

**CONTRACT FOR  
PROFESSIONAL SERVICES BETWEEN  
BOARD OF WYOMING SSBCI CONSORTIUM  
AND**

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1. **Parties.** This Contract is made and entered into this \_\_\_\_ day of January 2013 by and between the Board of Laramie SSBCI Consortium, (hereinafter referred to as “Board”) whose address is \_\_\_\_\_ and \_\_\_\_\_, (hereinafter referred to as “Consultant”) whose address is \_\_\_\_\_.

2. **Purpose of Contract.** Consultant shall provide Board auditing services as more specifically described in Attachment A which is attached hereto and incorporated herein.

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 March 31, 2017, unless this Contract is otherwise terminated pursuant to the termination provision contained in Paragraph 8.21 and 8.26 herein or extended as outlined in Paragraph 8.25 herein.

4. **Payment.** Board agrees to pay Consultant for the services as more fully described in Attachment A. The total payment under this Contract shall not exceed \_\_\_\_\_. Payment shall be payable to Consultant upon receipt of the invoice for the services. The payment shall cover the cost for those services to be provided by Consultant as outlined in Paragraph 5 herein and Attachments A and Attachment B.

5. **Responsibilities of Consultant.**

5.01. Consultant will conduct the audit in accordance with auditing standards generally accepted in the United States of America and Governmental Auditing.

5.03. Consultant will provide services per specified in Attachment A, which is the Request for Proposal issued by the Board and Attachment B which is the Proposal submitted by the Consultant.

5.04. Consultant shall audit the depository account of American National Bank to ensure the safety of funds deposited with financial institution including pledging requirements upon Cities in accordance with Federal and Wyoming statutes and that disbursements have been released in compliance with Compliance Review of Consultant.

6. **Responsibilities of Board.**

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**6.01.** Board's representative as identified in Paragraph 8.15 shall be authorized to act on the behalf of Board with respect to the services in Attachment A. Board and/or his designee shall render decisions in a timely manner pertaining to services provided by Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

**6.02.** Nothing in this Contract nor any act or failure to act on the part of Board shall be construed as a waiver of a claim by Board for any defects of the services required of Consultant.

**7. Special Provisions.**

**7.01. Monitor Activities.** Board shall have the right to monitor all Contract related activities of the Consultant. This shall include, but not be limited to, the right to make site inspections at any time, and to observe all Consultant personnel in every phase of performance of Contract related work. Board shall notify the consultant in writing to the address as identified in Paragraph 8.15.

**7.02. Nondiscrimination.** 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. 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.

**7.03. 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 Board as the sponsoring agency and shall not be released without prior written approval from Board.

**8. General Provisions.**

**8.01. 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 but not limited to Paragraph 5.05, include services required of Consultant's subconsultants may be accomplished after execution of this Contract, without invalidating this Contract, if mutually agreed in writing,

**8.02. 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 Eighth Judicial District, Carbon County, Wyoming.

**8.03. Assignment/Contract Not Used as Collateral.** Neither party shall assign or

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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.

**8.04. Award of Related Contracts.** Board may undertake or award supplemental or successor contracts for work related to this Contract. The Consultant shall cooperate fully with other Consultants and Board in all such cases.

**8.05. Compliance with Law.** Consultant professional services shall be consistent with auditing principles 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 Board of the change and its impact on work already performed or to be performed, fees and costs involved, and scheduling. If either Board or 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 Contract pursuant to Paragraph 8.21.

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

**8.07. Entirety of Contract.** This Contract, consisting of nine (9) pages, together with Attachment A, which is entitled Attachment A Engagement Administration, Fees and Other and consists of four (4) pages represents the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral.

**8.08. Ethics.** 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 Consultant's profession.

**8.09. 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.

**8.10. Indemnification.**

**8.10(i).** Consultant shall indemnify, defend and hold harmless the Board, and

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their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Consultant's failure to perform any of Consultant's duties and obligations under this contract or in connection with the negligent performance of Consultant's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Consultant's professional services under this Contract.

**8.10(ii).** Consultant shall be liable to Board for all damages including consequential damages and every expense, cost, exclusive of betterment, attorneys' fees and payment incurred by Board as the result of negligence, or negligent acts in any of the services furnished under this Contract.

**8.10(iii).** Without limitation as to other remedies, which Board may have, Consultant will without additional compensation, correct or revise any errors or deficiencies in its tennis lessons consulting services.

**8.11. Independent Contractor.** Consultant shall function as an independent Contractor for the purposes of this Contract, and shall not be considered an employee of the for any purpose. Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by 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 Consultant or its agents and/or employees to act as an agent or representative for or on behalf of the Board, or to incur any obligation of any kind on the behalf of the Board. Consultant agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to Board employees will inure to the benefit of Consultant or the Consultant's agents and/or employees as a result of this Contract.

**8.12. Kickbacks.** 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. Consultant shall provide the Board 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, Board may, at its discretion, terminate this Contract without liability to the Board, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

**8.13. 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.

**8.14. Notice and Approval of Proposed Sale or Transfer of Consultant.** Consultant shall provide Board with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of Consultant. Such notice shall be provided in accordance with the notice provision of this Contract. If Board determines that the proposed merger, consolidation, sale or transfer of assets is not consistent with the continued

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satisfactory performance of Consultant's obligations under this Contract, then Board may, at its option, terminate or renegotiate the Contract.

**8.15. Liaison and Notice** Board's and Consultant's Designated Representatives.

**8.15(i)** Board's designated representative is the Board Administrator, whose address is \_\_\_\_\_; telephone number \_\_\_\_\_ and facsimile \_\_\_\_\_.

**8.15(ii)** The Consultant's project representative is \_\_\_\_\_

**8.15(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.

**8.16. Insurance.** The Consultant shall maintain the following insurance:

**8.16(i). Professional Liability Insurance.** Consultant shall provide proof of professional liability insurance to protect the Board from any and all claims arising from Consultant's alleged or real professional errors, omissions or mistakes in the performance of professional duties by Consultant in an amount not less than one million dollars (\$1,000,000.00).

**8.16(ii). Coverage.** All policies required under this Contract shall be in effect for the duration of this Contract and projects. All policies shall be primary and not contributory. 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 ninety (90) days advance written notice to Board.

**8.16(iii). Additional Insured.** All insurance policies required by this Contract, except workers' compensation, shall name Board as an additional insured, and shall contain a waiver of subrogation against Board, its agents and employees. Consultant shall provide, upon request a copy of an endorsement providing this coverage.

**8.16(iv). Board's Right to Reject.** Board reserves the right to reject a certificate of insurance if 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.

**8.16(v). Subcontractors.** The insurance requirements set forth above apply to all subconsultants. It is Consultant's responsibility to ensure that its subconsultants meet these insurance requirements. Board has the right to review the Certificates of any and all

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subconsultants used by the Consultant.

**8.16(vi). Cancellation.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent to not renew insurance coverage without ninety (90) days written notice from Consultant or their insurers to Board. 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 Board and its division, officers and employees.

**8.17. Use of Work Product.** Board further agrees not to use or permit any other person to use equipment or other work products or materials prepared by or owned by the consultant, which will remain at the Board.

**8.18. 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 Board Council.

**8.19. Governmental Immunity.** The Board does not waive Governmental 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.

**8.20. Taxes.** 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.

**8.21. Termination of Contract.**

**8.21(i).** Board 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 ninety (90) days written notice to Consultant. The Consultant may terminate this Contract upon written notice to Board should Board substantially fail to perform in accordance with Paragraph 4 and 6 of this Contract.

**8.21(ii).** In event of termination, all materials and equipment owned by the consultant at the Board shall be immediately surrendered to Consultant.

**8.22(iii).** In the event of termination, Consultant shall pay to Board, 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.

**8.22. 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

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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.

**8.23. Warranty.** Consultant warrants the following:

- 8.23(i).** has the power and authority to enter into contract;
- 8.23(ii).** has the ability to perform the agreed upon services;
- 8.23(iii).** shall, at all times during the term of this contract be duly certified to perform the services,
- 8.23(iv).** shall provide suitable resources and equipment to perform work in accordance with agreed services;
- 8.23(v).** will endeavor to provide the services herein on a timely basis consistent with the difficulty and scope of services to be provided;
- 8.23(vi).** 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
- 8.23(vii).** is responsible for the professional quality, technical accuracy and coordination of all personal training and other services furnished by Consultant under this Contract.

**8.24. 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 subconsultants will violate any such restriction.

**8.25. 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 Board 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.

**8.26. Limitation of Payment.** Board's obligation to pay Consultant for services of Consultant pursuant to this Contract is conditioned upon the availability of Board's funds which are allocated to pay Consultant. If funds are not allocated and available to pay the Consultant for these services, Board may terminate this Contract at the end of the period for which the funds are available.

Board shall notify Consultant at the earliest possible time if Consultant will or may be affected by a shortage of funds. No liability shall accrue to Board in the event this provision is exercised, and Board 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 Board to terminate this Contract in order to acquire similar services or use from another party.

Consultant shall be paid for the use by Board provided and expenses incurred prior to receipt of any such notification that Board was terminating the Contract because of a shortage of funds.

**8.27. 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.

**8.28. Conflict.** Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this agreement, the documents must control in this order of precedence: First, the terms of this agreement, as may be amended; Second, the Board's RFP; and Third, the Consultant's proposal.

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

**8.30. Waiver.** The waiver or any breach of any term or condition in this Contract shall be deemed a waiver of any prior or subsequent breach.

**8.31. Time is of the Essence.** Time is of the essence in all provisions of the Contract.

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**IN WITNESS WHEREOF**, the Wyoming SSBCI Consortium Board Board has caused this Contract to be signed and executed in its behalf by its Chair, and duly attested by its Board Secretary, and Consultant has signed and executed this Contract the day and year first written above.

**BOARD:**

By: \_\_\_\_\_

Attest: \_\_\_\_\_

**CONSULTANT:**

By: \_\_\_\_\_

Title \_\_\_\_\_

DRAFT

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