.1) in connection with the performance or non-performance of design and/or engineering professional services pursuant to the Contract Documents shall be $1,000,000.

## 2.4 Design Development Services

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled


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submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

**2.4.3** Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

**2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## 2.5 Legal Requirements

**2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**2.5.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## 2.6 Government Approvals and Permits

**2.6.1** Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## 2.7 Design-Builder's Construction Phase Services

**2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary


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supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

**2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.7.5** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## 2.8 Design-Builder's Responsibility for Project Safety

**2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

**2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.


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**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

### 2.9 Design-Builder's Warranty

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

### 2.10 Correction of Defective Work

**2.10.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

**2.10.2** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

**2.10.3** The one year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## Article 3
## Owner's Services and Responsibilities

### 3.1 Duty to Cooperate

**3.1.1** Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.


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**3.1.2** Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

**3.1.3** Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

## 3.2 Furnishing of Services and Information

**3.2.1** Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

**.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

**.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

**.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

**.4** A legal description of the Site;

**.5** To the extent available, as-built and record drawings of any existing structures at the Site; and

**.6** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

**3.2.2** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

## 3.3 Financial Information

**3.3.1** At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

**3.3.2** Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

## 3.4 Owner's Representative

**3.4.1** Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt


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notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

### 3.5 Government Approvals and Permits

**3.5.1** Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

**3.5.2** Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

### 3.6 Owner's Separate Contractors

**3.6.1** Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## Article 4
## Hazardous Conditions and Differing Site Conditions

### 4.1 Hazardous Conditions

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

**4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

**4.1.4** Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

**4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising


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out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

**4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

### 4.2 Differing Site Conditions

**4.2.1** Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

**4.2.2** Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

## Article 5
## Insurance and Bonds

### 5.1 Design-Builder's Insurance Requirements

**5.1.1** Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

**5.1.2** Design-Builder's liability insurance set forth in the Agreement above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**5.1.3** Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

**5.1.4** Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.


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## 5.2 Owner's Liability Insurance

**5.2.1** Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

## 5.3 Owner's Property Insurance

**5.3.1** Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1

**5.3.2** Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

**5.3.3** Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

**5.3.4** Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

**5.3.5** Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

## 5.4 Bonds and Other Performance Security


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**5.4.1** If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

**5.4.2** All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

# Article 6
# Payment

## 6.1 Schedule of Values

**6.1.1** Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

**6.1.2** The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

## 6.2 Monthly Progress Payments

**6.2.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

**6.2.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

**6.2.3** All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

**6.2.4** The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

## 6.3 Withholding of Payments


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**6.3.1** On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

**6.3.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

## 6.4 Right to Stop Work and Interest

**6.4.1** If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

## 6.5 Design-Builder's Payment Obligations

**6.5.1** Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

## 6.6 Substantial Completion

**6.6.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**6.6.3** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.


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### 6.7 Final Payment

**6.7.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

**6.7.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

**.1** an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

**.2** a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

**.3** consent of Design-Builder's surety, if any, to final payment;

**.4** all operating manuals, warranties and other deliverables required by the Contract Documents; and

**.5** certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

**6.7.3** Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

**6.7.4** Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

## Article 7
## Indemnification

### 7.1 Patent and Copyright Infringement

**7.1.1** Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed


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of all developments in the defense of such actions.

**7.1.2** If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

**7.1.3** Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

**7.1.4** The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

## 7.2 Tax Claim Indemnification

**7.2.1** If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

## 7.3 Payment Claim Indemnification

**7.3.1** Providing that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

## 7.4 Design-Builder's General Indemnification

**7.4.1** Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**7.4.2** If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity


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obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

### 7.5 Owner's General Indemnification

**7.5.1** Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for whose acts any of them may be liable.

# Article 8
## Time

### 8.1 Obligation to Achieve the Contract Times

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

### 8.2 Delays to the Work

**8.2.1** If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

**8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for adverse weather delays not reasonably anticipated.

# Article 9
## Changes to the Contract Price and Time

### 9.1 Change Orders

**9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

**.1** The scope of the change in the Work;


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**.2** The amount of the adjustment to the Contract Price; and

**.3** The extent of the adjustment to the Contract Time(s).

**9.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

**9.1.3** If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

## 9.2 Work Change Directives

**9.2.1** A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

**9.2.2** Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

## 9.3 Minor Changes in the Work

**9.3.1** Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

## 9.4 Contract Price Adjustments

**9.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

**.1** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

**.2** A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

**.3** Costs, fees and any other markups set forth in the Agreement; and

**.4** If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

**9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.


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**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

### 9.5 Emergencies

**9.5.1** In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

# Article 10
## Contract Adjustments and Disputes

### 10.1 Requests for Contract Adjustments and Relief

**10.1.1** If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

### 10.2 Dispute Avoidance and Resolution

**10.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

**10.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.


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**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**10.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

## 10.3 Arbitration

**10.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

**10.3.2** The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

**10.3.3** Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

**10.3.4** The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

## 10.4 Duty to Continue Performance

**10.4.1** Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

## 10.5 CONSEQUENTIAL DAMAGES

**10.5.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS,


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BUSINESS, REPUTATION OR FINANCING.

**10.5.2** The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

# Article 11
## Stop Work and Termination for Cause

### 11.1 Owner's Right to Stop Work

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**11.1.2** Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

### 11.2 Owner's Right to Perform and Terminate for Cause

**11.2.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay


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the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the reprocurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

**11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

## 11.3 Design-Builder's Right to Stop Work

**11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

**.1** Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

**.2** Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

**11.3.2** Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

## 11.4 Design-Builder's Right to Terminate for Cause

**11.4.1** Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

**.1** The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

**.2** Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

**.3** Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the


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Agreement for its convenience under Article 8 of the Agreement.

**11.5 Bankruptcy of Owner or Design-Builder**

**11.5.1** If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

**.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

**.2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

# Article 12
## Electronic Data

**12.1 Electronic Data**. The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

**12.2 Transmission of Electronic Data**

**12.2.1** Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

**12.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

**12.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic


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Data be deemed to be a sale by the transmitting party of tangible goods.

### 12.3 Electronic Data Protocol

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

**12.3.2** Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

**12.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

**12.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## Article 13
## Miscellaneous

### 13.1 Confidential Information

**13.1.1** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (a) the transmitting party identifies as either confidential or proprietary; (b) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (c) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

### 13.2 Assignment

**13.2.1** Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

### 13.3 Successorship

**13.3.1** Design-Builder and Owner intend that the provisions of the Contract Documents are


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binding upon the parties, their employees, agents, heirs, successors and assigns.

### 13.4 Governing Law

**13.4.1** The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

### 13.5 Severability

**13.5.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

### 13.6 No Waiver

**13.6.1** The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

### 13.7 Headings

**13.7.1** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

### 13.8 Notice

**13.8.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

### 13.9 Amendments

**13.9.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.


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# CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016

**Agenda Item:** Bid Award

**Title: Beech Street Overlay Project**

**Recommended Council MOTION:**

"I move to award the Beech Street Overlay Project bid to Simon Contractors of Cheyenne, WY in the amount not to exceed $413,764.00, with a contingency of $41,000, to approve the contract therefore, and authorize the Mayor and City Clerk sign."

**Administrative or Policy Goal:**

- ✓ Maintain City-wide Infrastructure Improvement Program as provided in *Street Capital Plan*
- ✓ To extend the service life of the streets by performing annual preventive maintenance.

**Background:**

The condition of all Laramie streets are routinely evaluated using a Pavement Management System (PMS). This system utilizes a combination of a computer data base (PAVER) and field inspections to create a historical trend analysis of pavement condition. This information is utilized to develop our pavement maintenance strategies with the goal of maintaining as high a quality pavement condition as possible with a given budget. The Beech Street Overlay/reconstruction project was a specific capital project (Page 227, Non-enterprise fund budget) to address the failure of Beech Street between Boulder and Vista. This project differs from a typical overlay project in that asphalt will be removed and replaced with new asphalt. The end result will be a new roadway meeting current construction standards.

The project was bid according to the City's purchasing policies. Bids for the project were opened on July 26, 2016 with results as follows:

| Contractor | Base Bid | Bid Item #4 | Add Alternate | Total |
|---|---|---|---|---|
| Simon | $408,409.00 | <$26,010.00> | $31,365.00 | $413,764.00 |
| Knife River | $416,340.30 | <$59,593.50> | $59,593.50 | $416,340.30 |

The add-alternate is for the milling (grinding) of the existing asphalt with the byproduct (millings/road base) being delivered to the City for our use. Staff recommends awarding the bid with the add-alternate as we use asphalt millings extensively in alleys and on other gravel surfaces.

**Legal/Statutory Authority:**

## BUDGET/FISCAL INFORMATION:

**REVENUE**

| Source | Amount | Type |
|---|---|---|
| Fees/Charges for Service | $500,000.00 | MCCF Acct. No. 300-3315-410-73.20 |
| Other | | |
| Total | $500,000.00 | |

**EXPENSE**

Proposed Project Cost.

| Project Budget | | Amount | Funds |
|---|---|---|---|
| Project Cost | | $413,764.00 | MCCF Acct. No. 300-3315-410-73.20 |
| Loans on Project | | | |
| Grants for Project | | | |
| Other/Outside Projects | | | |
| City's Amount | | $413,764.00 | |
| Contingency | 0% | $41,000.00 | |
| Total Amount | | $454,764.00 | |

Amount spent to date (approved and adopted by Council)

| Budget | Amount | Funds |
|---|---|---|
| Total Budget Allocation | $500,000.00 | MCCF Acct. No. 300-3315-410-73.20 |
| Less Amount Spent to Date | | |
| Remainder of Budget | $500,000.00 | |

## Responsible Staff:

Earl Smith, P.E., Public Works Director
Eric Jaap, P.E., City Engineer
Shane Johnson, Street Division Manager
William Winkler, P.E., Civil Engineer

**Attachments:**

Contract
Bid Tabulation
Bid Recommendation

**CONSTRUCTION CONTRACT**
**BETWEEN**
**CITY OF LARAMIE, WYOMING**
**AND**
**SIMON CONTRACTORS**

**1. Parties.** This Contract is entered into this _____ day of _____, 20___ by and between City of Laramie, Wyoming, (hereinafter referred to as "City"), whose address is 406 Ivinson Street, Laramie, Wyoming 82072, and Simon Contractors (hereinafter referred to as "Contractor"), whose address is 1465 N. 4th St. Stu 120, Laramie, WY 82072. City and Contractor agree to the terms set forth in this document.

**2. Purpose of Contract.** Contractor shall provide all labor, supervision, materials, equipment, all incidentals, related items and appurtenances, and perform all operations necessary to complete the Beech Street Overlay Project including 13745 SY of Placement of Plant Mix Bituminous Pavement (4-inch) on Beech Street between Boulder Drive and Vista Drive. 1822 CY of Removal and Haul of Unsuitable Material and Placement of Base and Subbase Material has been estimated to remediate any soft spots discovered during construction, these two items are to be used only at the discretion of the City of Laramie. Add Alternate 1 has been incorporated in the contract replacing the 1530 CY of Removal and Haul of Existing Pavement item with 1530 CY of Rotomill and Haul of Existing Pavement instead of the.

**3. Term of Contract.**

**A. Time of Commencement and Substantial Completion.**

**(i)** The work under this Contract shall commence within seven (7) calendar days of receipt of Notice to Proceed and will be substantially complete and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before October 15th, 2016.

**(ii)** Performance under this Contract shall not begin prior to the date upon which the last required signature is affixed to this Contract or the date of the Contractor's receipt of a Notice to Proceed, whichever occurs later.

**(iii)** Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the use of additional contract time, will in no way operate as a waiver on the part of City of any of its rights under the Contract.

**4. Payment.**

**A. Contract Sum.**

**(i)** City agrees to pay Contractor for the services described herein. The total payment under this Contract shall not exceed Four Hundred Thirteen Thousand Seven Hundred Sixty Four Dollars, ($413,764.00). No payment shall be made for work performed prior to the date upon which the last required

signature is affixed to this Contract or the date of the Contractor's receipt of a Notice to Proceed, whichever occurs later.

**(ii)** Additional Notices to Proceed shall be issued corresponding to any respective Contract Amendments.

**(iii)** Pursuant to Wyo. Stat. §16-6-602, City shall pay interest beginning the forty-sixth day at the rate of one and one-half percent (1 ½%) per month on the unpaid balance of the progress payment until the account is paid in full, unless a good faith dispute exists as to City's obligation to pay all or a portion of the account.

**B. <u>Progress Payments.</u>**

**(i)** Contractor may submit monthly invoices for progress payment. Materials included on each invoice must either be installed or stored on site, additionally, any fees for labor must be performed prior to the submission of the invoice. No advance payment for materials or services may be requested. So long as the Contractor is satisfactorily progressing in performance of this contract, City may make monthly progress payments on the contract sum to the Contractor. Pursuant to Wyo. Stat. §16-6-702, City shall withhold ten percent (10%) of the calculated value of any work completed until one hundred percent (100%) of the work required by the contract has been performed. The withheld percentage of the contract price shall be retained in an account in the name of the Contractor which has been assigned to City until the contract is completed satisfactorily and finally accepted. Before the withheld percentage payment is made, City shall determine that satisfactory and substantial reasons exist for the payment and shall require written approval from any surety furnishing bonds for the contract work.

**(ii)** If it becomes necessary for City to take over the completion of the Contract, all amounts owed the Contractor, including the withheld percentage shall first be applied toward the cost of completion of the Contract, as provided in Wyo. Stat. §16-6-703, as amended. Any balance remaining of the retained percentage after completion by City shall be payable to Contractor or Contractor's creditors. The retained percentage which may be due to Contractor shall be due and payable as prescribed by Wyo. Stat. §16-6-116.

**C. <u>Final Payment.</u>**

**(i)** Final payment, constituting the entire unpaid balance of the contract sum, shall be paid by City to the Contractor when the Contract work has been completed, and the Contract fully performed. The Contractor shall make its request for final payment in writing to City. The Contractor's request for final payment must include the final reconciliation of the return of, and any restocking charges applied by the suppliers for any unused materials in storage. City shall determine in writing when the Contract work has been completed. Final payment will be made pursuant to Wyo. Stat. §§ 16-6-116 and 16-6-117, as amended.

**(ii)** No final payment will be made until the Contractor files a sworn statement, stating that all claims for material and labor performed under the Contract have been made, and that no liens or claims for unpaid materials, labor or equipment are outstanding. The sworn statement shall be filed with the appropriate entity, as designated in Wyo. Stat. § 16-6-117. A copy of the sworn statement shall be provided to City.

**(ii)** If any claim for material and labor is disputed, the sworn statement shall so state and include a copy of any claim or lien and the amount claimed. The amount claimed shall be deducted from the final payment and retained by City until the dispute is resolved, as provided in Wyo. Stat. § 16-6-117. The parties agree that City may, at its discretion, place the disputed amount in an interest bearing account. In the event the funds are placed in an interest bearing account, any and all accrued interest shall belong to City.

**D. <u>Liquidated Damages.</u>**

**(i)** If the Contractor fails to complete the work within the time specified in the Contract, or within any authorized extension of time under a change order, Contractor shall pay to City as liquidated damages, the sum listed in the following table, for each calendar day of delay until the work is substantially complete, as approved by City.

| Original Contract Amount | | | Liquidated Damages charge per calendar day |
|---|---|---|---|
| $0.00 | to | $50,000.00 | $500.00 |
| $50,000.01 | to | $100,000.00 | $1,000.00 |
| $100,000.01 | to | $500,000.00 | $1,500.00 |
| $500,000.01 | to | $1,000,000.00 | $2,000.00 |
| $1,000,000.00 | | and greater | $3,000.00 |

**(ii)** The liquidated damages shall be computed beginning the day following the first calendar day specified for completion and shall continue each and every calendar day until all work under the Contract is substantially complete, as approved by City.

**(iii)** Liquidated damages will not be charged for any work required to be done by the Contractor as a result of a final inspection, providing the work is only cleanup or of a minor nature and the Contractor has shown constant effort in completing the work, as determined by City. If deferment of the inspection is necessary due to causes which City determines to be beyond the control of and without the fault or negligence of the Contractor, liquidated damages will not be assessed for that period of time.

**(iv)** Nothing herein shall be construed to preclude City from the recovery of damages for causes other than the delay by the Contractor.

**5. <u>Responsibilities of Contractor</u>.**

**A.** The Contractor shall perform all work on the described project as required by the Contract documents. The work to be performed includes the labor and services necessary to produce such replacement, and all materials, supplies, tools, transportation, equipment, and machinery required for replacement.

**B.** This project bid includes all materials, labor and equipment to complete the reconstruction and resurfacing of streets as outlined in the Project Manual for <u>Beech Street Overlay</u> dated <u>7/1/2016</u> as outlined in Attachment A.

**6. General Provisions.**

**A. Ownership of Documents/Work Product.** All documents, reports, records, field notes, materials, and data of any kind resulting from performance of this Contract are at all times the joint property of the Contractor and City. Upon termination of the Contract all of the above documents return to the City.

**B. Independent Contractor.** The Contractor shall function as an independent Contractor for the purposes of this Contract, and shall not be considered an employee of the City of Laramie for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of City, or to incur any obligation of any kind on the behalf of City. The Contractor agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to City of Laramie employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees as a result of this Contract.

**C. Amendments.** Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.

**D. Insurance.** The Contractor shall maintain the following insurance:

**(i) Comprehensive General Liability.** Contractor shall have and maintain comprehensive general liability insurance coverage during the entire term of the Contract, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including underground, collapse and explosion (XCU) and products and completed operations in an amount not less than five hundred thousand dollars ($500,000.00) each occurrence and one million dollars ($1,000,000.00) in the general aggregate.

**(ii) Workers Compensation or Employers Liability Insurance.** Contractor shall provide proof of workers compensation coverage, for all its employees who are to work on the projects described in this Contract. Contractor's coverage shall be under the Wyoming Workers Safety and Compensation program, if statutorily required, or such other workers compensation insurance as appropriate. Contractor's insurance shall include A Stop Gap coverage in an amount not less than Five Hundred Thousand Dollars ($500,000.00) per employee for each accident and disease. Contractor shall have also supply proof of workers' compensation and employer's liability insurance on each and every subcontractor before allowing that subcontractor on the job site.

**(iii) Business Automobile Liability.** Contractor shall maintain, during the entire term of the contract, automobile liability insurance in an amount not less than five hundred thousand dollars ($500,000.00) per occurrence.

**(iv) Coverage.** All polices required under this Contract shall be in effect for the duration of this Contract and projects. All policies shall be primary and not contributory. Contractor shall pay the premiums on all insurance policies and insurance certificates must include a clause stating that the insurance

may not be revoked, cancelled, amended or allowed to lapse until the expiration of at least thirty (30) days advance written notice to City.

**(v) Additional Insured.** All insurance policies required by this Contract, except workers' compensation, shall name City as an additional insured, and shall contain a waiver of subrogation against City, its agents and employees. Contractor shall provide, upon request a copy of an endorsement providing this coverage.

**(vi) City's Right to Reject.** The City reserves the right to reject a certificate of insurance if Contractor's insurance company is widely regarded in the insurance industry as financially unstable. This would include but is not limited to insurance companies with no less than AVIII rating in the A.M. Best insurance rating guide.

**(vii) Subcontractors.** The insurance requirements set forth above apply to all subcontractors. It is Contractor's responsibility to ensure that its subcontractors meet these insurance requirements. City has the right to review the Certificates of any and all subcontractors used by the Contractor.

**(viii) Cancellation.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent to not renew insurance coverage without thirty (30) days written notice from Contractor or their insurers to City. Any failure to comply with the reporting provision of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to City and its division, officers and employees.

**E. Indemnification.** The Contractor shall release indemnify, and hold harmless the state, City, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of Contractor's failure to perform any of the Contractor's duties and obligations under or in connection with the negligent performance of Contractor's duties or obligations, including but not limited to any claims, law suits, losses or liability arising out of Contractor's malpractice performance under this Contract.

**F. Audit/Access to Records.** The Contractor shall, immediately upon receiving written instruction from City, provide to any independent auditor, accountant, or accounting firm, all books documents, papers and records of the Contractor which are pertinent to this Contract. The Contractor shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by City. There will be no cost for audit expense for City request to the Contractor.

**G. Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, shall identify City as the sponsoring City and shall not be released without prior written approval from City.

**H. Assignment, Transfer and Subcontracting.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set for in this Contract without the prior written approval of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of City. No such written approval shall relieve the Contractor of any obligations of this Contract and any transferee or subcontractor shall be considered the agent of the Contractor. The Contractor shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

**I. Compliance With Laws.** The Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract or any properly promulgated rules and regulations related thereto, and Section 504 of the Rehabilitation Act of 1973.

**J. Wyoming Product Preference.** Unless otherwise provided in the Contract, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of work, whether temporary or permanent. The Contractor shall comply with all resident and other preference requirements, including but not limited to those applicable to labor, materials and subcontractors. The Contractor agrees to provide Wyoming made goods where those goods are comparable in price and quality to those required by this Contract.

**K. Termination of Contract.** This Contract may be terminated for cause if the Contractor or City fails to perform in accordance with the terms and conditions of this Contract following delivery of a written thirty (30) day notice stating the grounds for such default.

**L. Applicable Law/Venue.** The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the Second Judicial District, Albany County, Wyoming.

**M. Nondiscrimination.** The Contractor shall comply with Presidential Executive Order 11246 entitled, "Equal Employment Opportunity", as amended by Presidential Executive Order 11375, and as supplemented in the Department of labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, et seq., the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 et seq.), the Wyoming Human Rights Act, and the Age Discrimination Act of 1975.

All parties of this Contract agree that all hiring must be done on the basis of merit and qualifications. There may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the person or persons performing the Contract including, but not limited to, the prevailing wage laws.

**N. Entirety of Contract.**

**(i)** The Contract shall consist of this document and its terms and conditions and the following documents: The Advertisement to Bid, Instructions to Bidders, Bid Form, Signature Sheets, Performance and Payment Bond, General Conditions, Supplementary Conditions, Specifications, Supplementary Specifications, Special Provisions, Notice to Proceed, duly issued Change Orders, Extra Work Orders and Field Orders, Addenda, and all modifications issued after execution of this Contract. The Contract documents are as fully a part of this Contract as if hereto attached or herein repeated. The Contract documents are complementary and what is required by one shall be as binding as if required by all. The Contractor warrants that it has carefully examined and understands all of the Contract documents listed above, prior to starting any work under this Contract. The Contractor has not identified any issues from the above documents or site conditions which would prevent accomplishing the entire work as outlined in the Project Manual which is marked Attachment A and attached hereto and incorporated herein. Modifications include but are not limited to the following: (1) change orders (2) extra work orders or (3) addenda entered into by the parties pursuant to the terms of the Contract.

**(ii)** The Contract does not include prior negotiations or any other documents not specifically enumerated in the contract documents delineated in subparagraph (A) above.

**(iii)** This Contract, consisting of eleven (11) pages, along with the documents explicitly enumerated in Paragraph 6 (N) above and Attachment A entitled Project Manual for Beech Street Overlay dated 7/1/2016, represent the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. The Contractor shall report to City any error, inconsistency or omission it may discover. City, after consulting with the Contractor, will make a determination on correction of such error. The Contractor may request a change order, under the change order provisions of this Contract, in conjunction with any required correction, if appropriate.

**(iv)** The terms and language set forth in this Contract have been negotiated by City and the Contractor and have not been drafted unilaterally by either party. By executing this Contract, the Contractor represents that it has carefully read, studied, compared and examined all contract documents, including the specifications, is satisfied with the sufficiency of the contract documents, and shall not, at any time, complain of defects or inaccuracies in such documents, specifications or drawings.

**P. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by City for its release.

**Q. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the non-performing party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and usually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the non-performing party.

**R. Kickbacks.** The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Contractor breaches or violates this warranty, City may, at its discretion, terminate this Contract without liability to City, or deduct from the contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

**S. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person.

**T. Liaison and Notice.** City Project Manager & Contractor Superintendent.

**(i)** City project manager is Shane Johnson, telephone number: (307) 721-5277 and facsimile: (307) 721-3960.

**(ii)** The Contractor's Project Superintendent is Royce Fertig, telephone number: (307) 760-1528 and facsimile: (307) 721-3107.

**(iii)** All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison above, and mailed first-class, postage prepaid. All notices sent via U.S. Postal Services are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

**U. Sovereign Immunity.** The City does not waive sovereign immunity by entering into this Contract, and specifically retains immunity and all defenses available to them as sovereign pursuant to Wyo. Stat. § 1-39-104(a) and all other state law.

**V. Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

**W. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract. The parties to this Contract intend and expressly agree that only parties signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Contract, or to bring an action for the breach of this Contract.

**X. Americans with Disabilities Act.** Contractor shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101 *et seq.* and any properly promulgated rules and regulations related thereto.

**Y. Warranty.** Contractor warrants the following:

**(i)** has the ability to perform the agreed services;

**(ii)** shall provide suitable resources to perform work in accordance with agreed services;

**(iii)** will endeavor to provide the services herein on a timely basis consistent with the difficulty and scope of services to be provided; and

**(iv)** shall perform all work in a professional and workmanship like manner.

**Z. Patent or Copyright Protection.** Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by Contractor or its subcontractors will violate any such restriction.

**AA. Extension.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this

Contract shall be requested by the Contractor and following approval by City shall be effective only after it is reduced to writing and executed by all parties to the Contract. Any agreement to extend this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.

**BB.** **Availability of Funds.** Each payment obligation of City is conditioned upon the availability of government 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 performed by the Contractor, the contract may be terminated by City at the end of the period for which the funds are available. City shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to City in the event this provision is exercised, and City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be constructed to permit City to terminate this Contract to acquire similar services from another party.

**CC.** **Award of Related Contracts.** City may undertake or award supplemental or successor contracts for work related to this Contract. The Contractor shall cooperate fully with other contractors and City in all such cases.

**DD.** **Time is of the Essence.** Time is of the essence in all provisions of the Contract.

**EE.** **Titles Not Controlling.** Titles of paragraphs and sections are for reference only, and shall not be used to control the language in the contract.

**FF.** **Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect and either party may attempt to renegotiate the terms affected by the severance.

**INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the Laramie City Council has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and Contractor has signed and executed this Agreement, the day and year first written above.

**CITY OF LARAMIE, WYOMING**:

By: _____
David A Paulekas, Mayor and President of the
City Council

Attest: _____
Angie Johnson
City Clerk

**CONTRACTOR:**

**Simon Contractors**

By: _____

Title: _____

**CITY OF LARAMIE**
Public Works Department
P.O. Box C
Laramie, WY 82073

Public Works 721-5230
Engineering 721-5250
Solid Waste 721-5279
Street 721-5277
Utility 721-5280
FAX (307) 721-5286
TDD (307) 721-5295

August 2nd, 2016

Earl Smith
City of Laramie Public Works
P.O. Box C
Laramie, WY 82073

*Re: 2016 Beech Street Overlay Project*

Dear Mr. Smith,

The bids received for the 2016 Beech Street Overlay Project received on July 26, 2016 have been reviewed by City of Laramie Engineering Division. The Basis of Award for this project was the Total of Bid Schedule including Add Alternate (1A). Two bids were received, as shown below. There were no errors found in either bid.

The bid form states that the bidder understands that the City may award the base bid alone, or base bid with any combination of schedules and alternate items under any schedule. To determine the basis of award, Item #4 of the Bid Schedule is replaced by Add Alternate (1A). Item #4 calls for the Removal and Haul of Existing Pavement where the removed material would become the property of the contractor. By replacing Item #4 with the Add Alternate (1A), Rotomill and Haul Existing Pavement, The removed material becomes the property of the City. This rotomilled material is used by the Streets and Utility divisions in a variety of ways.

| Company Name | Bid Schedule | Item #4 | Add Alternate (1A) | Basis of Award |
|---|---|---|---|---|
| Knife River, Corp. | $416,340.30 | $59,593.50 | $59,593.50 | $416,340.30 |
| Simon Contractors Inc. | $408,409.00 | $26,010.00 | $31,365.00 | $413,764.00 |

The low bid was submitted by Simon Contractors, Inc. With this engineering staff recommends that the basis of award be the bid schedule including add alternate (1A).

Engineering Staff recommends award of the bid to Simon Contractors, Inc., in the amount of $413,764.00.

Sincerely,

William Winkler, P.E.
Civil Engineer

**CITY OF LARAMIE BID OPENING**

**Name of Bid Item:** Beech Street Overlay Project

**Department:** Public Works

**Date of Opening:** July 26, 2016

**Staff Present:** Angie Johnson, LaDene Culver

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**Name of Bidder** Knife River

**Address** P.O. Box 20150

**City, State, Zip** Cheyenne, WY 82003

**Bid Bond** 5% **or Cashier's Check $**

**Total Bid Amount $** 416,340.30

---

**Name of Bidder** Simon Contractors

**Address** 1465 N. 4th Street

**City, State, Zip** Laramie, WY 82072

**Bid Bond** 5% **or Cashier's Check $**

**Total Bid Amount $** 408,409.00

---

**Name of Bidder**

**Address**

**City, State, Zip**

**Bid Bond** **or Cashier's Check $**

**Total Bid Amount $**

---

**Name of Bidder**

**Address**

**City, State, Zip**

**Bid Bond** **or Cashier's Check $**

**Total Bid Amount $**

**Name of Bidder** _____

**Address** _____

**City, State, Zip** _____

**Bid Bond** _____ **or Cashier's Check $** _____

**Total Bid Amount $** _____

---

**Name of Bidder** _____

**Address** _____

**City, State, Zip** _____

**Bid Bond** _____ **or Cashier's Check $** _____

**Total Bid Amount $** _____

---

**Name of Bidder** _____

**Address** _____

**City, State, Zip** _____

**Bid Bond** _____ **or Cashier's Check $** _____

**Total Bid Amount $** _____

---

**Name of Bidder** _____

**Address** _____

**City, State, Zip** _____

**Bid Bond** _____ **or Cashier's Check $** _____

**Total Bid Amount $** _____

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**Name of Bidder** _____

**Address** _____

**City, State, Zip** _____

**Bid Bond** _____ **or Cashier's Check $** _____

**Total Bid Amount $** _____

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# CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016

**Agenda Item:** Bid Award

**Title: 2016 Overlay Project**

**Recommended Council MOTION:**

"I move to award the 2016 Overlay Project bid to Simon Contractors of Cheyenne, WY in the amount not to exceed $320,000.00, to approve the contract therefore, and authorize the Mayor and City Clerk sign."

**Administrative or Policy Goal:**

- ✓ Maintain City-wide Infrastructure Improvement Program as provided in *Street Capital Plan.*
- ✓ To extend the service life of the streets by performing annual preventive maintenance.

**Background:**

The condition of all Laramie streets are routinely evaluated using a Pavement Management System (PMS). This system utilizes a combination of a computer data base (PAVER) and field inspections to create a historical trend analysis of pavement condition. This information is utilized to develop our pavement maintenance strategies with the goal of maintaining as high a quality pavement condition as possible with a given budget. The 2016 work locations have been selected from a list of critical needs generated from our PMS. Providing an asphalt overlay of streets is one of several recommended methods to prolong service life of asphalt pavements. Overlays are structural in nature and prolong the life of the road surface. Overlays also provide a significant improvement to the ride (smoothness) of a street.

The streets included in the 2016 Overlay base bid are:

- Beaufort Street between 13th Street and 15th Street
- Pierce Street between Wyoming Avenue and Madison Street

The project was bid according to the City's purchasing policies. Bids for the project were opened on July 26, 2016, with results as follows:

| Contractor | Base Bid |
|---|---|
| Simon Contractors | $118,571.25 |
| Knife River | $124,058.70 |

Since the base bid is well below the available budget of $267,910, staff requests authorization to increase the contract award to $320,000 to allow for the overlay and repair of additional street segments. The PMS results indicate a downward trend in Pavement Condition Index (PCI) and it is imperative we invest more resources into our streets. The list of additional locations to be overlaid includes the intersection of 13th and Sheridan and other priority locations as provided in the PMS.

**Legal/Statutory Authority:**

## BUDGET/FISCAL INFORMATION:

**REVENUE**

| Source | Amount | Type |
|---|---|---|
| Fees/Charges for Service | $500,000.00 | GF Acct. No. 100-4025-431-43.61 |
| Grants for Projects | | |
| Loans on Project | | |
| Other | $68,000.00 | SPT Funds |
| Total | $568,000.00 | |

**EXPENSE**

Proposed Project Cost.

| Project Budget | | Amount | Funds |
|---|---|---|---|
| Project Cost | | $118,571.00 | GF Acct. No. 100-4025-431-43.61 |
| Loans on Project | | | |
| Grants for Project | | | |
| Other/Outside Projects | | $201,429.00 | Additional locations |
| City's Amount | | | |
| Contingency | 0% | | |
| Total Amount | | $320,000.00 | |

Amount spent to date (approved and adopted by Council)

| Budget | Amount | Funds |
|---|---|---|
| Total Budget Allocation | $568,000.00 | GF Acct. No. 100-4025-431-43.61/SPT Funds |
| Less Amount Spent to Date | $232,090.00 | Chip Seal Project |
| Remainder of Budget | $335,910.00 | |

## Responsible Staff:

Earl Smith, P.E., Public Works Director
Eric Jaap, P.E., City Engineer
Shane Johnson, Street Division Manager
William Winkler, P.E., Civil Engineer

**Attachments:**

Contract
Bid Tabulation
Bid Recommendation

**CONSTRUCTION CONTRACT**
**BETWEEN**
**CITY OF LARAMIE, WYOMING**
**AND**
**SIMON CONTRACTORS**

**1. Parties.** This Contract is entered into this _____ day of _____, 20___ by and between City of Laramie, Wyoming, (hereinafter referred to as "City"), whose address is 406 Ivinson Street, Laramie, Wyoming 82072, and Simon Contractors (hereinafter referred to as "Contractor"), whose address is 1465 N. 4th St. Stu 120, Laramie, WY 82072. City and Contractor agree to the terms set forth in this document.

**2. Purpose of Contract.** Contractor shall provide all labor, supervision, materials, equipment, all incidentals, related items and appurtenances, and perform all operations necessary to complete the 2016 Overlay Project includes 4291 SY of asphalt will be placed on Beaufort Street between 13th Street and 15th Street. 5654 SY of asphalt will be placed on Pierce Street between Wyoming Avenue and Madison Street. This project requires rotomilling and hauling 35 CY of existing asphalt pavement. Rotomilling will be done as to provide a 1" tapered transition around the perimeter of the roadway section being paved. This tapered transition will allow the new asphalt to better tie into the existing streets and curb and gutter adjacent to the new pavement section. .

**3. Term of Contract.**

**A. Time of Commencement and Substantial Completion.**

**(i)** The work under this Contract shall commence within seven (7) calendar days of receipt of Notice to Proceed and will be substantially complete and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before October 15th, 2016.

**(ii)** Performance under this Contract shall not begin prior to the date upon which the last required signature is affixed to this Contract or the date of the Contractor's receipt of a Notice to Proceed, whichever occurs later.

**(iii)** Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the use of additional contract time, will in no way operate as a waiver on the part of City of any of its rights under the Contract.

**4. Payment.**

**A. Contract Sum.**

**(i)** City agrees to pay Contractor for the services described herein. The total payment under this Contract shall not exceed One Hundred Eighteen Thousand Five Hundred Seventy One Dollars and Twenty Five Cents, ($118,571.25). No payment shall be made for work performed prior to the date upon which the last required signature is affixed to this Contract or the date of the Contractor's receipt of a Notice to Proceed, whichever occurs later.

**(ii)** Additional Notices to Proceed shall be issued corresponding to any respective Contract Amendments.

**(iii)** Pursuant to Wyo. Stat. §16-6-602, City shall pay interest beginning the forty-sixth day at the rate of one and one-half percent (1 ½%) per month on the unpaid balance of the progress payment until the account is paid in full, unless a good faith dispute exists as to City's obligation to pay all or a portion of the account.

**B. <u>Progress Payments.</u>**

**(i)** Contractor may submit monthly invoices for progress payment. Materials included on each invoice must either be installed or stored on site, additionally, any fees for labor must be performed prior to the submission of the invoice. No advance payment for materials or services may be requested. So long as the Contractor is satisfactorily progressing in performance of this contract, City may make monthly progress payments on the contract sum to the Contractor. Pursuant to Wyo. Stat. §16-6-702, City shall withhold ten percent (10%) of the calculated value of any work completed until one hundred percent (100%) of the work required by the contract has been performed. The withheld percentage of the contract price shall be retained in an account in the name of the Contractor which has been assigned to City until the contract is completed satisfactorily and finally accepted. Before the withheld percentage payment is made, City shall determine that satisfactory and substantial reasons exist for the payment and shall require written approval from any surety furnishing bonds for the contract work.

**(ii)** If it becomes necessary for City to take over the completion of the Contract, all amounts owed the Contractor, including the withheld percentage shall first be applied toward the cost of completion of the Contract, as provided in Wyo. Stat. §16-6-703, as amended. Any balance remaining of the retained percentage after completion by City shall be payable to Contractor or Contractor's creditors. The retained percentage which may be due to Contractor shall be due and payable as prescribed by Wyo. Stat. §16-6-116.

**C. <u>Final Payment.</u>**

**(i)** Final payment, constituting the entire unpaid balance of the contract sum, shall be paid by City to the Contractor when the Contract work has been completed, and the Contract fully performed. The Contractor shall make its request for final payment in writing to City. The Contractor's request for final payment must include the final reconciliation of the return of, and any restocking charges applied by the suppliers for any unused materials in storage. City shall determine in writing when the Contract work has been completed. Final payment will be made pursuant to Wyo. Stat. §§ 16-6-116 and 16-6-117, as amended.

**(ii)** No final payment will be made until the Contractor files a sworn statement, stating that all claims for material and labor performed under the Contract have been made, and that no liens or claims for unpaid materials, labor or equipment are outstanding. The sworn statement shall be filed with the appropriate entity, as designated in Wyo. Stat. § 16-6-117. A copy of the sworn statement shall be provided to City.

**(ii)** If any claim for material and labor is disputed, the sworn statement shall so state and include a copy of any claim or lien and the amount claimed. The amount claimed shall be deducted from

the final payment and retained by City until the dispute is resolved, as provided in Wyo. Stat. § 16-6-117. The parties agree that City may, at its discretion, place the disputed amount in an interest bearing account. In the event the funds are placed in an interest bearing account, any and all accrued interest shall belong to City.

**D. Liquidated Damages.**

**(i)** If the Contractor fails to complete the work within the time specified in the Contract, or within any authorized extension of time under a change order, Contractor shall pay to City as liquidated damages, the sum listed in the following table, for each calendar day of delay until the work is substantially complete, as approved by City.

| Original Contract Amount | | | Liquidated Damages charge per calendar day |
|---|---|---|---|
| $0.00 | to | $50,000.00 | $500.00 |
| $50,000.01 | to | $100,000.00 | $1,000.00 |
| $100,000.01 | to | $500,000.00 | $1,500.00 |
| $500,000.01 | to | $1,000,000.00 | $2,000.00 |
| $1,000,000.00 | | and greater | $3,000.00 |

**(ii)** The liquidated damages shall be computed beginning the day following the first calendar day specified for completion and shall continue each and every calendar day until all work under the Contract is substantially complete, as approved by City.

**(iii)** Liquidated damages will not be charged for any work required to be done by the Contractor as a result of a final inspection, providing the work is only cleanup or of a minor nature and the Contractor has shown constant effort in completing the work, as determined by City. If deferment of the inspection is necessary due to causes which City determines to be beyond the control of and without the fault or negligence of the Contractor, liquidated damages will not be assessed for that period of time.

**(iv)** Nothing herein shall be construed to preclude City from the recovery of damages for causes other than the delay by the Contractor.

**5. Responsibilities of Contractor.**

**A.** The Contractor shall perform all work on the described project as required by the Contract documents. The work to be performed includes the labor and services necessary to produce such replacement, and all materials, supplies, tools, transportation, equipment, and machinery required for replacement.

**B.** This project bid includes all materials, labor and equipment to complete the reconstruction and resurfacing of streets as outlined in the Project Manual for 2016 Overlay dated 6/27/2016 as outlined in Attachment A.

**6. General Provisions.**

**A. Ownership of Documents/Work Product.** All documents, reports, records, field notes, materials, and data of any kind resulting from performance of this Contract are at all times the joint property of the Contractor and City. Upon termination of the Contract all of the above documents return to the City.

**B. Independent Contractor.** The Contractor shall function as an independent Contractor for the purposes of this Contract, and shall not be considered an employee of the City of Laramie for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of City, or to incur any obligation of any kind on the behalf of City. The Contractor agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to City of Laramie employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees as a result of this Contract.

**C. Amendments.** Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.

**D. Insurance.** The Contractor shall maintain the following insurance:

**(i) Comprehensive General Liability.** Contractor shall have and maintain comprehensive general liability insurance coverage during the entire term of the Contract, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including underground, collapse and explosion (XCU) and products and completed operations in an amount not less than five hundred thousand dollars ($500,000.00) each occurrence and one million dollars ($1,000,000.00) in the general aggregate.

**(ii) Workers Compensation or Employers Liability Insurance.** Contractor shall provide proof of workers compensation coverage, for all its employees who are to work on the projects described in this Contract. Contractor's coverage shall be under the Wyoming Workers Safety and Compensation program, if statutorily required, or such other workers compensation insurance as appropriate. Contractor's insurance shall include A Stop Gap coverage in an amount not less than Five Hundred Thousand Dollars ($500,000.00) per employee for each accident and disease. Contractor shall have also supply proof of workers' compensation and employer's liability insurance on each and every subcontractor before allowing that subcontractor on the job site.

**(iii) Business Automobile Liability.** Contractor shall maintain, during the entire term of the contract, automobile liability insurance in an amount not less than five hundred thousand dollars ($500,000.00) per occurrence.

**(iv) Coverage.** All polices required under this Contract shall be in effect for the duration of this Contract and projects. All policies shall be primary and not contributory. Contractor shall pay the premiums on all insurance policies and insurance certificates must include a clause stating that the insurance may not be revoked, cancelled, amended or allowed to lapse until the expiration of at least thirty (30) days advance written notice to City.

**(v) Additional Insured.** All insurance policies required by this Contract, except workers' compensation, shall name City as an additional insured, and shall contain a waiver of subrogation against City, its agents and employees. Contractor shall provide, upon request a copy of an endorsement providing this coverage.

**(vi) City's Right to Reject.** The City reserves the right to reject a certificate of insurance if Contractor's insurance company is widely regarded in the insurance industry as financially unstable. This would include but is not limited to insurance companies with no less than AVIII rating in the A.M. Best insurance rating guide.

**(vii) Subcontractors.** The insurance requirements set forth above apply to all subcontractors. It is Contractor's responsibility to ensure that its subcontractors meet these insurance requirements. City has the right to review the Certificates of any and all subcontractors used by the Contractor.

**(viii) Cancellation.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent to not renew insurance coverage without thirty (30) days written notice from Contractor or their insurers to City. Any failure to comply with the reporting provision of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to City and its division, officers and employees.

**E. Indemnification.** The Contractor shall release indemnify, and hold harmless the state, City, and their officers, agents, employees, successors and assignees from any cause of action, or claims or demands arising out of Contractor's failure to perform any of the Contractor's duties and obligations under or in connection with the negligent performance of Contractor's duties or obligations, including but not limited to any claims, law suits, losses or liability arising out of Contractor's malpractice performance under this Contract.

**F. Audit/Access to Records.** The Contractor shall, immediately upon receiving written instruction from City, provide to any independent auditor, accountant, or accounting firm, all books documents, papers and records of the Contractor which are pertinent to this Contract. The Contractor shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by City. There will be no cost for audit expense for City request to the Contractor.

**G. Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, shall identify City as the sponsoring City and shall not be released without prior written approval from City.

**H. Assignment, Transfer and Subcontracting.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set for in this Contract without the prior written approval of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of City. No such written approval shall relieve the Contractor of any obligations of this Contract and any transferee or subcontractor shall be considered the agent of the Contractor. The Contractor shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

**I. Compliance With Laws.** The Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract or any properly promulgated rules and regulations related thereto, and Section 504 of the Rehabilitation Act of 1973.

**J. Wyoming Product Preference.** Unless otherwise provided in the Contract, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of work, whether temporary or permanent. The Contractor shall comply with all resident and other preference requirements, including but not limited to those applicable to labor, materials and subcontractors. The Contractor agrees to provide Wyoming made goods where those goods are comparable in price and quality to those required by this Contract.

**K. Termination of Contract.** This Contract may be terminated for cause if the Contractor or City fails to perform in accordance with the terms and conditions of this Contract following delivery of a written thirty (30) day notice stating the grounds for such default.

**L. Applicable Law/Venue.** The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the Second Judicial District, Albany County, Wyoming.

**M. Nondiscrimination.** The Contractor shall comply with Presidential Executive Order 11246 entitled, "Equal Employment Opportunity", as amended by Presidential Executive Order 11375, and as supplemented in the Department of labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, et seq., the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 et seq.), the Wyoming Human Rights Act, and the Age Discrimination Act of 1975.

All parties of this Contract agree that all hiring must be done on the basis of merit and qualifications. There may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the person or persons performing the Contract including, but not limited to, the prevailing wage laws.

**N. Entirety of Contract.**

**(i)** The Contract shall consist of this document and its terms and conditions and the following documents: The Advertisement to Bid, Instructions to Bidders, Bid Form, Signature Sheets, Performance and Payment Bond, General Conditions, Supplementary Conditions, Specifications, Supplementary Specifications, Special Provisions, Notice to Proceed, duly issued Change Orders, Extra Work Orders and Field Orders, Addenda, and all modifications issued after execution of this Contract. The Contract documents are as fully a part of this Contract as if hereto attached or herein repeated. The Contract documents are complementary and what is required by one shall be as binding as if required by all. The Contractor warrants that it has carefully examined and understands all of the Contract documents listed above, prior to starting any work under this Contract. The Contractor has not identified any issues from the above documents or site conditions which would prevent accomplishing the entire work as outlined in the Project Manual which is marked Attachment A and attached hereto and incorporated herein. Modifications include but are not limited to the following: (1) change orders (2) extra work orders or (3) addenda entered into by the parties pursuant to the terms of the Contract.

**(ii)** The Contract does not include prior negotiations or any other documents not specifically enumerated in the contract documents delineated in subparagraph (A) above.

**(iii)** This Contract, consisting of eleven (11) pages, along with the documents explicitly enumerated in Paragraph 6 (N) above and Attachment A entitled Project Manual for 2016 Overlay dated 6/27/2016, represent the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. The Contractor shall report to City any error, inconsistency or omission it may discover. City, after consulting with the Contractor, will make a determination on correction of such error. The Contractor may request a change order, under the change order provisions of this Contract, in conjunction with any required correction, if appropriate.

**(iv)** The terms and language set forth in this Contract have been negotiated by City and the Contractor and have not been drafted unilaterally by either party. By executing this Contract, the Contractor represents that it has carefully read, studied, compared and examined all contract documents, including the specifications, is satisfied with the sufficiency of the contract documents, and shall not, at any time, complain of defects or inaccuracies in such documents, specifications or drawings.

**P. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by City for its release.

**Q. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the non-performing party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and usually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the non-performing party.

**R. Kickbacks.** The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Contractor breaches or violates this warranty, City may, at its discretion, terminate this Contract without liability to City, or deduct from the contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

**S. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person.

**T. Liaison and Notice.** City Project Manager & Contractor Superintendent.

**(i)** City project manager is Shane Johnson, telephone number: (307) 721-5277 and facsimile: (307) 721-3960.

**(ii)** The Contractor's Project Superintendent is Royce Fertig, telephone number: (307) 760-1528 and facsimile: (307) 721-3107.

**(iii)** All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison above, and mailed first-class, postage prepaid. All notices sent via U.S. Postal Services are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

**U.** **Sovereign Immunity.** The City does not waive sovereign immunity by entering into this Contract, and specifically retains immunity and all defenses available to them as sovereign pursuant to Wyo. Stat. § 1-39-104(a) and all other state law.

**V.** **Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

**W.** **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract. The parties to this Contract intend and expressly agree that only parties signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Contract, or to bring an action for the breach of this Contract.

**X**. **Americans with Disabilities Act.** Contractor shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101 *et seq.* and any properly promulgated rules and regulations related thereto.

**Y.** **Warranty.** Contractor warrants the following:

**(i)** has the ability to perform the agreed services;

**(ii)** shall provide suitable resources to perform work in accordance with agreed services;

**(iii)** will endeavor to provide the services herein on a timely basis consistent with the difficulty and scope of services to be provided; and

**(iv)** shall perform all work in a professional and workmanship like manner.

**Z.** **Patent or Copyright Protection.** Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by Contractor or its subcontractors will violate any such restriction.

**AA.** **Extension.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be requested by the Contractor and following approval by City shall be effective only after it is reduced to writing and executed by all parties to the Contract. Any agreement to extend this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the

term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.

**BB. Availability of Funds.** Each payment obligation of City is conditioned upon the availability of government 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 performed by the Contractor, the contract may be terminated by City at the end of the period for which the funds are available. City shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to City in the event this provision is exercised, and City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be constructed to permit City to terminate this Contract to acquire similar services from another party.

**CC. Award of Related Contracts.** City may undertake or award supplemental or successor contracts for work related to this Contract. The Contractor shall cooperate fully with other contractors and City in all such cases.

**DD. Time is of the Essence.** Time is of the essence in all provisions of the Contract.

**EE. Titles Not Controlling.** Titles of paragraphs and sections are for reference only, and shall not be used to control the language in the contract.

**FF. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect and either party may attempt to renegotiate the terms affected by the severance.

**INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the Laramie City Council has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and Contractor has signed and executed this Agreement, the day and year first written above.

**CITY OF LARAMIE, WYOMING**:

By: _____
David A Paulekas, Mayor and President of the
City Council

Attest: _____
Angie Johnson
City Clerk

**CONTRACTOR:**

**Simon Contractors**

By: _____

Title: _____

**CITY OF LARAMIE BID OPENING**

**Name of Bid Item:** 2016 Overlay Project

**Department:** Public Works

**Date of Opening:** July 26, 2016

**Staff Present:** Angie Johnson, LaDene Culver

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**Name of Bidder** Knife River

**Address** P.O. Box 20150

**City, State, Zip** Cheyenne, WY 82003

**Bid Bond** 5% **or Cashier's Check $**

**Total Bid Amount $** 124,058.70

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**Name of Bidder** Simon Contractors

**Address** 1465 N. 4th Street

**City, State, Zip** Laramie, WY 82072

**Bid Bond** 5% **or Cashier's Check $**

**Total Bid Amount $** 118,571.25

---

**Name of Bidder**

**Address**

**City, State, Zip**

**Bid Bond** **or Cashier's Check $**

**Total Bid Amount $**

---

**Name of Bidder**

**Address**

**City, State, Zip**

**Bid Bond** **or Cashier's Check $**

**Total Bid Amount $**

**Name of Bidder** _____

**Address** _____

**City, State, Zip** _____

**Bid Bond** _____ **or Cashier's Check $** _____

**Total Bid Amount $** _____

---

**Name of Bidder** _____

**Address** _____

**City, State, Zip** _____

**Bid Bond** _____ **or Cashier's Check $** _____

**Total Bid Amount $** _____

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**Name of Bidder** _____

**Address** _____

**City, State, Zip** _____

**Bid Bond** _____ **or Cashier's Check $** _____

**Total Bid Amount $** _____

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**Name of Bidder** _____

**Address** _____

**City, State, Zip** _____

**Bid Bond** _____ **or Cashier's Check $** _____

**Total Bid Amount $** _____

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**Name of Bidder** _____

**Address** _____

**City, State, Zip** _____

**Bid Bond** _____ **or Cashier's Check $** _____

**Total Bid Amount $** _____

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**CITY OF LARAMIE**
Public Works Department
P.O. Box C
Laramie, WY 82073

Public Works 721-5230
Engineering 721-5250
Solid Waste 721-5279
Street 721-5277
Utility 721-5280
FAX (307) 721-5286
TDD (307) 721-5295

August 2nd, 2016

Earl Smith
City of Laramie Public Works
P.O. Box C
Laramie, WY 82073

*Re: 2016 Overlay Project*

Dear Mr. Smith,

The bids received for the 2016 Overlay Project received on July 26, 2016 have been reviewed by City of Laramie Engineering Division. The Basis of Award for this project is the total of the Bid Schedule. Two bids were received, as shown below. There were no errors found in either bid.

| | Company Name | Bid Schedule |
|---|---|---|
| 1. | Knife River, Corp. | $124,058.70 |
| 2. | Simon Contractors Inc. | $118,571.25 |

The low bid was submitted by Simon Contractors, Inc. The low bid is within the budget for this project.

Engineering Staff recommends award of the bid to Simon Contractors, Inc., in the amount of $118,571.25.

Sincerely,

William Winkler, P.E.
Civil Engineer

# CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016

**Agenda Item: Professional Services Agreement**

**Title: Award Professional Services Agreement for the 20" Transmission Line Rehabilitation Project**

## Recommended Council MOTION:

"I move to award the Professional Services Agreement for the 20" Transmission Line Rehabilitation Project to Mechanical Systems, Inc., of Cheyenne, WY, in the total amount of $5, 545,155.00 plus a contingency of $500,000.00 for a total amount not to exceed $6,045,155.00, and authorize the Mayor and Clerk to sign, and to authorize the necessary budget transfers including $2,000,000 from FY 2018 into FY 2017 to amend the budget."

## Administrative or Policy Goal:

Implement improvements as identified in the 2015 Water Master Plan.

## Background:

The Water Fund budget includes funding to rehabilitate the 20" transmission main from the City's Water Treatment Plant at Harmony into the City. The project is identified in the Water Master Plan as one of the top priorities of all improvements identified. The intent of the project is to design a solution to isolate or remove the coal tar liner within the 20" host pipe and to construct the recommended improvements.

Due to the unique qualities of this project, staff pursued an alternative delivery method when soliciting interest from engineers and contractors. The project was released essentially as a design/build delivery method where we asked for teams that included an engineer and a contractor. Once the delivery method was developed, the selection process mirrored the City's Purchasing Policies, Request for Qualifications (RFQ) process. Proposals from twelve highly qualified teams were received on March 18, 2016.

On April 12, 2016, a selection committee made up of a representative of City staff members knowledgeable in the subject matter met, reviewed the proposals, and recommended two firms for further consideration. The firms of Mechanical Systems, Inc. (MSI) and HEBNA were invited to interview with the selection committee. Those interviews were conducted on May 3, 2016. Based upon the results of the interview process, the firm of MSI, was recommended to be awarded the 20" Transmission Line Rehabilitation Project. Additional detail is provided in the attached recommendation.

## BUDGET/FISCAL INFORMATION:

This project is funded entirely by the City of Laramie through the Water Fund. Due to the excellent pricing on this project we recommend reprioritizing projects within the current Long Range Financial plan, moving the 20" transmission main project forward in its entirety and moving other projects back in the schedule beyond FY 2018.

| Funding Source/Project | Budget Amount |
|---|---|
| 20" Transmission FY17 | $2,600,000.00 |
| PRV Stations | $1,200,000.00 |
| Dispensing Stations | $100,000.00 |
| SPT Water Funds | $374,000.00 |
| ***20" Transmission FY18*** | ***$2,000,000.00*** |
| Total funding | $6,274,000.00 |

**REVENUE**

| Source | Amount | Type |
|---|---|---|
| Fees/Charges for Service | $6,274,000.00 | Water Fund Budget |
| Grants for Projects | | |
| Loans on Project | | |
| Other | | |
| Total | $6,274,000.00 | |

**EXPENSE**

Proposed Project Cost

| Project Budget | | Amount | Funds |
|---|---|---|---|
| Project Cost | | $5, 545,155.00 | As per fee proposal from RFQ process |
| City's Amount | | | |
| Contingency | 10% | $500,000.00 | |
| Total Amount | | $6,045,155.00 | |
| | | | |

Amount spent to date (approved and adopted by Council)

| Budget | Amount | Funds |
|---|---|---|
| Total Budget Allocation | $6,274,000.00 | |
| Less Amount Spent to Date | | |
| Remainder of Budget | $6,274,000.00 | |

## Responsible Staff:

Earl Smith P.E., Public Works Director
Cal Van Zee, Utilities Manager
Mike Lytle, Water Treatment Supervisor

Attachments:

Professional Services Agreement

**AGREEMENT FOR**
**PROFESSIONAL ENGINEERING**
**SERVICES BETWEEN**
**THE CITY OF LARAMIE, WYOMING**
**AND**
**MECHANICAL SYSTEMS, INC.**

**1.** **Parties**. This Agreement is made and entered into this 16th day of August, 2016, by and between the City of Laramie, Wyoming, a municipal corporation (hereinafter referred to as "City") whose address is 406 Ivinson Street, Laramie, Wyoming 82070 and Mechanical Systems, Incorporated (MSI), (hereinafter referred to as "Consultant") whose address is 1313 West Lincolnway, Cheyenne, WY 82001.

**2.** **Purpose of Contract**. The Consultant shall provide professional engineering and construction services to perform all operations described in the scope of work and supporting documents necessary to complete the 20" Transmission Line Rehabilitation Project as provided in the Consultant's proposal titled "20" Transmission Line Rehabilitation Project", dated March 18, 2016.

**3.** **Term of Contract and Required Approvals**. This Contract is effective when all parties have executed it and all required approvals have been granted. The term of the Contract is from the date of execution through the completion of the work as described in the contractor's proposal, unless otherwise terminated or extended as outlined herein.

**4.** **Payment.**

**A.** **Contract Sum**.

**(i).** City agrees to pay the Consultant for the services described herein and in contractor's proposal. The Consultant shall provide services in contractor's proposal for the total projected fee not to exceed the amount of Five Million Five Hundred Forty Five Thousand One Hundred Fifty Five and 00/100 Dollars ($5,545,155.00). Budgets for the identified tasks are not transferrable without prior authorization. No payment shall be made for work performed prior to the date upon which the last required signature is affixed to this Contract or the date of the Consultant's receipt of a Notice to Proceed, whichever occurs later.

**(ii).** Reimbursable expenses, including transportation and copying will be included in the remuneration of services listed in the contractor's proposal, which is attached hereto and incorporated herein and shall be included as a reimbursable expense item in the not to exceed amount of this contract.

**(iii).** Payments under this Contract shall not be based upon a percentage of the construction cost, in accordance with the prohibition at Wyo. Stat. §9-2-1032(e).

**(iv).** The Consultant may submit monthly invoices for payment based on the

work completed. Monthly invoices for services associated with Additional Services shall have written authorization from the City before proceeding with any additional services. Payments shall be made pursuant to Wyo. Stat. §16-6-602. Payments made beyond forty-five (45) days after invoice will include interest at the legal rate for the State of Wyoming for such period beyond thirty (30) days. Any fees for services must be performed prior to the submission of the invoice. No advance payment for services may be requested.

**(v).** Records of personnel, consultants, extra and reimbursable expenses pertaining to the Project shall be kept on a generally recognized accounting basis, acceptable to City, and shall be available to City or authorized representatives of City upon request by City.

**B.** Progress Payments for the Consultant's services, as described in Attachment A shall be for time expended on the project by Consultant and of consultant's sub consultant firms.

**5. <u>Responsibilities of Consultant</u>.**

**A. <u>General Services</u>.**

**(i).** The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the project. The Consultant shall comply with the schedule for the performance of all services as outlined in the Proposal, which is attached hereto and incorporated herein to this Contract and which shall be adjusted, if necessary, as the project proceeds. The schedule shall be in the form of a progress chart so as to indicate by percentage the work completed at any time. The Consultant shall update the progress schedule as requested by City. This schedule shall include allowances for periods of time required for City's review, and for approval of submissions by authorities having jurisdiction over each project. Time limits established by this schedule approved by City shall not, except for reasonable cause, be exceeded by the Consultant.

**(ii).** The Consultant may have a direct contract with a person or entity to perform a portion of services required by this Contract. Such subcontract to other consultants is at the Consultant's expense, and those expenses will be reimbursable through payment requests as detailed above to the extent it deems necessary to complete the project as provided in the Contractor's Proposal and for project reports, and recommendations, including mechanical, electrical, structural and civil engineers licensed as such by the State of Wyoming and any other consultant necessary for the development of the project. The Consultant agrees that it is as fully responsible to City for negligence, negligent acts and omissions of its subconsultant and their agents, and or persons either directly or indirectly employed by them, as it is for the negligence, negligent acts or omissions of person is directly employed by it. Nothing in the foregoing procedure shall create any contractual relation between City and any consultants employed by the Consultant under the terms of this Contract. By written agreement, the Consultant shall require each subconsultant, to the extent of the services to be performed by subconsultant, to be bound to the Consultant by the terms of this Contract, and to assume toward the Consultant all obligations and responsibilities which the Consultant, by this Contract, assumes toward City.

**(iii).** The Consultant shall consult, to the extent required by City, with authorized employees, agents and/or representatives of City relative to the 20" Transmission Line Rehabilitation Project and completion of the project as provided in Consultant's proposal.

**(iv).** The Consultant shall designate a principal or staff member of Consultant's staff satisfactory to City as the Project representative who shall, so long as their performance continues to be acceptable to City remain in charge of the engineering services for the project in Attachment A from City Council approval through completion of the work.

**(v).** The Consultant shall assist City in fulfilling requirements and contingencies set forth or required by appropriate authorities and agencies whose interest bears on the professional engineering and other services to perform all operations necessary to complete the preliminary and final design, along with scope alterations, for the 20" Transmission Line Rehabilitation Project as outlined in Attachment A. Appropriate authorities and agencies shall mean any private, local, municipal, county, state, region or federal authority or agency with which each of the projects may be involved. This term is intended to include those agencies and authorities, which may require information or the filing of plans, specifications, or other documentation or verifications in connection with the project in Attachment A on either a voluntary or non-voluntary basis.

**(vi).** The Consultant shall provide copies of all documents required by City for review and approval by City and the appropriate authorities and agencies. Expenses incurred in reproduction will be reimbursed per the reimbursement schedule in Attachment A.

**(vii).** The Consultant shall provide professional engineering and other services to complete 20" Transmission Line Rehabilitation Project as outlined in Attachment A; services will include professional engineering and other services to complete design, along with scope alterations.

**(viii).** Extra Services of Consultant. When authorized in advance by means of a written change order, pursuant to the amendment provision of this Contract contained in Paragraph 8(A), shall be paid for by City, as provided within Paragraph 4 (B), for the project scope of services as provided in Attachment A.

**6. <u>Responsibilities of City</u>.**

**A.** Unless otherwise provided in this Contract, City shall provide full information in a timely manner regarding requirements for and limitations on each scope item in Attachment A.

**B.** City's Project representative as identified in Paragraph 8 (Q) shall be authorized to act on the behalf of City with respect to each of the project in Attachment A. City and/or his designee shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

**C.** City shall notify the Consultant upon awareness of any deficiencies or defects

in the design during the preliminary engineering design phase.

**D.** Nothing in this Contract nor any act or failure to act on the part of City shall be construed as a waiver of a claim by City for any defects or deficiencies in the preliminary and final design services, along with scope alterations, of the project required of the Consultant.

**7. Special Provisions.**

**A. Limitation of Payments**. City's obligation to pay the Consultant for services rendered pursuant to this Contract is conditioned upon the availability of City's funds which are allocated to pay the Consultant. If funds are not allocated and available to pay the Consultant for these services, City may terminate this Contract at the end of the period for which the funds are available.

City shall notify the Consultant at the earliest possible time if this agreement will or may be affected by a shortage of funds. No liability shall accrue to City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed so as to permit City to terminate this Contract in order to acquire similar services from another party. The Consultant shall be paid for any allowable services provided and expenses incurred prior to receipt of any such notification that City was terminating the Contract because of a shortage of funds.

**B. Assumption of Risk**. Consultant shall assume the risk of any loss of State or Federal funding, either administrative or program dollars, due to Consultant's failure to comply with State or Federal requirements. City shall notify Consultant of any State or Federal determination of noncompliance.

**C. Monitor Activities**. City shall have the right to monitor all Contract related activities of the Consultant and all subcontractors. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe all the Consultant's personnel in every phase of performance of Contract related work.

**D. No Finder's Fees**. No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract shall be paid by either party.

**E. Nondiscrimination**. The Consultant shall comply with Presidential Executive Order 11246 entitled, "Equal Employment Opportunity," as amended by Presidential Executive Order 11375, and as supplemented in the Department of Labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 et seq.), and the Americans With Disabilities Act (hereinafter referred to as "ADA"), 42 U.S.C. 12101, et seq. The Consultant shall assure that no person is discriminated against based on the grounds of sex, race, religion, national origin or disability in connection with the performance of this Contract. The Consultant shall include the provisions of this section in every subcontract awarded in excess of ten thousand dollars ($10,000) so that such provisions are binding on each subcontractor.

**F. Publicity.** Any publicity given to the program or services provided herein including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Consultant, shall identify City as the sponsoring agency and shall not be released without prior written approval from City.

**G. Immigration Reform and Control Act of 1986**. In connection with the performance of the Consultant pursuant to this agreement, the Consultant warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 (P.L. 99-603, November 6, 1986) which prohibits the hiring, referral or recruitment of aliens not authorized to work, and provides for employer verification that an individual is not an unauthorized alien. The Consultant agrees to send notice to all subconsultants regarding the requirements of the Immigration Reform and Control Act of 1986 and notice that they are expected to comply with all of its provisions.

**H. Wyoming Preference Act of 1971.** The Consultant shall comply with the "Wyoming Preference Act of 1971". Special attention if called to W.S. §§ 16-6-203: Every person who is charged with the duty of construction, reconstructing, improving, enlarging, altering or repairing any public works project or improvement for the state or any political subdivision, municipal corporation, or other governmental unit, shall employ only Wyoming laborers on the project or improvement. Every contract let by any person shall contain a provision requiring that Wyoming labor be used except other laborers may be used when Wyoming laborers are not available for the employment from within the state or are not qualified to perform the work involved. A person required to employ Wyoming laborers may employ other than Wyoming laborers if that person informs the nearest state employment office of his employment needs and the state employment office certifies that the person's need for laborers cannot be filled from those listed as of the date the information is filed. Consultant shall also comply with W.S. §§ 16-6-201, 16-6-202, 16-6-204, 16-6-205 and 16-6-206, as applicable.

**8. General Provisions.**

**A. Amendments**. Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract. Change in Services of the Consultant, including services required of Consultant's subconsultants, may be accomplished after execution of this Contract, without invalidating this Contract, if mutually agreed in writing,

**B. Americans with Disabilities Act**. The Consultant shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, et seq., and/or any properly promulgated rules and regulations related thereto.

**C. Applicable Law/Venue**. The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the

Second Judicial District, Albany County, Wyoming.

**D.** **Assignment/Contract Not Used as Collateral**. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Consultant shall not use this Contract, or any portion thereof, for collateral for any financial obligation.

**E.** **Audit**. City and any of its representatives shall have access to any books, documents, papers, and records of the Consultant which are pertinent to this Contract. Additionally, the Consultant shall abide by all regulations imposed by funding sources or governmental agencies, such as auditing requirements, payroll affidavits, and other documentation or verification.

**F.** **Award of Related Contracts**. City may undertake or award supplemental or successor contracts for work related to this Contract. The Consultant shall cooperate fully with other Consultants and City in all such cases and the City shall provide notice to the Consultant prior to awarding any such contract.

**G.** **Compliance with Law**. The Consultant's professional services shall be consistent with sound engineering practices and shall keep informed of and comply with all applicable federal, state and local laws, regulations, codes and standards that are applicable in the performance of this Contract. In the event of a change in laws and/or regulations of which the Consultant shall inform City of the change and its impact on work already performed or to be performed, fees and costs involved, and scheduling. If either City or the Consultant believes the change requires a renegotiation of this Contract, both parties will renegotiate the Contract promptly and in good faith. If a renegotiated Contract cannot be agreed to, either party may terminate this Agreement pursuant to Paragraph 8 (X).

**H.** **Confidentiality and Publicity**. All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Consultant in the performance of this Contract shall be kept confidential by the Consultant unless written permission is granted by City for its release. The Consultant shall have similar agreements with any subconsultants to maintain the confidentiality of information specifically designated as confidential by City.

**I.** **Entirety of Contract**. This Contract, consisting of Fourteen (14) pages, together with Attachment A, which is entitled 20" Transmission Line Rehabilitation Project consisting of Eighteen (18) pages, and includes all material as outlined in the Request for Proposals dated March 18, 2016 and amendments, represents the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral, unless otherwise terminated or extended as outlined herein.

**J.** **Ethics**. The Consultant shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat §9-13-101, et seq.), and any and all ethical standards governing the Consultant's profession.

**K.** **Force Majeure**. Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

**L.** **Indemnification**.

**(i)** **General Indemnity:** The Consultant shall indemnify, defend and hold harmless the City, and their officers, agents, employees, successors and assignees from any and all third party claims, losses and liability arising out of the Consultant's work under the Agreement providing that such a claim, damage, loss or expense is attributed to bodily injury , sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) but only to the extent caused in whole or in part by negligent acts or omissions of the Consultant, a subconsultant, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**(ii).** Professional Liability Indemnifications: The Consultant agrees to indemnify and hold the Owner harmless from and against any liabilities, claims, damages and costs (including reasonable attorney's fees) to the extent caused by the negligence of the Consultant in performance of services under this Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceeding for professional negligence would be barred by the applicable statute of repose or statute of limitations.

**(iii).** Without limitation as to other remedies, which City may have, the Consultant will without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications or other services.

**M.** **Independent Contractor**. The Consultant shall function as an independent Contractor for the purposes of this Contract, and shall not be considered an employee of the City of Laramie for any purpose. The Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by the Consultant in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Consultant or its agents and/or employees to act as an agent or representative for or on behalf of the City, or to incur any obligation of any kind on the behalf of the City. The Consultant agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to City employees will inure to the benefit of the Consultant or their agents and/or employees as a result of this Contract.

**N.** **Kickbacks**. The Consultant certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. The Consultant shall provide the City with a certification under oath that he has not in any way been involved in any gratuities, kickbacks or contingent fees in connection with his selection or ultimate performance under this contract. If the Consultant breaches or violates this warranty, City may, at its discretion, terminate this Contract without liability to the City, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

**O.** **Notices**. All notices arising out of, or from, the provisions of this contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person.

**P.** **Notice and Approval of Proposed Sale or Transfer of Consultant**. The Consultant shall provide City with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Consultant. Such notice shall be provided in accordance with the notice provision of this Contract. If City determines that the proposed merger, consolidation, sale or transfer of assets is not consistent with the continued satisfactory performance of the Consultant's obligations under this Contract, then City may, at its option, terminate or renegotiate the Contract.

**Q.** **Liaison and Notice** City's and Consultant's Designated Representatives.

**(i)** City's designated representative is Cal Van Zee, Utilities Division Manager, PO Box C, Laramie, WY 82073: telephone number: (307) 721-5206, and email: cvanzee@cityoflaramie.org

**(ii)** The Consultant's project representative is Keith Zabka, Project Manager, 1313 West Lincolnway, Cheyenne, WY 82001, telephone number: (307) 634-7419, and email: kzabka@msiwyo.com

**(iii)** All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison above, and mailed first-class, postage prepaid. All notices sent via U.S. Postal Services are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

**R.** **Insurance**. The Consultant shall maintain the following insurance:

**(i).** **Comprehensive General Liability**. The Consultant shall have and maintain comprehensive general liability insurance coverage during the entire term of the Contract, against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including underground, collapse and explosion (XCU) and products and completed operations in an amount not less than one million each occurrence and one million dollars ($1,000,000.00) in the general aggregate.

**(ii). Workers Compensation or Employers Liability Insurance.** The Consultant shall provide proof of workers compensation coverage, for all its employees who are to work on the projects described in this Contract. The Consultant's coverage shall be under the Wyoming Workers Safety and Compensation program, if statutorily required or such other workers compensation insurance as appropriate. The Consultants insurance shall include AStop Gap@ coverage in an amount not less than Five Hundred Thousand Dollars ($500,000.00) per employee for each accident and disease. The Consultant shall have also supply proof of workers' compensation and employer's liability insurance on each and every subconsultant before allowing that sub consultant on the job site.

**(iii). Professional Liability or Errors and Omissions Liability Insurance**. The Consultant shall provide proof of professional liability insurance or errors and omissions liability insurance to protect the City from any and all claims arising from the Consultant's alleged or real professional errors, omissions or mistakes in the performance of professional duties by the Consultant or his structural, electrical, or mechanical engineering consultants in an amount not less than one million dollars ($1,000,000.00).

**(iv). Business Automobile Liability**. The Consultant shall maintain, during the entire term of the contract, automobile liability insurance in an amount not less than five hundred thousand dollars ($500,000.00) per occurrence.

**(v). Coverage**. All polices required under this Contract shall be in effect for the duration of this Contract and projects. All policies shall be primary and not contributory. The Consultant shall pay the premiums on all insurance policies and insurance certificates must include a clause stating that the insurance may not be revoked, cancelled, amended or allowed to lapse until the expiration of at least thirty (30) days advance written notice to City.

**(vi). Additional Insured**. All insurance policies required by this Contract, except workers' compensation and professional liability insurance or errors and omissions liability insurance, shall name City as an additional insured, and shall contain a waiver of subrogation against City, its agents and employees. The Consultant shall provide, upon request a copy of an endorsement providing this coverage.

**(vii). City's Right to Reject**. The City reserves the right to reject a certificate of insurance if the Consultant's insurance company is widely regarded in the insurance industry as financially unstable. This would include but is not limited to insurance companies with no less than AVIII rating in the A.M. Best insurance rating guide.

**(viii). Subcontractors**. The insurance requirements set forth above apply to all subconsultants. It is the Consultant's responsibility to ensure that its subconsultants meet these insurance requirements. City has the right to review the Certificates of any and all subconsultants used by the Consultant.

**(ix).** **Cancellation**. There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent to not renew insurance coverage without thirty (30) days written notice from the Consultant or their insurers to City. Any failure to comply with the reporting provision of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to City and its division, officers and employees.

**S.** **Ownership of Documents/Work Product/Materials**. All construction documents including but not limited to the plans and specifications, prepared by the Consultant, whether complete or incomplete, shall be and remain the property of City and any other, reports, records, field notes, data, samples, specimens, and materials of any kind resulting from performance of this Contract are at all times the property of City. City will not revise any of the construction documents without prior written approval of the Consultant.

**T.** **Patent or Copyright Protection**. The Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by The Consultant or its subcontractors will violate any such restriction.

**U.** **Prior Approval**. This Contract shall not be binding upon either party; no services shall be performed under the terms of this Contract, until this Contract has been reduced to writing, approved by the Laramie City Council.

**V.** **Sovereign Immunity**. The City does not waive sovereign immunity by entering into this Contract, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other state law.

**W.** **Taxes**. The Consultant shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

**X.** **Termination of Contract**.

**(i).** If through any cause either party shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if either party shall violate any of the covenants, Contracts or stipulations of this Contract, the other party shall thereupon have the right to terminate this Contract if such default or violation is not corrected within fifteen (15) days after submitting written notice to the other party. Documents, data, studies, surveys, drawings, maps, models, photographs, films, duplicating plates, and reports prepared by the Consultant under their Contract shall then immediately be turned over to the City. In the event of such termination, The Consultant shall be entitled to receive just and equitable compensation, not to exceed the agreed amount for services provided before termination, for any satisfactory work completed on such documents and other materials prior to receipt of Notice of Termination including reimbursable expenses then incurred less any damages sustained by City incident to the Consultant's breach.

**(ii).** In event of termination, all finished or unfinished design development

and construction documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant shall be immediately surrendered to City.

**(iii).** In the event of termination, City shall pay to the Consultant, as full payment for all services performed and all expenses incurred under this Contract, which shall have become payable because of the progress in the work. In ascertaining the services actually rendered hereunder up to the date of termination of this Contract, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents, whether delivered to City or in the possession of City and to authorized reimbursable expenses.

**(iv).** If, upon payment of the amount required to be paid under this paragraph herein following the termination of this Contract, City thereafter should determine to complete the original project or substantially the same project, City for such purposes shall have the right of utilization of any original tracings, drawings, calculations, specifications, estimates, and other construction documents prepared under this Contract by the Consultant without liability to the Consultant or its subconsultants. At the Consultant's request, City agrees to credit the Consultant which such authorship as may be due him or her, but is not required to renew the Contract. City will not reuse any of the construction documents without prior written approval of the Consultant.

**Y.** **Third Party Beneficiary Rights**. The parties do not intend to create in any other individual or entity the status of third party beneficiary and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract. The parties to this Contract intend and expressly agree that only parties signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this contract, or to bring an action for the breach of this Contract.

**Z.** **Disputes/Remedies**. In seeking to resolve any dispute relating to this Contract, City does not waive its sovereign immunity. Any dispute or claim arising out of or relating to this Contract may be assigned to non-binding mediation upon mutual agreement of the parties, in accordance with the Wyoming Supreme Court's rules for alternative dispute resolution. The parties to the dispute shall bear their respective costs for the mediation. The rights and remedies of the parties provided for in these clauses are in addition to any other rights and remedies provided by law or under this Contract.

**AA.** **Limitations on Lobbying Activities**. In accordance with P.L.101-121, any payments made from a Federal grant shall not be utilized by the Consultant or its subcontractors in connection with lobbying Congressmen, or any other Federal Department in connection with the award of a Federal grant, contract, cooperative agreement, or loan. The Consultant and any subcontractors shall submit a certification statement and disclosure form acceptable to the State before commencement of the work.

**BB.** **Americans with Disabilities Act**. Contractor shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101 et seq. and any properly promulgated rules and regulations related thereto.

**CC.** **Warranty**. The Consultant warrants the following:

**(i).** has the ability to perform the agreed services;

**(ii).** shall provide suitable resources to perform work in accordance with agreed services;

**(iii).** will endeavor to provide the services herein on a timely basis consistent with the difficulty and scope of services to be provided;

**(iv).** shall perform services 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

**(v).** is responsible for the professional quality, technical accuracy and coordination of all designs, drawings, specifications and other services furnished by the Consultant under this Contract.

**DD.** **Patent or Copyright Protection**. Consultant recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and warrants that no work performed by Consultant or its sub-consultants will violate any such restriction.

**EE.** **Extension**. Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be requested by the Consultant and following approval by City shall be effective only after it is reduced to writing and executed by all parties to the Contract. Any agreement to extend this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.

**FF.** **Severability**. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect and either party may attempt to renegotiate the terms affected by the severance.

**GG.** **Titles Not Controlling**. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Contract.

**HH.** **Waiver**. The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach.

**II.** **Time is of the Essence**. Time is of the essence in all provisions of the Contract.

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IN WITNESS WHEREOF, the Laramie City Council has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and Consultant has signed and executed this Agreement, the day and year first written above.

**CITY OF LARAMIE, WYOMING**:

By: _____
David A. Paulekas, Mayor and President of the
City Council

Attest:_____
Angie Johnson
City Clerk

**CONSULTANT: MECHANICAL SYSTEMS, INC.**

By:_____

Title _____

July 21, 2016

To: Earl Smith, P.E., Public Works Director
Fr: Cal Van Zee, Utility Division Manager
Re: Staff Recommendation for Contractor for the 20" Transmission Rehabilitation Project

**Background**

The 20" Transmission Line Rehabilitation Project was initiated after the transmission lines were cleaned in 2012 from the Water Treatment Plant to the line blow offs approximately three miles west of Laramie. After cleaning the lines, it became apparent that the coal tar liner needed to be permanently isolated from the refined water because of the issues of water contamination and the critical importance the pipeline has in providing water to the city.

A Request for Qualifications was released on January 6, 2016, requiring all interested parties to attend a mandatory pre-proposal meeting held on February 9, 2016, at the Utility Division Office. There were forty individuals present representing thirty different entities. Proposals were due on March 18, 2016, and twelve proposals were received.

**Proposal Evaluation**

The proposal review committee met on April 12, 2016 to evaluate the proposals. Two companies were selected for interviews based on their ability to complete the entire project within the budget available. The remaining companies had phased the project over two or more years. The two companies selected were HEBNA Pipeline Liners from Aurora, Colorado and Mechanical Systems, Inc. from Cheyenne, Wyoming.

Interviews were held on May 3, 2016, in Laramie. Upon conclusion of the interviews, it was determined additional information was needed and a set of questions was sent to both companies. Mechanical Systems, Inc. returned the answers to the questions on May 17, 2016 and HEBNA Pipeline Liners returned the answers on May 23, 2016. The proposal review committee met on June 1, 2016, at the Utility Division Office to go over the requested information and select a company for the project.

**Proposal Recommendation**

The proposal review committee selected Mechanical Systems, Inc. of Cheyenne, Wyoming as the successful proposal for the following reasons:

- Mechanical Systems, Inc. had much more experience with lining large diameter water pipe >14" long distances, much of it in Wyoming while HEBNA Pipeline Liners had several lining projects in sewer pipe but only one in water which was a 16" line 400' in length.

- The financial reports requested from each company shows that HEBNA Pipeline Liners has not been profitable the last two years. The total revenue for the company was just over $5.5 million. Mechanical Systems, Inc. installing company had sales of just under $90 million for the previous year.
- HEBNA Pipeline Liners price to complete the project was $5,443,994.00 and the price from Mechanical Systems, Inc. was $5,545,155.00, however if the 5% in state preference is used, their price is $5,267,897.25 ($5,545,155 X .95%). Using the other method of adding 5% to the out of state company, their bid would be $5,716,193.70 ($5,443,994.00 X 1.05%). Both methods have Mechanical Systems, Inc. with the best price.

**CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016**

| | |
|---|---|
| | **Agenda Item:** Orig. Ordinance - 1st Reading<br>**Title:** Original Ordinance _____ to amend sections 9.12.010, 9.12.020, 9.12.030 and 9.16.070 of the Laramie Municipal Code. First Reading |

**Recommended Council MOTION:**

1. I move to approve Original Ordinance _____ to amend sections 9.12.010, 9.12.020, 9.12.030 and 9.16.070 of the Laramie Municipal Code and set it for second reading on September 6, 2016.

**Administrative or Policy Goal:**

Clean up code

**Background:**

The disorderly conduct sections of code were written a century or two ago and deal with houses of prostitution. The City has applied these to modern day loud/disorderly parties. The new language better addresses modern day parties.

The property damage section of code had no culpability requirement and was too specific in types of property. The new language adds careless, reckless or intentional so accidently damaging property (negligence) is no longer a crime. Also, the language was simplified to include "tangible property of another" which more or less means any property.

**Responsible Staff:** **City Attorney**

Future dates are subject to change

| | |
|---|---|
| Introduction/1st Reading | 8/15/2016 |
| 2nd Reading | 9/6/2016 |
| 3rd Reading | 9/20/2016 |
| | Click here to enter a date. |

ORIGINAL ORDINANCE NO.

INTRODUCED BY: _____

ENROLLED ORDINANCE NO.

AN ORDINANCE TO AMEND SECTIONS 9.12.010, 9.12.020, 9.12.030 OF THE LARAMIE MUNICIPAL CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LARAMIE, WYOMING that:

**Section 1. Laramie Municipal Code Sections 9.12.010, 9.12.020, 9.12.030, 9.12.130 and 9.16.070 shall be amended as follows:**

~~9.12.010 - Disorderly houses.~~

~~No person shall keep any common, ill-governed or disorderly house or suffer any drunkenness, quarreling, fighting, unlawful games or riotous games or disorderly conduct whatever on his premises.~~

9.12.010. - Disorderly party or gathering prohibited.

No person shall participate in any party or gathering consisting of two or more people when such party or gathering:

1. Occurs in residentially zoned or used areas or buildings between the hours of 10:00 p.m. and 6:00 a.m. and when said party or gathering gives rise to unreasonable noise likely to cause significant discomfort or annoyance to a reasonable person of normal sensitivities present in the area, in consideration of the time of day and the residential character of said area or building. Noise of such volume as to be clearly audible at a distance of 50 feet from the structure or building in which the party or gathering is occurring, or in the case of apartment buildings, in the adjacent hallway or apartment, shall be prima facie evidence of unreasonable noise in violation of this article.
2. When fighting or disorderly conduct occurs on the premises.
3. When minors are consuming alcohol on the premises.

~~9.12.020 - Houses of ill fame—Prohibited.~~

~~No bawdy house, house of ill fame, house of prostitution or assignation or other place for the practice of fornication or common, ill-governed or disorderly house, shall be kept or~~

~~maintained within the city. No person shall keep any such house or shall be an inmate of or in any manner connected with any such house or contribute to its support.~~

9.12-020. - Order to disperse—Refusal prohibited.

When a police officer determines that a party or other gathering has become disorderly, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave the premises after being ordered by a police officer to do so.

~~9.12.030 - Houses of ill fame~~ Disorderly Houses ~~—Permitting such use.~~

~~No person shall permit any building or tenement in his possession or under his control to be used or occupied for any of the purposes mentioned and prohibited in Section 9.12.020, or permit any building or tenement used or occupied for any such purpose to stand upon any lot or parcel of land within the city owned, held, possessed or controlled, either as agent, owner or otherwise, by him.~~

9.12.030 - Tenant or owner—Cooperation required.

Every owner of such premises, or tenant in charge of such premises, who has knowledge of the disturbance shall cooperate with such police officer and shall make reasonable effort to stop the disturbance.

9.12.130 - Disorderly conduct—Generally.

A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or carelessly creating a risk thereof, he or she:

A. Engages in fighting or other violent or tumultuous conduct or in conduct creating the threat of imminent fighting or other violence; or

B. Makes or uses to or of another and in his or her presence any gesture, display, opprobrious words, profane, obscene, or abusive language which would reasonably tend to incite or abet a person to engage in fighting or other violent or tumultuous conduct; or

C. Creates loud and offensive noise or utters profane or obscene language in any public street or other public place, or place to which the public is invited; or

D. Places himself or herself or with another or others congregates, in or on any public way so as to reasonably tend to halt or interfere with the free and regular flow of vehicular or pedestrian traffic and refuses to clear such public way when ordered by the police or other lawful authority; or

E. Is found in any public place under the influence of intoxicating liquor or drug or any combination of any intoxicating liquor or drug, in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor or drug or any combination of any intoxicating liquor or drug, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way; or

F. While loitering, prowling, or wandering upon the private property of another, in the nighttime, peeks in the door or window of any inhabited building or structure located thereon, without visible or lawful purpose.

G. This section does not apply to constitutionally-protected activity. If an individual claims to have been engaged in a constitutionally-protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

9.16.070 - Damaging—Property—Generally.

No person shall carelessly, recklessly or intentionally damage the tangible property of another. ~~in any way deface the windows, walls or other parts of buildings, whether occupied or unoccupied, within the city nor in any manner injure the awnings, awning posts, fences, enclosures or other improvements of any kind or character whatsoever, either private or public property, nor fill up, obstruct or otherwise damage any ditch or clog any intakes or pipes in the storm sewer system constructed in the city norinjure, mark or deface any tress, flowers or shrubs.~~

**Section 2. This ordinance shall become effective after passage, approval and publication.**

PASSED AND APPROVED THIS _____ DAY OF _____, 2016.

_____
David A. Paulekas, Mayor and President
of the City Council of the City of
Laramie, Wyoming

ATTEST:

_____
Angie Johnson
City Clerk

| | |
|---|---|
| First Reading | August 15, 2016 |
| Second Reading | August 6, 2016 |
| Third Reading | September 20, 2016 |

Duly published in the Laramie Daily Boomerang this _____ day of _____, 2016.

**CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016**

| | |
|---|---|
| | **Agenda Item:** Orig. Ordinance - 2nd Reading<br>**Title:** Original Ordinance 1952 to add section 10.36.330; amend sections 10.36.010, 10.36.020, 10.36.080, 10.36.090, 10.36.120, 10.36.130, 10.36.140, 10.36.150, 10.36.220, 10.36.280, 10.36.300, 10.36.310, 10.36.350; delete Sections 10.36.050, 10.36.160, 10.36.170, 10.36.180, 10.36.190, 10.36.200 of the Laramie Municipal Code. Second Reading |

**Recommended Council MOTION:**

1. I move to approve Original Ordinance 1952 to add, amend and delete various sections within Chapter 10.36 of the Laramie Municipal Code and set it for third reading on September 6, 2016.

**Administrative or Policy Goal:**

Clean up parking code.

**Background:**

During a work session last year we discussed various changes to the parking code. The substantive changes are to allow RV/trailer parking in front of an owner or occupant's home, establish no parking within 20 feet of an intersection, and to allow minor permits to be handled by public works rather than by the city manager or traffic commission. The rest of the changes are cleaning up language, deleting duplicitous provisions etc….

Second Reading – I made some edits for second reading which I will discuss.

**Responsible Staff:** **City Attorney**

Future dates are subject to change

| | |
|---|---|
| Introduction/1st Reading | 8/2/2016 |
| 2nd Reading | 8/15/2016 |
| 3rd Reading | 9/6/2016 |
| Public Hearing | 8/15/2016 |

ORIGINAL ORDINANCE NO. 1952

INTRODUCED BY: Summerville

ENROLLED ORDINANCE NO.

AN ORDINANCE TO ADD SECTION 10.36.330; AMEND SECTIONS 10.36.010, 10.36.020, 10.36.080, 10.36.090, 10.36.120, 10.36.130, 10.36.140, 10.36.150, 10.36.220, 10.36.280, 10.36.300, 10.36.310, 10.36.350; DELETE SECTIONS 10.36.060, 10.36.160, 10.36.170, 10.36.180, 10.36.190, 10.36.200 OF THE LARAMIE MUNICIPAL CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LARAMIE, WYOMING that:

**Section 1. Laramie Municipal Code Section 10.36.330 shall be added to state as follows:**

10.36.330 - Recreational vehicle, trailer- Parking permitted in certain places.

In addition to the limitations specified in this chapter, recreational vehicles and trailers may be parked in the street only if the area in which any such vehicle is parked is immediately and entirely adjacent to real property which is owned by or occupied by the owner of the recreational vehicle or trailer.

**Section 2. Laramie Municipal Code Sections 10.36.010, 10.36.020, 10.36.080, 10.36.090, 10.36.120, 10.36.130, 10.36.140, 10.36.150, 10.36.220, 10.36.280, 10.36.300, and 10.36.310, 10.36.350 shall be amended as follows:**

10.36.010 - Definitions.

For the purposes of this chapter the following definitions shall prevail unless the context of the chapter clearly requires otherwise:

"Corner" means the point at which the extension of the curblines of any intersecting streets meet; provided, that where curbs are not in existence, a corner shall be any point at which the extension of a proposed curbline for any intersecting streets meet.

"Crosswalk" means:

1. That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;
2. Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

"Curb" means any type of constructed barrier marking the outside boundary of the street; provided, that in the absence of a constructed barrier, it means the curbline as would be constructed pursuant to Section 16.12.030 of this code.

"Intersection" means the area beyond a stop sign or yield sign or, if none, then the area embraced within the prolongation or connection of the lateral curblines or, if none, then the lateral boundary lines of streets which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

"Parking zones" mean zones, areas or streets established or designated by the official traffic commission of the city as those within or upon which parking of vehicles shall be controlled, regulated and inspected with the aid of time limits.

"Recreational vehicle" means a vehicular unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are travel trailer, camping trailer, truck camper and motor home.

"Semi-trailer" means a trailer which is designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight or that of its load rests upon or is carried by another vehicle. "Semi-trailer" shall not include any camper designed to be carried in or upon a truck or other motor vehicle, and any house trailer, as defined by Wyo. Stat. Ann. Section 31-5-102(a)(xv) (or as amended), if so designed or constructed that some part of its weight or that of its load rests upon or is carried by another vehicle.

“Trailer" means any structure that is designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight or that of its load rests upon or is carried by another vehicle. "Trailer" shall not include any camp trailer, tent trailer, or house trailer, as defined by Wyo. Stat. Ann. Section 31-5-102(a)(xv) (or as amended), if so designed or constructed that no part of its weight or that of its load rests upon or is carried by another vehicle.

"Vehicle" means every device, in, upon, or by which any person or property may be transported or drawn upon a street or highway, and includes, but is not limited to, motor vehicles as defined in Section 10.16.015 of this code.

(Prior code § 23-22(a); Ord. 542 § 1 (part), 1978; Ord. 680 § 1 (part), 1981; Ord. 1436 § 2, 2004)

10.36.020 - Generally—Where prohibited.

It is unlawful for the operator of a vehicle to stop, stand or park a motor vehicle at any time at any of the following places, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer:

A. Within an intersection;

B. Between a safety zone as designated by the traffic commission, and the adjacent curb or within twenty feet of a point on the curb immediately opposite the end of a safety zone, unless the official traffic commission indicates a different length by signs;

C. Upon a crosswalk;

D. Within fifteen feet of a fire hydrant;

E. Within fifteen feet of the driveway entrance to any fire station;

F. Within the outside portion of a private or public driveway or alleyway;

G. Upon a sidewalk or upon public property between the curbline and property line ~~in the area between the curb and property line~~;

H. Upon driveways of commercial garages, filling stations and service stations or within twelve feet of the gasoline pumps of any such place of business other than while such vehicle is being serviced in the normal course of business by such places of business;

I. Adjacent to any curb painted yellow, or adjacent to any curb displaying a "No Parking" sign either of which has been designated by action of the traffic commission.

J. Within twenty feet upon the approach to any stop sign, traffic-control signal or flashing beacon located at the side of a roadway.

K. In the front yard of any property within the City, unless otherwise allowed by the Unified Development Code.

(Prior code § 23-22(b); Ord. 542 § 1 (part), 1978; Ord. 680 § 1 (part), 1981)

10.36.080 - Passenger and loading zones—Determination authority.

The city public works director or designeecity manager or designee ~~official traffic commission~~ shall have authority to determine the location of passenger zones and loading zones, as described in this chapter, and shall erect and maintain appropriate signs indicating the same.

(Prior code § 23-25(c))

10.36.090 - Buses and taxicabs prohibited from parking except at stands.

It is unlawful for the operator of any bus, transportation network vehicle or taxicab, ~~hackney or dray~~ to stand or park upon any street in any business district at any place other than at a bus stop, or transportation network company vehicle/taxicab stand ~~or hackney or dray stand respectively~~; except, that this section shall not prevent the operator of any such vehicle from temporarily stopping in accordance with other parking regulations at any place for the purpose of and while actually engaged in loading or unloading passengers.

(Prior code § 23-26)

10.36.120 - Limited parking zone—Restrictions.

A. The ~~official traffic commission~~ city public works directorcity manager or designee shall designate streets and areas within the limited parking zone where parked vehicles shall be prohibited between the hours of two a.m. and six a.m. on all Mondays on streets which run north-south; and between two a.m. and six a.m. on all Tuesdays on streets which run east-west. The ~~city manager or his~~ city public works director or designeecity manager or designee shall install signs along the designated streets in such form and at such locations as in ~~his~~ the city public works director or designeecity manager or designee's judgment may be necessary, stating the hours and days when parking is prohibited.

B. 1. When the ~~city manager or his~~ city public works director or designeecity manager or designee determines that snow and ice should be removed from streets and public parking areas within the limited parking zone, ~~he~~ the public works director or designee may direct that no vehicle may be parked within all or part of the limited parking zone between the hours of two a.m. and six a.m. to accommodate snow removal.

2. The ~~city manager or his~~ city public works director or designeecity manager or designee shall post signs in the limited parking area, indicating the extent of the snow removal zone and that violators will be towed.

3. The ~~city manager or his~~ city public works director or designeecity manager or designee shall give notice of the restriction not less than fourteen hours before it begins. Notice is effective when given by local radio or newspaper.

4. If proper notice is given, any unattended vehicle found parked or standing on a public street or public parking lot within the designated area between two a.m. and six a.m. may be towed and stored at the owner's expense.

5. This subsection is in addition to Section 10.36.220, Snow emergency routes, which is not modified.

(Prior code § 23-27(b); Ord. 1202 § 1, 1997)

10.36.130 - Limited parking zone—Violation—Prohibited—Towing.

No person shall park any vehicle in violation of the provisions of Sections 10.36.070, 10.36.110 or 10.36.120 of this chapter or in violation of a designation of the official traffic commission under those provisions. Whenever any vehicle, except an emergency vehicle responding to an emergency, is parked or standing, attended or unattended, in violation of this section, the ~~city manager or his~~ city public works director or designeecity manager or designee may have the vehicle towed and stored, both at the owner's expense. Notice given by sign containing the international pictorial sign for a tow away zone or stating "tow away zone" or the equivalent is sufficient notice that vehicles will be removed.

(Prior code § 23-27(c); Ord. 1132 § 1, 1994)

10.36.140 - Parking parallel to curb—Exceptions.

Except when necessary in obedience to traffic regulations or traffic signs or signals, the operator of a vehicle shall not stop, stand or park such vehicle in a roadway other than parallel with the edge of the roadway, headed in the direction of traffic, and with the curbside wheels of the vehicle within one foot of the edge of the roadway and within the area designated by the markings on the roadway, except as provided in the following subsections:

A. Upon those streets which have been marked or signed for angle parking, vehicles shall be parked at the angle to the curb indicated by such marks or signs.

B. The ~~official traffic commission~~ city public works director is authorized to issue, to any owner of a vehicle used to transport merchandise or materials, a special permit, renewable annually, and to state therein the terms and conditions thereof, allowing the operator of such vehicle the privilege of loading and unloading while the vehicle is backed against a curb, if in the opinion of the city public works director, such privilege is reasonably necessary in the conduct of the owner's business and will not seriously interfere with traffic. In places where and at hours when stopping for the loading or unloading of merchandise or materials is permitted, vehicles used for the transportation of merchandise or materials may back into the curb to take on or discharge loads, when the owner of such vehicle holds a permit granting him such special privilege. Such permit shall be either in the possession of the operator or on the vehicle at the time such vehicle is backed against the curb to take on or discharge a load, and it is unlawful for any owner or operator to violate any of the ~~special~~ terms or conditions of any such special permit.

C. On a street where there is a perceptible grade, a vehicle, when stopped or left unattended, shall have a front wheel or a rear wheel turned at an angle against a curb.

(Prior code § 23-28)

10.36.150 - Parking oversize trucks—Prohibited.

~~In order to promote the safety and general welfare of the citizens of the city, every truck of one and one-half ton capacity and larger, every tractor, every trailer of more than one-fourth-ton capacity and all semitrailers shall park in the business district off of arterial streets and streets followed by United States and state highways and on no other streets within the city.~~

No truck, trailer, semitrailer, or commercial vehicle shall be parked on any street, avenue, boulevard, or alley in any residential district of the city for a period longer than one hour; provided, however, that unless such vehicles are actively loading or unloading cargo may be parked on the streets, avenues, boulevards or alleys long enough to complete their loading or unloading; and provided further, that such restrictions shall not apply to any truck in use on any repair, maintenance, or construction project in progress on any such street, avenue, boulevard or alley, nor shall it apply when I-870 is closed.. Unless written permission is given by the city public works director or designeecity manager or designee, no semi-truck trailer can be parked on any street, avenue, boulevard or alley in any district of the city while said semi-truck trailer is disconnected from the tractor; nor shall any truck, trailer, semi-trailer, or other commercial vehicle be parked on any street, avenue, boulevard or alley in any district of the city between the

hours of 10:00 p.m. and 6:00 a.m. ”Truck” and "Commercial vehicle" as designated in this Section shall not include vehicles rated ~~as less than~~ one-ton or less.

(Prior code § 23-29 (part))

10.36.220 - Snow emergency routes.

A. Whenever the ~~city manager~~ city public works director or designeecity manager or designee determines that due to snow, sleet, hail, freezing rain, or a forecast by the United States Weather Bureau of weather conditions that so warrant, he is authorized to declare a snow emergency.

B. The ~~city manager~~ city public works director or designeecity manager or designee shall provide announcements to local radio stations declaring a snow emergency. There shall be included in such announcements the time and date that parking prohibitions become effective pursuant to this section. When feasible, such announcements shall be disseminated to the local newspaper.

C. No vehicle may be parked or left standing on any designated snow emergency route during a snow emergency. This section does not apply to a fire department, law enforcement, utility department or public utility company, vehicle or an ambulance, responding to an emergency.

D. The city council may from time to time adopt and amend a snow and ice control plan, designating snow emergency routes, creating standards for declaration of a snow emergency, designating the priorities for snow removal, and such other purposes as council shall determine. The snow and ice control plan is a public document which may be examined by any interested person at city hall upon request. On each street or portion of street upon which parking is otherwise permitted and which is designated a snow emergency route, the city public works director or designeecity manager or designee shall cause to be posted, at reasonable intervals, traffic signs indicating that the street or portion of street has been designated as a snow emergency route and that vehicles may be towed. The signs may use words, international symbols, or both.

E. Whenever any vehicle, except an emergency vehicle responding to an emergency, is found parked or standing, attended or unattended, upon a snow emergency route during a snow emergency, the ~~city manager~~ city public works director or designeecity manager or designee shall have the vehicle towed from the snow emergency route and stored, both at the owner's expense.

F. Once declared, a snow emergency exists until the city manager declares it terminated. Notice of termination of a snow emergency shall be given by the same means as the announcement of the snow emergency.

G. All authority granted the ~~city manager~~ city public works director or designeecity manager or designee in this ordinance may be exercised by the manager or any person designated by the ~~manager~~ city public works director or designeecity manager or designee.

H. The city council finds that notice of the location of snow emergency routes given by the snow and ice control plan and signs, and the declaration of snow emergencies given by

announcement telephoned to local radio stations, are sufficient to notify all persons of the conduct prohibited by the ordinance codified in this section.

10.36.250 - Diagonal spaces—Parking procedure.

In any diagonal parking space the vehicle shall be headed in to the space and within the lines confining the parking space, with one tire within one foot of the curb. Backing into a space shall be prohibited, unless established as a back in diagonal parking zone.

10.36.280 - Parking prohibition for funerals and parades—Authority.

The ~~city manager~~ city public works director or designeecity manager or designee is authorized to prohibit parking by all vehicles in parking zones in an area and during the time set aside by the city manager for the purpose of funerals and parades.

(Ord. 1436 § 6 (part), 2004)

10.36.300 - Establishment authority.

On any property in which the city owns an estate and which is made available to the city manager for such purposes by the city council, the ~~city manager~~ city public works director or designeecity manager or designee is authorized to establish off-street unmetered parking lots or areas.

(Ord. 1436 § 6 (part), 2004)

10.36.310 - Layout of lots.

Off-street parking lots shall be laid out by the ~~city manager~~ city public works director or designeecity manager or designee for either angle, perpendicular or parallel parking of vehicles, whichever system best utilizes the available area, but in any case physical installations or markings shall clearly indicate the method of parking required.

10.36.330 - Recreational vehicle, trailer- Parking permitted in certain places.

In addition to the limitations specified in this chapter, recreational vehicles and trailers may be parked in the street only if the area in which any such vehicle is parked is immediately and entirely adjacent to real property which is owned and occupied by the owner of the recreational vehicle or trailer. No more than one recreational vehicle or trailer may be parked in the street per residential property owner.

10.36.350 - Violation—Fine—Late fees.

A. It shall be the duty of the chief of police or a person designated by the chief of police to keep a record of all violations of this chapter and to report:

   1. The state license number of such vehicle; and

   2. Any other facts, a knowledge of which is necessary to an understanding of the circumstances attending such violation.

B. The chief of police or other person designated by the chief of police shall attach to each such vehicle a notice that it has been parked in violation of this chapter and instructing the owner or operator to report in regard to such violation.

C. The fines for violations of this chapter are enumerated in the below chart. ~~The owner or operator may, within five business days after the time when such notice was attached to such vehicle, pay to the city traffic clerk's office in full satisfaction of such violation, the amount listed for the respective violation, which shall be remitted to the city treasurer. In the event the owner or operator receiving the notice above referred to fails to respond within such five-day period, as above provided, a warning of issuance of a warrant shall be mailed to the registered owner of the vehicle, where possible, advising owner or operator that if payment is not made within ten days of the mailing of such warning of issuance of a warrant, a warrant shall issue; after the initial five-day period the fine shall be increased to the respective amount listed in the below chart for each violation; but in the event the owner or operator fails to appear within the ten-day period announced in the warning of issuance of warrant, a warrant shall issue against owner or operator for the violation, and upon satisfactory proof that the violation was committed, owner or operator shall be fined the respective sum listed in the below chart in addition to a warrant fee assessed by the court, but in any case not more than seven hundred fifty dollars for each violation.~~ With respect to Sections 10.36.130, 10.36.270, and 10.46.090 of this code, the owner or operator shall not be fined less than the amount listed in the below chart.

D. Nonreceipt of any notice of violation ~~or warning of issuance of warrant~~ shall not constitute a defense to a violation of this chapter.

E. The chief of police or other person designated by the chief of police may place a chalk or other removable mark upon the tire of any vehicle parked upon the public street or in a public parking lot, for the purpose of determining how long the vehicle remains parked in one location. The chief of police or designee may use other technology available to monitor vehicle parking times that may include but are not limited to cameras or license plate readers.

1. It is unlawful for any person to deface or remove, or to attempt to deface or remove, such chalk or other mark.

2. Any person who defaces or removes or attempts to deface or remove such mark shall upon conviction be fined not less than twenty dollars.

| Violation | Code | Within 5 days | After 5 days | After 15 days |
|---|---|---|---|---|
| Overtime parking downtown | 10.36.110 | $ 10.00 | $ 20.00 | $30.00 ~~+ warrant fee~~ |
| Parking in limited parking zone | 10.36.130 | 25.00 | 25.00 | $25.00 ~~+ warrant fee~~ |
| Overtime parking elsewhere | 10.36.230 | 10.00 | 20.00 | $30.00 ~~+ warrant fee~~ |
| Handicapped parking | 10.36.270 | 100.00 | 125.00 | $150.00 ~~+ warrant fee~~ |

| | | | | |
|---|---|---|---|---|
| Residential permit parking | 10.46.080 | 50.00 | 50.00 | $50.00 ~~+ warrant fee~~ |
| All other violations | | 10.00 | 20.00 | $30.00 ~~+ warrant fee~~ |

(Ord. 1436 § 8, 2004)

**Section 3. Laramie Municipal Code Sections 10.36.050, 10.36.160, 10.36.170, 10.36.180, 10.36.190, and 10.36.200 shall be deleted.**

**Section 4. This ordinance shall become effective after passage, approval and publication.**

PASSED AND APPROVED THIS _____ DAY OF _____, 2016.

_____
David A. Paulekas, Mayor and President
of the City Council of the City of
Laramie, Wyoming

ATTEST:

_____
Angie Johnson
City Clerk

First Reading August 2, 2016
Second Reading August 16, 2016
Third Reading September 6, 2016

Duly published in the Laramie Daily Boomerang this _____ day of _____, 2016.

# CITY OF LARAMIE COUNCIL REGULAR MEETING August 15, 2016

| | |
|---|---|
| | **Agenda Item: Resolution**<br><br>**Title: Resolution No. to the Wyoming Legislature's Interim Joint Revenue Committee advocating for the support of the preservation of the excise tax on electricity produced by wind at its current level and opposing any increase in such excise tax, in order to encourage wind development and to realize the resulting future direct and indirect revenues to the State of Wyoming, Wyoming Counties and Wyoming Municipalities from wind development and ancillary wind development businesses, thereby providing long term and sustainable benefits to local communities** |

**Recommended Council MOTION:**

I move to approve Resolution No. 2016- _____ to the Wyoming Legislature's Interim Joint Revenue Committee advocating for the support of the preservation of the excise tax on electricity produced by wind at its current level and opposing any increase in such excise tax, in order to encourage wind development and to realize the resulting future direct and indirect revenues to the State of Wyoming, Wyoming Counties and Wyoming Municipalities from wind development and ancillary wind development businesses, thereby providing long term and sustainable benefits to local communities and authorize the Mayor and City Clerk to sign.

**Administrative or Policy Goal:**

From Council's Goals adopted April 19, 2016:
Pursue economic development at Cirrus Sky Technology Park and throughout the community

**Background:**

The Wyoming Department of Environmental Quality's Industrial Siting Division issued an Industrial Siting Permit to the Chokecherry and Sierra Madre Wind Project (CCSM Project) in 2014. While this project is in Carbon County, south of the City of Rawlins, Albany County and the City of Laramie were parties to the Industrial Siting process as Albany County received a 3% share of impact assistance funds related to the project.

Additionally, Intermountain Wind, LLC is proposing a wind project in Wyoming, the Boswell Springs project (Boswell project) with up to 170 turbines, to be located in Albany County. This project will be submitted to the Industrial Siting Division soon.

The Wyoming Legislature's 2009 Wind Task Force, after comprehensively studying taxation of the wind energy industry recommended that any proposed new tax be imposed in a way so as to encourage the diversification of Wyoming's economy and so as not to force the wind energy industry out of Wyoming. The Task Force recommended that any tax burden proposed be calculated to maintain some competitive advantage for Wyoming's wind energy producers as they deliver electricity to the market. With the passage of House Bill 101–HEA0018 in 2010, the Wyoming Legislature imposed an excise tax of $1.00 to be paid on every megawatt-hour of electricity generated by wind, after a turbine has been operating three years – making Wyoming the only state that imposes an excise tax on electricity created by wind.

In 2009, the Wyoming Legislature repealed the sales and use tax exemption for wind energy as of January 1, 2012. The CCSM Project's approximately $232.4 million and the Boswell Project's approximately $24.8 million in revenue yielded from these taxes will be distributed to the State General Fund, to all 23 Wyoming counties, and to incorporated municipalities including the City of Laramie, making additional revenue available to address local funding requirements.

The Interim Joint Revenue Committee's May 11, 2016, decision to draft a bill that would further increase taxes on wind energy projects to an unspecified level. This proposed bill would likely increase the risks associated with developing wind projects in Wyoming and may well put the economic benefits and substantial tax revenues to be received all wind projects at risk.

Concern at this time for local governments is that an increase in the Wind Excise Tax would slow development of any wind projects thus negatively impacting a source of revenue to the State of Wyoming and local government. The purpose of the resolution is to support continuation of the current tax and oppose any increase to the tax at this time.

The proposed Boswell Springs project planned by Intermountain Wind, LLC possibly could be affected by this Wind Excise Tax increase. Paul Martin, President of Intermountain Wind, provided the following information via an email:

> *During construction, an estimated $2.5 million in sales and use taxes would stem from the purchase of construction materials within the state. An additional $22.3 million in use taxes would result from the purchase of the wind turbines that would be delivered to the site. Between $110,000 and $240,000 in lodging taxes would be collected during the period of construction in Albany and Carbon counties, from temporary lodging of non-local workers.*
>
> *During operations, an estimated $3.3 to $4.6 million in annual property taxes would be paid to Albany County taxing jurisdictions for the first year of operations. Property taxes would be paid over a 30-year expected life of the project, but decrease over time due to depreciation and decreased future income stream from the project. Over $1 million per year in wind production tax collections occur after first three years of production (the project would be exempt for the first three years), with 60 percent of the tax collected distributed to Albany County.*

While a much smaller project than the CCSM project, the possible loss or delay in receipt of potential revenue is significant to Albany County and the City of Laramie.

The Carbon County Commission, City of Rawlins, Albany County Commission and other entities have passes resolutions in support of preserving the current tax and opposing any increases at this time. The Wyoming Association of Municipalities also passed a resolution at the conference in June 2016 in support of preserving the current tax and opposing any increases at this time. Those resolutions are included for review.

Staff recognizes that this is a policy decision of the City Council and the Resolution is being presented at the request of the City of Rawlins in concert with the Power Company of Wyoming, the developer of the CCSM project.

**Legal/Statutory Authority:**

## Responsible Staff:

David M Derragon 721-5304

Attachments: City of Laramie proposed Resolution No. 2016-_____; WAM Resolution No. 16-07; City of Rawlins Res. No. 06C-2016; Carbon County Commissioners Res. No. 216-33; Letter – Power Company of Wyoming;

R E S O L U T I O N  N O. _____

A RESOLUTION TO THE WYOMING LEGISLATURE'S INTERIM JOINT REVENUE COMMITTEE ADVOCATING FOR THE SUPPORT OF THE PRESERVATION OF THE EXCISE TAX ON ELECTRICITY PRODUCED BY WIND AT ITS CURRENT LEVEL AND OPPOSING ANY INCREASE IN SUCH EXCISE TAX, IN ORDER TO ENCOURAGE WIND DEVELOPMENT AND TO REALIZE THE RESULTING FUTURE DIRECT AND INDIRECT REVENUES TO THE STATE OF WYOMING, WYOMING COUNTIES AND WYOMING MUNICIPALITIES FROM WIND DEVELOPMENT AND ANCILLARY WIND DEVELOPMENT BUSINESSES, THEREBY PROVIDING LONG TERM AND SUSTAINABLE BENEFITS TO LOCAL COMMUNITIES.

***WHEREAS*****,** currently wind energy development in Wyoming provides economic benefits including job creation, fostering development of ancillary businesses and services, and contributing to state and local governments through three forms of tax revenues: sales and use tax, property tax and an excise tax on electricity produced by wind; and

***WHEREAS*****,** the largest wind project proposed to be built in Wyoming, the Chokecherry and Sierra Madre Wind Energy Project (CCSM Project) with up to 1,000 turbines, would be located in Carbon County; and

***WHEREAS***, Intermountain Wind, LLC is proposing a wind project in Wyoming, the Boswell Springs project (Boswell project) with up to 170 turbines to be located in Albany County, home to the City of Laramie; and

***WHEREAS*****,** in 2009, the Wyoming Legislature repealed the sales and use tax exemption for wind energy as of January 1, 2012. The CCSM Project's approximately $232.4 million and the Boswell Project's approximately $24.8 million in revenue yielded from these taxes will be distributed to the State General Fund, to all 23 Wyoming counties, and to incorporated municipalities including the **City of Laramie**, making additional revenue available to address local funding requirements; and

***WHEREAS*****,** the Wyoming Legislature's 2009 Wind Task Force, after comprehensively studying taxation of the wind energy industry recommended that any proposed new tax be imposed in a way so as to encourage the diversification of Wyoming's economy and so as not to force the wind energy industry out of Wyoming. The Task Force recommended that any tax burden proposed be calculated to maintain some competitive advantage for Wyoming's wind energy producers as they deliver electricity to the market; and

***WHEREAS*****,** with the passage of House Bill 101-HEA0018 in 2010, the Wyoming Legislature imposed an excise tax of $1.00 to be paid on every megawatt-hour of electricity generated by wind, after a turbine has been operating three years - making Wyoming the only state that imposes an excise tax on electricity created by wind. This results in ongoing tax revenues of approximately $10.5 million annually from the CCSM Project, with these revenues to be distributed 60% to all of the counties where wind energy projects are located and 40% to the state general fund; and

***WHEREAS*****,** the CCSM Project represents an estimated $5 billion capital investment in Carbon County, significantly boosting the county's total assessed valuation; an estimated 114 new operations jobs, making the wind farm one of the county's largest private employers; and an estimated state and local tax total of nearly $800 million in tax revenues due to these three tax streams paid over the initial project life; and

***WHEREAS,*** the Wyoming Department of Environmental Quality's Industrial Siting Division issued an Industrial Siting Permit to the CCSM Project in 2014, following two days of public hearings in which Albany County, Sweetwater County, Carbon County, and municipalities that were parties to the proceeding including the **City of Laramie** testified in support of the CCSM Project permit, and in which the permit was approved 7-0 by the Wyoming Industrial Siting Council; and

***WHEREAS*****,** the Industrial Siting Council determined that impact assistance funds related to the CCSM Project would be allocated to affected government entities in the manner to which they all agreed: 3% to Albany County, 3% to Sweetwater County, and 94% to Carbon County. The total forecasted average quarterly impact assistance payment over 29 quarters is $1.67 million, and the total forecasted yearly impact assistance payment is $6.05 million, calculated as described in Wyoming Statute §39-15-111.

***WHEREAS,*** local governments are experiencing sharp revenue shortfalls, as evidenced by the **City of Laramie's** 2015-2016 fiscal year decrease in sales and use tax revenues, putting Laramie's sales and use tax revenues at its lowest level in more than 10 years; and

***WHEREAS****,* sharing tax revenues from wind power development and production with Wyoming municipalities and counties helps to further diversify our economy and provide a new sustainable and predictable revenue stream for Wyoming; and

***WHEREAS*****,** the Interim Joint Revenue Committee's May 11, 2016, decision to draft a bill that would further increase taxes on wind energy projects to an unspecified level would increase the risks associated with developing wind projects in Wyoming and may well put the economic benefits and substantial tax revenues to be received from the CCSM Project at risk.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LARAMIE, ALBANY COUNTY, WYOMING,** we request that the Wyoming Legislature's Interim Joint Revenue Committee preserve the excise tax on electricity produced by wind at its current level and cease consideration of any bills that would increase the excise tax in order to encourage wind development and to realize the resulting future direct and indirect revenues to the state of Wyoming, Wyoming counties and Wyoming municipalities from wind development and ancillary wind development businesses, thereby providing economic diversity, long term and sustainable benefits to all Wyoming cities and towns.

**PASSED, APPROVED, AND ADOPTED** this 15th day of August, 2016.

CITY OF LARAMIE, a Wyoming
Municipal Corporation

_____
David A. Paulekas, Mayor

ATTEST:

_____
Angie Johnson, City Clerk

The Anschutz Corporation
555 Seventeenth Street
Suite 2400
Denver, CO 80202
303.298.1000

***VIA EMAIL DELIVERY***

May 18, 2016

Wyoming Legislature
Interim Joint Revenue Committee
Senator R. Ray Peterson, Co-Chairman
Representative Michael Madden, Co-Chairman
213 State Capitol
Cheyenne, WY 82002
Ray.Peterson@wyoleg.gov
Mike.Madden@wyoleg.gov

Dave Gruver, Director
Wyoming Legislative Service Office
213 State Capitol
Cheyenne, WY 82002
Dave.Gruver@wyoleg.gov
lso@wyoleg.gov

Dear Chairman Peterson, Chairman Madden, Revenue Committee Members and Mr. Gruver:

This letter follows-up on my previous letters dated May 6 and 10 regarding the Wind Generation Tax that the Interim Joint Revenue Committee (the Committee) discussed on May 11. After I sent a letter discussing the presentation prepared by the Legislative Service Office called "Taxation of Wind, Coal, and Natural Gas," which we accessed from the committee website on May 9 (the Original LSO Presentation), the LSO updated the presentation (the Updated LSO Presentation). Therefore, this letter updates the estimates of the total tax revenues that Wyoming receives from coal used in the previous letter, reflecting the reduced estimates presented in the Updated LSO Presentation. For the reader's convenience, this letter includes the Wind data that we provided in the May 10 letter, now presented with the Updated LSO Presentation information, as well as attachments with the summary pages from both the Original LSO Presentation and the Updated LSO Presentation.

- Coal (8,000 BTU @ $15/ton) - The Original LSO Presentation estimated that from Coal (8,000 BTU @ $15/ton) Wyoming receives total tax revenues, or the total taxes paid to Wyoming, from all forms of taxes is **$1.98 MWH**. *See Attachment A, Summary Pages Original LSO Presentation.* The Updated LSO Presentation reduced the estimated total tax revenues that Wyoming receives from all forms of taxes to **$1.77 MWH**. *See Attachment B, Summary Pages Updated LSO Presentation.* Of this amount, $0.95 MWH are Wyoming-based taxes, in other words, taxes imposed on the resource under Wyoming tax laws.

- Coal (10,000 BTU @ $30/ton) - The Original LSO Presentation estimated that from Coal (10,000 BTU @ $30/ton) Wyoming receives total tax revenues, or the total taxes paid to Wyoming, from all forms of taxes is **$2.86 MWH**. *See Attachment A, Summary Pages Original LSO Presentation.* The Updated LSO Presentation reduced the estimated total tax revenues that Wyoming receives from all forms of taxes to **$2.69 MWH**. *See Attachment B, Summary Pages Updated LSO Presentation.* Of this amount, $1.54 MWH are Wyoming-based taxes, or the taxes imposed on the resource via Wyoming tax laws.

With the Committee's decision to draft bills regarding raising taxes on Wind, it is proceeding down a path that will make it impossible for the Chokecherry and Sierra Madre Wind Energy Project (CCSM Project) to compete on price with other wind or solar projects – like those in New Mexico who are not subject to any state generation tax. As I outlined in my previous letter, this is an important issue to The Anschutz Corporation, which has persevered for nine years developing the CCSM Project in Carbon County, Wyoming through its affiliate Power Company of Wyoming LLC (PCW).
The Committee's stated purpose is to be fair and equitable in taxing Wyoming's resources. Therefore, it is critical that the Committee rely upon accurate and complete information in its decision making. However, neither the Original LSO Presentation nor the Updated LSO Presentation includes all of the tax revenues that Wyoming receives from Wind. I urge the Committee to consider the information contained in this letter that supplements and clarifies taxation of wind generation in Wyoming and to confirm it with the Wyoming Department of Revenue.

Updated LSO Presentation

The LSO Presentation purports to compare taxes imposed on coal, gas and wind per megawatt-hour (MWH). In order to make the comparison, the LSO represented that it considered all of the various types of "taxes" paid by coal and gas and then converted the taxes imposed to a per MWH basis. For coal and gas, these taxes included but are not limited to, Federal Mineral Royalties, Severance Tax, Ad Valorem Tax and Coal Lease Bonuses.

For wind, however, the LSO considered only the Wind Generation Tax. The LSO failed to consider two other significant Wyoming taxes paid by wind – the Sales and Use Tax and the Ad Valorem Tax. In addition, the LSO failed to consider the Federal Royalties paid by wind. Therefore, the LSO's summary comparison for each resource of: (1) the total tax revenues paid to or received by Wyoming from all forms of taxes; (2) the portion of those revenues attributable to Wyoming imposed or Wyoming-based taxes; and (3) the State level allocation of tax revenues, is highly misleading. PCW submits the following additional data based upon the application of Wyoming-based taxes and federal royalties that will be paid by the CCSM Project converted to a per MWH basis.

All Taxes and Royalties Paid by Wind

PCW's Chokecherry and Sierra Madre Wind Energy Project with 1,000 turbines is anticipated to produce about **10.5 million MWH of electricity every year**. Based upon a full build-out, PCW estimated the total taxes and royalties paid over a 20-year period and then calculated a levelized per MWH rate for each category based upon production of 10.5 million MWH per year. Generation of 10.5 million MWH per year is the same estimate PCW provided to the Wyoming Industrial Siting Council in its application for a state permit. The Sales and Use Tax and Ad Valorem Tax estimates are also consistent with those set out in PCW's ISC application.[1]

[1] The wind generation tax of $1.00 per MWH begins after a turbine is operational for three years. The $210 million estimate represents payment of the generation tax for 20 years and is consistent with the LSO Presentation that cited $1.00 per MWH.

| CCSM Wind Project | Taxes & Fees ($MM) | Taxes & Fees ($/MWh) |
|---|---|---|
| Sales and Use Taxes (20 yrs) | 232.4 | $1.11 |
| Ad Valorem Property Tax - Construction (20 yrs) | 106.4 | $0.51 |
| Ad Valorem Property Tax – Operations (20 yrs) | 271.1 | $1.29 |
| WY Wind Excise Tax (20 yrs) | 210.0 | $1.00 |
| **Total Tax Received by WY and WY Based Taxes** | **819.9** | **$3.91** |
| BLM Royalties – Low Case (20 yrs) | 179.0 | $0.85 |
| **Total Taxes & Fees Low Case** | **998.9** | **$4.76** |

Both the Original and Updated LSO Presentation's Summary page concluded that the tax burden on wind is only $1.00 per MWH of electricity produced. *See Attachment A and Attachment B.* In fact, the tax burden on wind when considering all taxes and royalties paid is $4.76 MWH. The LSO underestimated the total taxes paid on wind by $3.76 MWH. **The total tax revenues received by Wyoming from Wind are $3.91 MWH** because Wyoming does not receive a portion of the Federal Royalties that PCW will pay. Nonetheless, the LSO underestimated the total tax revenues received by Wyoming from Wind by $2.91 MWH. The portion of the total tax revenues that are attributable to Wyoming-based taxes is $3.91 or 100%.

Note that the total of $3.91 per MWH does not consider the approximately $23.4 million in fees that the CCSM Project will pay to the state of Wyoming in royalties due to siting turbines on state lands, that is, another $0.09 per MWH royalty.

Comparison of Wind, Coal and Gas

The Updated LSO Presentation's Summary (*See Attachment B*) sets out the total tax revenues received by Wyoming per MWH and the portion that is derived from Wyoming-based taxes for coal and gas. PCW has used the LSO's conclusions for the per MWH tax on coal and gas. Even the LSO, however, cautions that its tax estimates vary depending on price and depending on coal BTU. For this comparison, the LSO's conclusions for coal and gas are reproduced below and then compared to the numbers for wind set out above. *See Attachment B, Summary Page 1.*

| COAL – UPDATED LSO ANALYSIS[2] | WIND |
|---|---|
| For 8,000 BTU at $15.00/ton:<br>(a) All taxes paid to WY **$1.77** per MWH;<br>(b) WY based taxes are **$0.95** per MWH<br>(c) Total of all taxes paid not summarized | (a) All taxes paid to WY **$3.91** per MWH<br>(b) WY based taxes are **$3.91** per MWH<br>(c) All taxes paid **$4.76** per MWH |
| For 10,000 BTU at $30.00/ton<br>(a) All taxes paid to WY **$2.69** per MWH<br>(b) WY based taxes are **$1.54** per MWH<br>(c) Total of all taxes paid not summarized | (a) All taxes paid to WY **$3.91** per MWH<br>(b) WY based taxes are **$3.91** per MWH<br>(c) All taxes paid **$4.76** per MWH |
| **GAS – UPDATED LSO ANALYSIS[3]** | **WIND** |
| Price of $2.85 per MCF<br>(a) All taxes paid to WY **$3.49** per MWH<br>(b) WY based taxes are **$2.32** MWH<br>(c) Total of all taxes paid not summarized | (a) All taxes paid to WY **$3.91** per MWH<br>(b) WY based taxes are **$3.91** per MWH<br>(c) All taxes paid **$4.76** per MWH |

**The total taxes paid to Wyoming, or total tax revenues received by Wyoming, from Wind of $3.91 per MWH exceed those for coal and gas of $1.77 to $3.49 per MWH.** The Wyoming-based taxes paid by wind of $3.91 MWH exceed those for coal and gas of $0.95 to $2.32 per MWH. PCW recognizes that Wyoming does not receive any of the wind Federal Royalty while Wyoming does receive a significant portion of the Federal Mineral Royalty. However, even so, the per MWH revenues received by Wyoming from wind of $3.91 per MWH still exceeds the $1.77 to $3.49 per MWH paid by coal and gas.

The Updated LSO Presentation makes one further comparison between wind, coal and gas by comparing what it calls "State" level revenues. *See Attachment B, Summary Slide 2.* PCW's understanding of this category is that it represents tax revenues received at the state level, in other words, excluding or ignoring tax revenues that are distributed to Wyoming counties and other local Wyoming entities that are supported by taxes paid in Wyoming. Again, the LSO's conclusion that "State" level revenues from wind are only $0.40 per MWH is incorrect because the LSO failed to consider the Sales and Use Tax and the Ad Valorem Tax in its analysis. Looking only at wind tax allocated at the **State level**, wind actually pays a total of **$1.26 per MWH**. Therefore, the LSO underestimated the State level tax for wind by $0.86. However, wind also pays an additional county and local level tax of **$2.65 per MWH** for a total Wyoming tax of **$3.91 per MWH**. This is summarized in the following chart.

[2] *Attachment B, Summary Page 1.*
[3] *Attachment B, Summary Page 1.*

| CCSM Wind Project | Taxes & Fees ($MM) | Taxes & Fees ($/MWH) |
|---|---|---|
| WY State Allocations | | |
| Sales and Use Taxes | 106.9 | $0.51 |
| Ad Valorem Property Tax (19.4%) | 73.2 | $0.35 |
| WY Wind Excise Tax (40%) | 84.0 | $0.40 |
| **Total WY State Level Taxes** | **264.1** | **$1.26** |
| WY County Allocations | | |
| Sales and Use Taxes | 125.5 | $0.60 |
| Ad Valorem Property Tax | 304.3 | $1.45 |
| WY Wind Excise Tax (60%) | 126.0 | $0.60 |
| **Total WY County and Other Level Taxes** | **555.8** | **$2.65** |
| **Total WY Taxes Paid** | **819.9** | **$3.91** |

Based on the Updated LSO Presentation's estimates of the "State" level revenues for coal and gas ranging from a low of $0.89 to a high of $3.15, it is correct that "State" level revenues for wind are lower. But, the LSO Presentation did not address the level of taxes paid by coal and gas at the "County" and "Local" levels, while wind pays another $2.65 per MWH. The total tax revenues paid to or received by Wyoming per MWH from wind far exceed those paid by coal and gas. The difference that comes to light when comparing the wind, coal and gas tax regimes is better characterized as a difference in the allocation or distribution of the total tax revenues, not inequities in total Wyoming taxation (unless the Committee wants to address the fact that wind is paying higher total Wyoming taxes per MWH than either coal or gas).

In sum, if built, the CCSM Project will significantly contribute to Wyoming's economic growth and stability for decades. Based upon Wyoming's current tax policy, the wind industry will without question pay its "fair share" as compared to other resources. Indeed, the per MWH taxes for wind discussed above do not even reflect the additional tax revenues and economic growth that Wyoming will receive from the associated development of transmission, which will benefit other industries besides wind.

The Committee's stated goal is to "arrive at an equitable tax relative to other state energy sources for electricity generation." Equity requires the Committee reject another increase in the wind Generation Tax that could not only stall the CCSM Project but also quash any renewed interest by other developers in Wyoming's wind resource. Thank you for your consideration.

Sincerely,

William J. Miller
Senior Vice President, Energy and Land Resources

Attachments as Stated

# ATTACHMENT A

**Original Materials for the Joint Revenue Committee Meeting:**

**"Taxation of Wind, Coal and Natural Gas"**

**Wyoming Legislative Service Office**
**Joint Revenue Committee**
**May 11, 2016**

# Taxation of Wind, Coal, and Natural Gas

**WYOMING LEGISLATIVE SERVICE OFFICE**

*Joint Revenue Committee*

*May 11, 2016*

16IP001

# Summary

**Wind: Pays $1 per MWH of electricity produced.**

**Coal: Taxes paid per MWH depend most importantly on the price and BTU's of the coal.**

- **Example 1: If you consider all taxes paid the amount is estimated to be $1.98 per MWH (WY based taxes are $0.95 per MWH) This is for cheaper and lower BTU coal.**
- **Example 2: If you consider all taxes paid the amount is estimated to be $2.86 per MWH (WY based taxes are $1.54 per MWH). This is for more expensive and higher BTU coal.**

**Natural Gas: Taxes paid per MWH depend mainly on price.**

- **CREG estimated price of $2.85 per MCF results in an estimated taxes paid of $3.49 per MWH for all taxes (WY based taxes are $2.32 per MWH).**

# Summary

- "State" level revenues:
  - Wind: 40% of the total or $0.40 per MWH
  - Coal: Estimates vary depending on BTU and Price:
    - Example 1: lower BTU and lower priced coal may range between $0.89 and $1.81 depending on which taxes are included.
    - Example 2: higher BTU and higher priced coal may range between $1.45 and $2.58 depending on which taxes are included.
  - Natural Gas: Estimates vary depending on price.
    - For the CREG projection of $2.85 per MCF, taxes may range between $2.20 and $3.15 depending on which taxes are included.

Questions?

# ATTACHMENT B

**Revised Meeting Materials for the Joint Revenue Committee Meeting:**

**"Taxation of Wind, Coal and Natural Gas"**

**Wyoming Legislative Service Office**
**Joint Revenue Committee**
**May 11, 2016**
***Notification posted on Twitter on 5/10/2016 at 4:17 pm**

# Taxation of Wind, Coal, and Natural Gas

**WYOMING LEGISLATIVE SERVICE OFFICE**

***Joint Revenue Committee***

***May 11, 2016***

16IP001

# Summary

**Wind: Pays $1 per MWH of electricity produced.**

**Coal: Taxes paid per MWH depend most importantly on the price and BTU's of the coal.**

- **Example 1: If you consider all taxes paid the amount is estimated to be $1.77 per MWH (WY based taxes are $0.95 per MWH) This is for cheaper and lower BTU coal.**
- **Example 2: If you consider all taxes paid the amount is estimated to be $2.69 per MWH (WY based taxes are $1.54 per MWH). This is for more expensive and higher BTU coal.**

**Natural Gas: Taxes paid per MWH depend mainly on price.**

- **CREG estimated price of $2.85 per MCF results in an estimated taxes paid of $3.49 per MWH for all taxes (WY based taxes are $2.32 per MWH).**

# Summary

- "State" level revenues per MWH:
  - Wind: 40% of the total or $0.40 per MWH
  - Coal: Estimates vary depending on BTU and Price:
    - Example 1: lower BTU and lower priced coal may range between $0.89 and $1.60 per MWH depending on which taxes are included.
    - Example 2: higher BTU and higher priced coal may range between $1.45 and $2.41 per MWH depending on which taxes are included.
  - Natural Gas: Estimates vary depending on price.
    - For the CREG projection of $2.85 per MCF, taxes may range between $2.20 and $3.15 per MWH depending on which taxes are included.

Questions?

**Resolution No. 2016 – 33**

**A Resolution of the Board of County Commissioners of Carbon County, Wyoming,**

A RESOLUTION TO THE WYOMING LEGISLATURE'S INTERIM JOINT REVENUE COMMITTEE ADVOCATING FOR THE SUPPORT OF THE PRESERVATION OF THE EXCISE TAX ON ELECTRICITY PRODUCED BY WIND AT ITS CURRENT LEVEL AND OPPOSING ANY INCREASE IN SUCH EXCISE TAX, IN ORDER TO ENCOURAGE WIND DEVELOPMENT AND TO REALIZE THE RESULTING FUTURE DIRECT AND INDIRECT REVENUES TO THE STATE OF WYOMING, WYOMING COUNTIES AND WYOMING MUNICIPALITIES FROM WIND DEVELOPMENT AND ANCILLARY WIND DEVELOPMENT BUSINESSES, THEREBY PROVIDING LONG TERM AND SUSTAINABLE BENEFITS TO LOCAL COMMUNITIES.

***WHEREAS***, currently wind energy development in Wyoming provides economic benefits including job creation, fostering development of ancillary businesses and services, and contributing to state and local governments through three forms of tax revenues: sales and use tax, property tax and an excise tax on electricity produced by wind; and

***WHEREAS***, the largest wind project proposed to be built in Wyoming, the Chokecherry and Sierra Madre Wind Energy Project (CCSM Project) with up to 1,000 turbines, would be located in **Carbon County**, home to 10 incorporated municipalities; and

***WHEREAS***, in 2009, the Wyoming Legislature repealed the sales and use tax exemption for wind energy as of January 1, 2012. The CCSM Project's approximately $232.4 million in revenue yielded from these taxes will be distributed to the State General Fund, to all 23 Wyoming counties, including Carbon County, and to incorporated municipalities, making additional revenue available to address local funding requirements; and

***WHEREAS***, the CCSM Project will pay property taxes at the 11.5% industrial property rate based upon the assessed value of the land and multimillion-dollar improvements. This results in approximately $377.5 million yielded from these taxes over the project's initial economic life, to be distributed to the Wyoming State Foundation, to Carbon County, and to local community organizations like Carbon County School Districts 1 and 2, the Carbon County Higher Education Center, the Carbon County library system, the Memorial Hospital of Carbon County, and other community entities; and

***WHEREAS,*** the Wyoming Legislature's 2009 Wind Task Force, after comprehensively studying taxation of the wind energy industry recommended that any proposed new tax be imposed in a way so as to encourage the diversification of Wyoming's economy and so as not to force the wind energy industry out of Wyoming. The Task Force recommended that any tax burden proposed be calculated to maintain some competitive advantage for Wyoming's wind energy producers as they deliver electricity to the market; and

***WHEREAS,*** with the passage of House Bill 101–HEA0018 in 2010, the Wyoming Legislature imposed an excise tax of $1.00 to be paid on every megawatt-hour of electricity generated by wind, after a turbine has been operating three years – making Wyoming the only state that imposes an excise tax on electricity created by wind. This results in ongoing tax revenues of approximately $10.5 million annually from the CCSM Project, with these revenues to be distributed 60% to all of the counties where wind energy projects are located and 40% to the state general fund; and

***WHEREAS,*** the CCSM Project represents an estimated $5 billion capital investment in Carbon County, significantly boosting the county's total assessed valuation; an estimated 114 new operations jobs, making the wind farm one of the county's largest private employers; and an estimated state and local tax total of nearly $800 million in tax revenues due to these three tax streams paid over the initial project life; and

***WHEREAS,*** the Wyoming Department of Environmental Quality's Industrial Siting Division issued an Industrial Siting Permit to the CCSM Project in 2014, following two days of public hearings in which Albany County, Sweetwater County, Carbon County, and municipalities that were parties to the proceeding testified in support of the CCSM Project permit, and in which the permit was approved 7-0 by the Wyoming Industrial Siting Council; and

***WHEREAS,*** Power Company of Wyoming has been engaged for approximately ten (10) years in obtaining Federal, State and local permits and has invested millions of dollars and has obtained local authorization in the form of a recommendation for approval from the Carbon

County Planning & Zoning Commission and approval from the Board of County Commissioners, in the form of a Conditional Use Permit, Resolution No. 2012-43, and;

**WHEREAS,** such authorization has been extended by Resolution 2014-19 and Resolution No. 2015-35, and;

***WHEREAS,*** Carbon County has been participating as a Cooperating Agency through the Bureau of Land Management's National Environmental Policy Act, EIS process and the US Fish &Wildlife Service NEPA, EIS Process and is well informed of the regional significance and economic benefits to the State of Wyoming, Carbon County and all of the municipalities within Carbon County; and

***WHEREAS,*** based on the review of the socioeconomic data, the BLM FEIS concluded that constructing 1,000 wind turbines would generate approximately $4.6 to $6.2 billion in capital investment and would create up to 1,150 seasonal jobs in the third and fourth years of the project construction. Up to 590 additional jobs could be induced through CCSM Phase I Project workers spending money in the local economy for goods and services and from additional demand for governments providing community services. Employment from maintenance and operation of the wind turbines would create approximately 150 jobs and induce an additional 120 jobs for approximately 25 years. The BLM FEIS estimated that 1,320 seasonal jobs would be filled by workers temporarily or permanently migrating into the area; and

***WHEREAS,*** the Industrial Siting Council determined that impact assistance funds related to the CCSM Project would be allocated to affected governmental entities in the manner to which they all agreed: 3% to Albany County, 3% to Sweetwater County, and 94% to Carbon County. The total forecasted average quarterly impact assistance payment over 29 quarters is $1.67 million, and the total forecasted yearly impact assistance payment is $6.05 million, calculated as described in Wyoming Statute §39-15-111. Carbon County's portion will be further allocated as listed below:

33.5% each to Carbon County and to City of Rawlins,
7% each to the Towns of Sinclair and Saratoga,
3% each to the Towns of Baggs, Dixon, Elk Mountain, Encampment, Hanna and Medicine Bow,

and 1% to the Town of Riverside, providing additional potential funding for local governments; and

***WHEREAS,*** local governments are experiencing sharp revenue shortfalls, as evidenced by **Carbon County's** 2015-2016 fiscal year decrease in sales and use tax revenues of approximately $300,000 dollars; and

***WHEREAS,*** local governments are experiencing sharp revenue shortfalls due to lower tax revenues from oil and gas production and a lower valuation, which caused **Carbon County's** 2016-2017 fiscal year funding to decrease by approximately $3.5 million; and

***WHEREAS,*** sharing tax revenues from wind power development and production with Wyoming municipalities and counties helps to further diversify our economy and provide a new sustainable and predictable revenue stream for Wyoming; and

***WHEREAS,*** the Interim Joint Revenue Committee's May 11, 2016, decision to draft a bill that would further increase taxes on wind energy projects to an unspecified level would increase the risks associated with developing wind projects in Wyoming and may well put the economic benefits and substantial tax revenues to be received from the CCSM Project at risk.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CARBON COUNTY, WYOMING,** we request that the Wyoming Legislature's Interim Joint Revenue Committee preserve the excise tax on electricity produced by wind at its current level and cease consideration of any bills that would increase the excise tax in order to encourage wind development and to realize the resulting future direct and indirect revenues to the state of Wyoming, Wyoming counties and Wyoming municipalities from wind development and ancillary wind development businesses, thereby providing economic diversity, long term and sustainable benefits to all Wyoming cities and towns.

**PASSED, APPROVED, AND ADOPTED** this 18th day of July, 2016.

**BOARD OF COUNTY COMMISSIONERS OF CARBON COUNTY, WYOMING**

By: _____

John Espy, Chairman

Willing John Johnson, Vice Chairman

Leo Chapman, Member

Lindy Glode, Member

Sue Jones, Member

Attest:

Gwynn G. Bartlett, Carbon County Clerk

STATE OF WYOMING
COUNTY CLERK
CARBON COUNTY

RESOLUTION NO. 06C-2016

A RESOLUTION TO THE WYOMING LEGISLATURE'S INTERIM JOINT REVENUE COMMITTEE ADVOCATING FOR THE SUPPORT OF THE PRESERVATION OF THE EXCISE TAX ON ELECTRICITY PRODUCED BY WIND AT ITS CURRENT LEVEL AND OPPOSING ANY INCREASE IN SUCH EXCISE TAX, IN ORDER TO ENCOURAGE WIND DEVELOPMENT AND TO REALIZE THE RESULTING FUTURE DIRECT AND INDIRECT REVENUES TO THE STATE OF WYOMING, WYOMING COUNTIES AND WYOMING MUNICIPALITIES FROM WIND DEVELOPMENT AND ANCILLARY WIND DEVELOPMENT BUSINESSES, THEREBY PROVIDING LONG TERM AND SUSTAINABLE BENEFITS TO LOCAL COMMUNITIES.

***WHEREAS,*** currently wind energy development in Wyoming provides economic benefits including job creation, fostering development of ancillary businesses and services, and contributing to state and local governments through three forms of tax revenues: sales and use tax, property tax and an excise tax on electricity produced by wind; and

***WHEREAS,*** the largest wind project proposed to be built in Wyoming, the Chokecherry and Sierra Madre Wind Energy Project (CCSM Project) with up to 1,000 turbines, would be located in Carbon County, home to 10 incorporated municipalities including the **City of Rawlins**; and

***WHEREAS,*** in 2009, the Wyoming Legislature repealed the sales and use tax exemption for wind energy as of January 1, 2012. The CCSM Project's approximately $232.4 million in revenue yielded from these taxes will be distributed to the State General Fund, to all 23 Wyoming counties, and to incorporated municipalities including the **City of Rawlins**, making additional revenue available to address local funding requirements; and

***WHEREAS,*** the CCSM Project will pay property taxes at the 11.5% industrial property rate based upon the assessed value of the land and multimillion-dollar improvements. This results in approximately $377.5 million yielded from these taxes over the project's initial economic life, to be distributed to the Wyoming State Foundation, to Carbon County, and to local community organizations like Carbon County School Districts 1 and 2, the Carbon County Higher Education Center, the Carbon County library system, the Memorial Hospital of Carbon County, and other community entities; and

***WHEREAS,*** the Wyoming Legislature's 2009 Wind Task Force, after comprehensively studying taxation of the wind energy industry recommended that any proposed new tax be imposed in a way so as to encourage the diversification of Wyoming's economy and so as not to force the wind energy industry out of Wyoming. The Task Force recommended that any tax burden proposed be calculated to maintain some competitive advantage for Wyoming's wind energy producers as they deliver electricity to the market; and

***WHEREAS,*** with the passage of House Bill 101-HEA0018 in 2010, the Wyoming Legislature imposed an excise tax of $1.00 to be paid on every megawatt-hour of electricity generated by wind, after a turbine has been operating three years – making Wyoming the only state that imposes an excise tax on electricity created by wind. This results in ongoing tax revenues of approximately $10.5 million annually from the CCSM Project, with these revenues to be distributed 60% to all of the counties where wind energy projects are located and 40% to the state general fund; and

***WHEREAS,*** the CCSM Project represents an estimated $5 billion capital investment in Carbon County, significantly boosting the county's total assessed valuation; an estimated 114 new operations jobs, making the wind farm one of the county's largest private employers; and an estimated state and local tax total of nearly $800 million in tax revenues due to these three tax streams paid over the initial project life; and

***WHEREAS,*** the Wyoming Department of Environmental Quality's Industrial Siting Division issued an Industrial Siting Permit to the CCSM Project in 2014, following two days of public hearings in which Albany County, Sweetwater County, Carbon County, and municipalities that were parties to the proceeding including the **City of Rawlins** testified in support of the CCSM Project permit, and in which the permit was approved 7-0 by the Wyoming Industrial Siting Council; and

***WHEREAS,*** the Industrial Siting Council determined that impact assistance funds related to the CCSM Project would be allocated to affected government entities in the manner to which they all agreed: 3% to Albany County, 3% to Sweetwater County, and 94% to Carbon County. The total forecasted average quarterly impact assistance payment over 29 quarters is $1.67 million, and the total forecasted yearly impact assistance payment is $6.05 million, calculated as described in Wyoming Statute §39-15-111. Carbon County's portion will be further allocated as listed below:

33.5% each to Carbon County and to **City of Rawlins,**
7% each to the Towns of Sinclair and Saratoga,
3% each to the Towns of Baggs, Dixon, Elk Mountain, Encampment, Hanna and Medicine Bow,
and 1% to the Town of Riverside, providing additional potential funding for local governments; and

***WHEREAS,*** local governments are experiencing sharp revenue shortfalls, as evidenced by the **City of Rawlins'** 2015-2016 fiscal year decrease in sales and use tax revenues of $1.1 million, putting Rawlins' sales and use tax revenues at its lowest level in more than 10 years; and

***WHEREAS,*** sharing tax revenues from wind power development and production with Wyoming municipalities and counties helps to further diversify our economy and provide a new sustainable and predictable revenue stream for Wyoming; and

***WHEREAS,*** the Interim Joint Revenue Committee's May 11, 2016, decision to draft a bill that would further increase taxes on wind energy projects to an unspecified level would increase the risks associated with developing wind projects in Wyoming and may well put the economic benefits and substantial tax revenues to be received from the CCSM Project at risk.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RAWLINS, CARBON COUNTY, WYOMING,** we request that the Wyoming Legislature's Interim Joint Revenue Committee preserve the excise tax on electricity produced by wind at its current level and cease consideration of any bills that would increase the excise tax in order to encourage wind development and to realize the resulting future direct and indirect revenues to the state of Wyoming, Wyoming counties and Wyoming municipalities from wind development and ancillary wind development businesses, thereby providing economic diversity, long term and sustainable benefits to all Wyoming cities and towns.

**PASSED, APPROVED, AND ADOPTED** this 21st day of June, 2016.

CITY OF RAWLINS, a Wyoming
Municipal Corporation

Robert L. Grauberger, Mayor

ATTEST:

Marla K. Brown, City Clerk

**<u>UPCOMING COUNCIL MEETINGS</u> August 15, 2016**

All meetings at City Hall, 406 Ivinson Street, unless noted.

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**August 15, 2016**

**6:00 p.m. – Pre-Council**

**6:30 p.m. – Public Hearing:** Ordinance amending various sections of the Laramie Municipal Code related to parking.

**6:30 p.m. – Regular Meeting**

**August 17, 2016**

**4:00 p.m. – Work Session:** LCCC Tour at the Cheyenne campus

**August 18, 2016**

**6:00 p.m. – Special Meeting:** Adjourn into Executive Session regarding personnel

**August 19, 2016**

**6:00 p.m. – Special Meeting:** Public Comments re city attorney selection; Recess to Executive Session regarding: personnel; Consideration to direct City Attorney to enter into contractual negotiations with selection for position of City Attorney; Adjournment

**August 23, 2016**

**6:00 p.m. – Work Session:** Public Comments
**6:00 p.m. – Work Session:** Development Review Update
**6:00 p.m. – Work Session:** Taxi Law Update
**6:00 p.m. – Work Session:** City Council Updates/Council Comments
**6:00 p.m. – Work Session:** Agenda Review
**6:00 p.m. – Work Session:** Public Comments

**September 6, 2016**

**6:00 p.m. – Pre-Council**

**6:30 p.m. – Public Hearing:** Hero Primo, LLC Liquor License Application *(tentative)*

**6:30 p.m. – Regular Meeting**

**September 13, 2016**

**6:00 p.m. – Work Session:** Public Comments
**6:00 p.m. – Work Session:** Wyoming Business Council Sponsored Trip to the National Main Street Conference Update *(tentative)*
**6:00 p.m. – Work Session:** Fluoridation in municipal water *(tentative)*
**6:00 p.m. – Work Session:** City Council Updates/Council Comments
**6:00 p.m. – Work Session:** Agenda Review
**6:00 p.m. – Work Session:** Public Comments

**September 20, 2016**

**6:00 p.m. – Pre-Council**

**6:30 p.m. – Regular Meeting**

**September 27, 2016**

**6:00 p.m. – Work Session:** Public Comments
**6:00 p.m. – Work Session:** UW President Nichols presentation
**6:00 p.m. – Work Session:** Urban Renewal *(tentative)*
**6:00 p.m. – Work Session:** City Council Updates/Council Comments
**6:00 p.m. – Work Session:** Agenda Review
**6:00 p.m. – Work Session:** Public Comments

**FUTURE CITY COUNCIL WORK SESSIONS 8/15/2016**

Requested by Council Formal Action:
City Curb & Gutter Policy (Paulekas)
Review general process of Boards & Commissions Program (Weaver/Vitale)
Review of Inter-Agency City/County Agreements (Hanson)
*UDC WAM Members Poll Results (Shuster)
Review of funding allocation for Child Care providers (Paulekas)
Open 311 (Summerville)
Turner Tract Plan Update (Summerville)
ACTA (Albany County Transportation Authority)/MPO (Summerville)
Tech Hire Grant Program (Summerville)
Homeless/Homeless Veterans (Shumway/Summerville)
*Update on taxi laws (Summerville)
*Urban Renewal (Weaver)

Requested by Staff:
Policy on Annexation & Extra-Territorial City Services Action Plan (Jordan)
Downtown Design Guidelines Revisions (CD)
Restaurant and Pool Inspection Program Future (Jordan)
*Fluoridation of Municipal Water Supply (Jordan/Citizen requested)
Storm Water Program and Funding (Jaap/Jordan)

* Scheduled, not held.