

**FACILITIES USE AGREEMENT
BETWEEN THE CITY OF LARAMIE, WYOMING AND
LARAMIE COUNTY COMMUNITY COLLEGE**

1. **Parties.** This Agreement is made and entered into this 1st Day of July, 2018 by and between the City of Laramie, Wyoming, a municipal corporation (hereinafter referred to as “City”) whose address is 406 Iverson Avenue, Laramie Wyoming 82073 and Laramie County Community College, (hereinafter referred to as “LCCC”) whose address is 1400 East College Drive, Cheyenne, Wyoming 82007 (hereinafter collectively referred to as “Parties”).

RECITALS:

WHEREAS, the City and LCCC entered into an agreement concerning the provision of services and commitment to use Recreation Center ancillary to an agreement to conveyance of Turner Tract acreage from the City for the benefit of LCCC; and

WHEREAS, the City and LCCC amended the original agreement to extend the term of the 100 credit hours per academic year (fall-spring-summer terms) and visits to the City’s Recreation Center for individuals enrolled in LCCC and to revise the conditions and payments for visits to City’s Recreation Center; and

WHEREAS, the City and LCCC entered into a new agreement that increased the original 100 credit hours to 200 credit hours per academic year (fall-spring-summer terms) for City employees.

NOW, THEREFORE, the City and LCCC for and in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

2. **Purpose of Contract.** The purpose of this Contract is to outline the use of the City’s Recreation Center by LCCC students and faculty and to establish the financial exchange for such use. In exchange for LCCC providing City 200 credit hours per academic year (fall-spring-summer terms) to be used by the employees of the City for the term of the agreement.

3. **Term of Contract and Required Approvals.** This Contract is effective when all parties have executed it and all required approvals have been granted. No services shall be performed prior to the contract effective date. The term of the Contract is from the date of execution through June 30, 2020, unless otherwise terminated or extended as outlined herein.

A. The Parties shall annually meet and review the terms of the contract during the first quarter of each year throughout the term of the Contract.

4. **Payment.** LCCC agrees to pay City Twenty-Five Thousand Dollars and no cents (\$25,000.00) per year for two (2) years for unlimited student visits to the City’s Recreation Center at a rate of Six Dollars (\$6.00) per visit for individuals who are in possession of a valid Laramie County Community College – Albany County Campus ID card with an approval sticker from LCCC. At the end of the year, any unused funds shall be rolled forward and deducted from the total annual fee of Twenty-Five Thousand Dollars (\$25,000.00). LCCC will pay accruals beyond \$25,000.00 at

the end of each academic year.

5. Responsibilities of LCCC.

A. LCCC shall, per the original agreement regarding provision of services and commitment to use Recreation Center ancillary to an agreement to conveyance of Turner Tract acreage from the City for the benefit of LCCC, provide City employees up to 200 credit hours per academic year (fall, spring, and summer terms) beginning with the fall semester of 2018 at no cost to the City. The credit hours are for in-state student credit hours only and cannot be applied to any additional student fees or laboratory fees required by LCCC.

B. LCCC agrees to permit the City to carry over from one academic year to another a maximum of 50 unused credit hours. At the termination of the agreement, any unused credit hours will be vacated.

C. LCCC agrees that all staff and students who are granted unlimited access to City's Recreation Center shall adhere to and follow all the usual and customary rules and regulations for Recreation Center membership.

D. LCCC shall ensure that only eligible students receive the approval sticker for the current semester.

E. LCCC students are only eligible to access the Recreation Center during specific semester dates, which will be communicated to Recreation Center staff before the beginning of each academic year.

F. LCCC shall consult, to the extent required by City, with authorized employees, agents and/or representatives of City relative to the details of the services provided.

F. LCCC's representative as identified in Paragraph 8 (L) shall be authorized to act on the behalf of LCCC. LCCC and/or his designee shall render decisions in a timely manner pertaining to services provided by City to avoid unreasonable delay in the orderly and sequential progress of the City's services.

6. Responsibilities of City.

A. City agrees to provide eligible LCCC students with unlimited visit access to City Recreation Center upon payment as outlined in Paragraph 4 herein for individuals who are in possession of a valid Laramie County Community College – Albany County Campus ID card with an approval sticker for the current semester.

B. City agrees to permit LCCC to carry over from one fiscal year to another a maximum of \$10,000.00 in unused City Recreation Center visits. Upon final termination of the agreement, any unused City Recreation Center visits will be vacated.

C. City agrees to ensure that only current enrolled students who possess a valid LCCC ACC student ID with an approval sticker for the current semester are granted a pass visit.

D. City agrees, with prior written approval at no charge or cost to LCCC, to grant use of City's Recreation Center for teaching swimming, exercise program classes, and other appropriate classes and/or activities when times and space are available. Scheduling to be done in coordination with Recreation Center Staff, LCCC acknowledges that City programming may take priority over other requested uses.

E. City and its employees shall comply with all usual and customary requirements and rules of LCCC for utilizing the credit hours provided by LCCC.

F. City reserves the right to remove any LCCC currently enrolled Albany County Campus student and revoke their Recreation Center visit privileges for violating the usual and customary rules for membership of City's Recreation Center.

G. City's representative as identified in Paragraph 8 (L) shall be authorized to act on the behalf of City. City and/or its designee shall render decisions in a timely manner pertaining to services provided by LCCC to avoid unreasonable delay in the orderly and sequential progress of the LCCC's services.

H. The City shall consider any currently enrolled students who possess a valid LCCC ACC student ID with an approval sticker as members for any class or activities during the term of approval.

I. City agrees to provide a financial assessment for facility usage and payments each year at the end of June and provide LCCC with the total amount owed or carried forward for the following year.

7. Special Provisions.

A. Monitor Activities. City shall have the right to monitor all activities related to this Contract, including activities of LCCC and all subcontractors. This shall include, but not be limited to, the right to make site inspections at any time, and to observe all LCCC personnel in every phase of performance of work related to this Contract.

B. Nondiscrimination. LCCC 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. LCCC 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. LCCC shall include the provisions of this section in every subcontract awarded so that such provisions are binding on each subcontractor.

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.

B. 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.

C. 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. LCCC shall not use this Contract, or any portion thereof, for collateral for any financial obligation.

D. Award of Related Contracts. City may undertake or award supplemental or successor contracts for activities related to this Contract. LCCC shall cooperate fully with other users and City in all such cases.

E. Confidentiality. All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Parties in the performance of this Contract shall be kept confidential by Parties unless written permission is granted by the Parties for its release. LCCC shall have similar agreements with any subconsultants to maintain the confidentiality of information specifically designated as confidential by City.

F. Entirety of Contract. This Contract, consisting of eight (8) pages, represents the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral.

G. Ethics. LCCC 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 LCCC's profession.

H. 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, 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 availability of the City's Recreation Center facilities 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.

I. 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 including but not limited any personal injury to individual or any damage to property or individuals or City. This provision shall not be construed or deemed to be a waiver of any governmental immunity of either party.

J. Debts and Liabilities. LCCC shall assume sole responsibility for any debts or liabilities that may be incurred by LCCC 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 LCCC 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. LCCC agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to City employees will inure to the benefit of LCCC or the LCCC's agents and/or employees as a result of this Contract.

K. 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.

L. Liaison and Notice City's and LCCC's Designated Representatives.

(i) City's designated representative is Todd Feezer, Parks and Recreation Director, telephone number: (307) 721- 5260 and facsimile: (307) 721-5284, email tfeezer@cityoflaramie.org.

(ii) The LCCC's representative is Jamie Spezzano, Director of Contracting and Procurement, telephone number: (307) 778-1280 and facsimile: (307) 778-4300.

(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.

M. Sovereign Immunity. Neither party waives its Governmental/Sovereign Immunity by entering into this Agreement and specifically retains all immunities and defenses available to it as a governmental entity pursuant to Wyo. Stat. Ann. § 1-39-101 (2011), et seq., and all other applicable laws. Each Party fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Contract. Designations of venue, choice of law, enforcement actions, and similar provisions should 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.

N. 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.

O. Termination of Contract.

(i). City reserves and has the right and privilege of canceling, suspending, or abandoning the execution of all or any services in connection with this Contract at any time upon three (3) months written notice to LCCC. LCCC may terminate this Contract upon written notice to

City should City substantially fail to perform in accordance with Paragraph 6 of this Contract.

(ii). In the event of termination, LCCC shall pay to City, 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 services. In ascertaining the services actually rendered hereunder up to the date of termination of this Contract, consideration shall be given to both completed services and services in progress.

P. 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 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.

Q. 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 LCCC 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.

R. 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.

S. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Contract.

T. Waiver. The waiver or any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach.

U. Time is of the Essence. Time is of the essence in all provisions of the Contract.

V. City Policies. LCCC acknowledges familiarity with the City Policies as applicable to this contract and listed below:

(i) The City of Laramie seeks to integrate energy efficiency practices into all aspects of day-to-day operations, from capital construction to staff behaviors, to ensure economic

and environmental sustainability. The City encourages bidder submissions that 1) enhance to efficiency of City projects and ongoing operations, and/or 2) consider all energy types, including traditional and renewable sources.

(ii) Preference is hereby given to materials, supplies, equipment, machinery and provisions produced, manufactured, supplied or grown in Wyoming, quality being equal to articles offered by competitors outside the State, as provided in W. S. §§ 16-6-101 through 16-6-119.

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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 LCCC has signed and executed this Agreement, the day and year first written above.

CITY OF LARAMIE, WYOMING:

By: _____
Andrea Summerville, Mayor and President of the
City Council

Attest: _____
Nancy Bartholomew
City Clerk

LARAMIE COUNTY COMMUNITY COLLEGE:

By: _____
Joe Schaffer, Ed. D
College President

Witness: _____