

SERVICE CONTRACT
RAWLINS CITY HALL FIRE PANEL UPGRADE

PARTIES: The parties to this Agreement are the City of Rawlins, a municipality duly organized and existing under the laws of the State of Wyoming, hereinafter referred to as the City, and *, hereinafter referred to as CONTRACTOR whose address is *.

PURPOSE OF AGREEMENT: FIRE PANEL UPGRADE TO THE RAWLINS CITY HALL ACCORDING TO THE ATTACHED BID SPECIFICATIONS.

WHEREAS, the CITY wishes to enter into an agreement with CONTRACTOR and CONTRACTOR wishes to enter into an agreement with the CITY for the purpose of completing all work as described and shown on the **RAWLINS CITY HALL FIRE PANEL UPGRADE SPECIFICATIONS attached hereto and incorporated herein as Exhibit A together with the detailed plans and drawings;** if any provision of this agreement and the Exhibits are in conflict the conflict must be brought to the attention of the CITY by CONTRACTOR or CITY will in its sole discretion determine which will apply; and

WHEREAS, CONTRACTOR is familiar with the requirements to complete the project and provide the services necessary and agrees that CONTRACTOR can complete the project in a timely and workmanlike manner; and

WHEREAS, CONTRACTOR acknowledges the governmental immunity of the CITY and agrees that nothing herein shall be construed to void the government immunity granted to the CITY; and

WHEREAS, CONTRACTOR is familiar with the standards of the industry relating to services to be provided and will provide service that meets or exceeds the standards of the industry; and

WHEREAS, CONTRACTOR understands the importance of completing this work on time and therefore agrees to pay liquidated damages in the event the work is not completed on time; and

WHEREAS, CONTRACTOR understands the injury to the city in the event the service described herein is stopped and the City is required to find others to complete the services and therefore agrees to a performance bond or other security agreeable to the City, CONTRACTOR shall furnish said performance bond or other security in the full amount of the contract bid before commencing work; and

WHEREAS, W.S. §16-6-116 requires that prior to final payment for the work performed in this agreement the CITY shall, forty (40) days before the final estimate is paid cause to be published in a newspaper of general circulation, once a week for three consecutive weeks, and CONTRACTOR shall post in three conspicuous places on the work, a notice setting forth in substance, that the CITY has accepted the work as

completed according to the plans and specifications and CONTRACTOR is entitled to final settlement therefore; and

WHEREAS, CONTRACTOR agrees that all persons providing materials or labor and all subcontractors acting at the request of Contractor will be paid by contractor, contractor agrees to adhere to the requirements of W.S. §16-6-110 and contractor agrees to provide City with a payment bond or other security acceptable to the city; and

WHEREAS, CONTRACTOR has given the CITY written notice of all conflicts, errors ambiguities or discrepancies that CONTRACTOR has discovered in this contract documents and the written resolution thereof by the CITY is acceptable to the CONTRACTOR, and this document is generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the work; and

WHEREAS, CONTRACTOR agrees that the warranty from CONTRACTOR for one year furnished on the work and materials shall be interpreted under the laws of Wyoming and any claim for breach of warranty shall be in Carbon, County Wyoming with consent of contractor; and

WHEREAS, W.S. §15-1-113 is hereby incorporated into this agreement by this reference; and

WHEREAS, PARTIES agree that each of the foregoing recitals are substantive provisions and considerations for entering into this Agreement and not mere recitals.

TERM: The term of this agreement shall begin upon last execution of this agreement by the City and completed within sixty (60) days of the Notice to Proceed.

PAYMENT: The City agrees to pay CONTRACTOR for services described in Contractor Responsibilities below in the amount of *. Change orders may be paid if services exceed what is described in this agreement and has received previous written approval by the city.

Payment will be made per the expenditure rules and regulations of the City.

CONTRACTOR RESPONSIBILITIES: CONTRACTOR agrees to:

- A. Furnishing, installing and proper connection of the fire alarm equipment to form a complete coordinated system ready for operation. Fire alarm system shall comply the current minimum requirements of the National Fire Protection Association (NFPA) 72. Program and optimize the system as well as testing and provide documentation of final system configuration with said installation to be in conformance with the bid specifications attached hereto. All permits required shall be pulled by the CONTRACTOR and all necessary permit inspections shall be called for with proper documentation of successful inspection provided to the

City of Rawlins. The CONTRACTOR shall be responsible for obtaining the proper City of Rawlins Specialty Class C Contractor's License with Fire Suppression Certification prior to the Notice to Proceed being issued. All existing fire alarm equipment, wiring, devices that are not be reused shall be removed by CONTRACTOR. All work performed and all materials and equipment shall be free from defects and shall remain so for a period of one year from the date of final acceptance of the entire installation.

B. Other Responsibilities of Contractor:

The CONTRACTOR agrees to complete the project in accordance with the Bid Specifications attached hereto and incorporated herein as Exhibit A.

The CONTRACTOR agrees to comply with all applicable local, state, and federal laws and ordinances including but not limited to Workman Compensation laws, labor laws, building codes, planning ordinances and environmental regulations.

The CONTRACTOR agrees to complete the project no later than sixty (60) days following the notice to proceed and agrees to pay liquidated damages of One Hundred Dollars (\$100.00) per day for everyday the project continues uncompleted thereafter.

CONTRACTOR shall supervise, direct and perform the work, using its best skill and attention. The CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work. CONTRACTOR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, temporary water, heat, utilities, transportation, City fees and other facilities and services necessary for the proper execution and completion of the work.

CONTRACTOR shall at all times enforce strict discipline and good order among its employees and subcontractors, and shall not employ on the work or contract with any unfit person or subcontractor or anyone not skilled in the task assigned or contracted.

The CONTRACTOR warrants to the CITY that all materials and equipment incorporated in the work will be new, unless otherwise specified, and that all work will be of good to excellent quality, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. Bond in the amount of 100% percent of the original bid will be provided to the city for a period of one (1) year after final acceptance to be used for replacement of defective work and/or materials and/or equipment.

The CONTRACTOR shall pay all sales, consumer, use and other similar taxes including building permits and City fees required by law and shall secure and pay all plan reviews, permits and on-site inspections, including City fees, required for the work.

The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the work, and shall notify the CITY if the Contract Documents or specifications or any portion of the work are at variance therewith.

The CONTRACTOR shall be responsible for the acts and omissions of all of CONTRACTOR'S employees and all Subcontractors, their agents and employees and all other persons performing any of the work on the Project.

The CONTRACTOR at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the work, CONTRACTOR shall remove all waste materials and rubbish from and about the premises, as well as tools, construction equipment, machinery and surplus material, and shall leave the work area broom clean or its equivalent, and, if applicable, shall level the site with appropriate drainage.

CONTRACTOR shall allow CITY and its representative's access to the work at all times.

Prior to commencing work, CONTRACTOR shall furnish to the CITY in writing a list of the names of Subcontractors and Materialmen proposed for any portions of the work. The CONTRACTOR shall not employ any Subcontractor or Materialman to whom the CITY may have a reasonable objection. Contracts between the CONTRACTOR and the Subcontractor and Materialmen shall be provided to the CITY prior to the beginning of work and shall be in accordance with the terms of this Contract and shall include the General Conditions insofar as applicable.

CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. CONTRACTOR shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the work and other persons who may be affected thereby, (2) all the work and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto.

CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the

CONTRACTOR, Subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the CONTRACTOR.

CONTRACTOR shall purchase and maintain and provide evidence satisfactory to CITY of: 1) Workman's Compensation; 2) Comprehensive General Liability and auto Coverage: a) \$1,000,000.00 in the event of bodily injury including death, 3) \$500,000.00 in the event of property damage. No work shall commence until CONTRACTOR shall have provided CITY with certificates of insurance and certificate of workers' compensation coverage. CONTRACTOR shall also insure any material or improvements for this project from risk of loss or damage. The risk of loss shall not pass to CITY until completion of the project.

The CONTRACTOR shall promptly correct any work that fails to conform to the requirements of the contract documents, in violation of CITY codes or not to the standard of workmanship generally accepted in the industry where such failure to conform appears during the progress of the work.

The CITY and CONTRACTOR recognize that time is of the essence of this Agreement and that the CITY will suffer financial loss if the Work is not completed within the times specified. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by the CITY if the Work is not completed on time. Accordingly, instead of requiring any such proof, the CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay CITY one hundred dollars (\$100.00) to be deducted from final payment for each day that expires after the time specified for completion until the work is complete.

CONTRACTOR agrees that after final payment and after warranty period described above for one year for an additional period of 1 year contractor will continue to service the project if so requested by the city. Contractor will respond to request for assistance in a timely manner but no later than 24 hours from receipt of request for assistance.

Standard of Skill and Care . The Services (whether performed by Contractor or Contractors Sub-Contractors shall be performed in a diligent, efficient and trustworthy manner and consistent with the standard of skill and care ordinarily exercised by professionals of

the same discipline in the state of Wyoming on projects of similar size and scope and under like circumstances. Contractor shall be responsible for all services provided under this agreement, whether such services are provided directly by Contractor or Contractors Sub-Contractors.

MISCELLANEOUS PROVISIONS

Governmental Immunity. The CITY of Rawlins specifically retains all immunities and defenses available to it as a governmental entity pursuant to the Wyoming Governmental Claims Act, Wyo. Stat. §1-39-101 et seq., and all other applicable laws. Designation of venue, choice of law, enforcement action, and similar provisions should not be considered as a waiver of governmental immunity

Applicable Law. 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 the venue shall be in the Second Judicial District, Carbon County, Wyoming.

Kickback. 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. The CONTRACTOR shall have in place and follow reasonable procedures designed to prevent and detect possible violations of Anti-Kickback Act of 1986 in its own operations and direct business relationships. When the CONTRACTOR has reasonable grounds to believe that a violation may have occurred, the CONTRACTOR shall promptly report in writing the possible violation. If the CONTRACTOR breaches or violates this warranty, the 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.

Availability of Funds. Each payment obligation of the 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 Agreement may be terminated by the CITY at the end of the period for which the funds are available. The 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 the 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 to permit the CITY to terminate this Agreement in order to acquire similar services from another party.

Payment. Invoices will be paid within forty five (45) days after receipt of a correct notice of amount due for services provided, otherwise finance charges shall accrue at a rate 1½% per month. See W.S. Section 16-6-602.

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 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 the CITY to incur any obligation of any kind on the behalf of the CITY. The CONTRACTOR agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to City of Rawlins employees will inure to the benefit of the CONTRACTOR or the CONTRACTOR'S agents and/or employees as a result of this Contract.

Term of Contract. This agreement shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this agreement and shall remain in full force and effect until terminated by final payment from City to Contractor or as described below.

Termination of Contract. The CITY may terminate this Contract immediately for cause if the CONTRACTOR fails to perform in accordance with the terms and conditions of this Contract. Should the CONTRACTOR fail to perform in a manner consistent with the terms and conditions set forth in this Contract, or not progressing satisfactorily payment under this Contract may be withheld until such time as the CONTRACTOR performs its duties and responsibilities. At this termination date, the CITY at its sole discretion may complete the project utilizing funds from completion bond or other surety accepted by the CITY or discontinued the project. In either event the CONTRACTOR will be entitled to a pro rata payment, less any expense to the CITY resulting from failure to perform, for all work accomplished and accepted by the CITY and all finished documents, data, models and reports prepared under the Contract shall, at the option of the CITY, become its property upon payment for services rendered through the termination of the Contract.

Captions. The captions for articles and sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

Modification and Waiver. This Agreement, including any exhibits or addendums, constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

Indemnification. The CONTRACTOR shall indemnify and hold harmless the CITY and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from acts or omission caused in whole or in part by any negligent act or omission of the CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The CITY, without waiving Governmental immunity or protections of the Wyoming Governmental Claims Act, will be responsible for damages or losses resulting from its negligence.

Patent or Copyright Protection. Contractor recognizes that certain proprietary matters, techniques or information may be subject to patent, trademark, copyright, license or other similar restriction, and warrants that no work performed by the Contractor or its Sub-Contractors hereunder in connection with the Project will infringe any such rights of any person or entity nor will it violate any restriction. Contractor shall defend, indemnify and hold harmless the City of Rawlins from any infringement, violation or alleged infringement or violation of any such patent, trademark, copyright, license or other restrictions.

Counterparts and Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile transmission of a signature shall be sufficient to evidence execution of this Agreement.

Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the day of mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or by express delivery with handling prepaid, and properly addressed as follows:

CITY: City Manager, City of Rawlins, P.O. Box 953, Rawlins, WY. 82301
CONTRACTOR: *

Any party may change an address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above.

Binding Effect. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors and assigns.

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 CONTRACTOR shall not use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the CITY.

Gender and Number. Unless the context clearly indicates the contrary, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

Nondiscrimination. CONTRACTOR shall comply with 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 (ADA), 42 W.S.C. §12101, et seq. CONTRACTOR shall assure that no person is discriminated against based on the grounds of age, race, sex, creed, color, national origin, ancestry, qualified disability, or pregnancy in connection with the performance of this Agreement.

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 renegotiate the terms affected by the severance.

No Third Party Beneficiary. No term or provision of this Agreement or the exhibits hereto is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a party hereto, and no such other person, firm, corporation or entity shall have any right or cause of action hereunder.

Documented Workers. The CONTRACTOR will not knowingly employ or contract with an illegal alien; the CONTRACTOR shall not enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien.

Mediation. The parties agree that in the event of any disagreement between the parties concerning the interpretation or implementation of this agreement and its attachments the parties may mediate the issue as described in the Wyoming Mediation Act (W.S. 1-43-101 et. Seq.). Nothing in this mediation provision will be binding on the CITY if it violates the cities governmental immunity or protections under the Wyoming Governmental Claims Act or violate the governmental claims act. Any mediator must be acceptable to both parties and venue in Carbon Co. Wyoming.

Costs and Attorney's Fees. In the event the City, through court action or otherwise, in the enforcement of these general provisions incurs any pre judgment and post judgment costs, expenses or attorney fees by reason of such exercise, the bidder agrees to pay the City all such reasonable costs, expenses and reasonable attorney fees in connection with the collection or reimbursement.

Preparation of Agreement. The parties acknowledge this Agreement has been prepared by the Acting CITY Attorney, Amy L. Bach, who represents only the interest of the CITY in this transaction. The CONTRACTOR certifies and agrees CONTRACTOR has either been represented by counsel or has voluntarily chosen not to have counsel prior to or at the execution of this agreement.

This Agreement was available to the Contractor for review prior to submitting a bid on this project. The contractor acknowledges contractor has not acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. The parties hereby waive the application of any rule of law which otherwise might be applicable to the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same.

IN WITNESS WHEREOF, the parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the days and dates set out below and certify that they have read, understood and agreed to the terms and conditions of this Agreement.

Approved as to form:

Approved as to form:

Public Works Department Head

City Attorney, Amy L. Bach

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

CITY

Date: _____

BY: _____
City Manager, Shawn Metcalf

(SEAL)
Attest:

Interim City Clerk, Mira Miller

Dated this ____ day of *, 2021

*Contractor:

BY: _____

STATE OF _____)
:ss
COUNTY OF _____)

On this ____ day of *, 2021, _____ appeared before me and sworn upon oath to have authority to bind contractor and to be the person described in and who executed the foregoing and attached Service Contract, duly sworn.

WITNESS my hand and official seal.

Notary Public