

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF LARAMIE, WYOMING AND
ACTION RESOURCES INTERNATIONAL-FEEDING LARAMIE VALLEY**

1. **Parties.** This Memorandum of Understanding (hereinafter referred to as "Agreement") is made and entered into this 4 day of September, 2018 by and between the City of Laramie, Wyoming, a municipal corporation (hereinafter referred to as "City") whose address is 406 Ivinson Avenue, Laramie, Wyoming 82070 and Action Resources International-Feeding Laramie Valley (hereinafter referred to as "ARI-FLV") whose address is 968 N. 9th Street, Laramie, Wyoming 82072 (hereinafter collectively referred to as "Parties").

2. **Purpose.** The purpose of this Agreement is for the Parties to address the use approximately 6,000 square feet of Kiwanis Park, as indicated on Attachment "A" – ARI-FLV Kiwanis Park Community Garden, by ARI-FLV to be developed and maintained as a public community garden.

3. **Term of Agreement and Required Approvals.** This Agreement is effective when all parties have executed it and all required approvals have been granted. The term of the Agreement is from the date of execution through December 31, 2023 unless otherwise terminated or extended as outlined herein.

4. **Consideration.** This Agreement is not expected to require the expenditure of any funds from one of the Parties of the other Party, but the mutual promises contained herein are acknowledged by the parties to be good and sufficient consideration.

5. **Responsibilities of ARI-FLV.**

A. ARI-FLV shall submit to the City written plans, drawings and specifications for all improvements for the Kiwanis Park Community Garden for approval by the Parks & Recreation Director, or their assignee, prior to any construction commencing.

B. ARI-FLV shall be responsible for the construction, care, operation and maintenance of all improvements and activities related to the Kiwanis Park Community Garden for as long as there is an executed agreement between the City and ARI-FLV. During construction and operation ARI-FLV shall keep the Park free and clean from dangerous accumulation of rubbish and debris, and shall maintain sufficient and proper barricades, lights, etc., for the protection of the public, as directed by the Parks and Recreation Director.

C. All improvements provided by ARI-FLV for the Kiwanis Park Community Garden shall become property of the City upon termination of this agreement.

D. ARI-FLV shall annually for the term of this agreement provide a written report of the activities, user and demographic information, surveys, etc. by January 31 of each year.

E. ARI-FLV shall be responsible for the materials required to provide non-potable water for seasonal plant material irrigation use in the Kiwanis Park Community Garden

including three (3) hose bibs and the adjustment of the existing irrigation system around the proposed Kiwanis Park Community Garden project. In addition, ARI-FLV shall be responsible for restricting access and usage of water provided by the City for the Kiwanis Park Community Garden for seasonal plant material irrigation only, and not for potable drinking water.

F. ARI-FLV's agents, volunteers, ARI-FLVs, employees, tenants, or licensees will complete the City's approved volunteer liability release and consent form prior to performing any work or construction activities in Kiwanis Park.

6. Responsibilities of City.

A. City will review the Kiwanis Park Community Garden project design in relation to the Kiwanis Park master plan and the Laramie Comprehensive Plan. All Kiwanis Park Community Garden improvements shall be designed and built to City standards and specifications in effect at the time the improvements are constructed by the ARI-FLV.

B. City agrees to inspect improvements during and at the completion of construction of each phase of development and, if completed in accordance with the standards and specifications for such improvements, to certify the improvements as following City standards and specifications. The inspections and certifications will be conducted in accordance with standard City policies and requirements.

C. City shall have the right to require the correction by ARI-FLV at any time of any item, or items, which do not conform to City Standards, Specifications or Ordinances, except for such item or items as may have been approved by the Parks and Recreation Director, whether in the plans or otherwise noted.

D. City shall provide the labor required to provide non-potable water for seasonal plant material irrigation use in the Kiwanis Park Community Garden including three (3) hose bibs and the adjustment of the existing irrigation system around the proposed Kiwanis Park Community Garden project.

7. Responsibilities of Parties.

A. The Parties agree that the Kiwanis Park Community Garden shall remain open and accessible to the public and Kiwanis Park users always under the Laramie Municipal Code, chapter 12.48.010, closed areas.

8. Special Provisions.

A. **Monitor Activities.** City shall have the right to monitor all related activities of the ARI-FLV, sub-contractors, volunteers and participants. 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 ARI-FLV personnel in every phase of performance of related work in Kiwanis Park.

B. **Publicity.** Any publicity given to the Kiwanis Park Community Garden

herein including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the ARI-FLV, shall identify City as a sponsoring agency and shall not be released without prior written approval from City's Liaison as designated below.

C. **Notice of Defect.** City will provide timely notice to the ARI-FLV whenever inspection reveals that an improvement is not constructed or completed in accordance with the standards and specifications for health or safety, and the notice of defect includes a statement explaining why the defect creates such immediate and substantial harm, the cure period may be shortened to no less than fifteen (15) days and City may declare a default under this Agreement if not satisfied that the defect is cured after the cure period. Any cure period should be reasonable in relation to the nature of the default.

D. **Termination.** Either party to this agreement may terminate such by giving notice of not less than thirty (30) days in writing of official action that has been taken by the governing body of the party which terminates the Memorandum of Understanding. In the event that such official action has been taken and the MOU has been terminated, then all of the improvements which have been constructed at Kiwanis Park shall become the property of the City, which shall then have responsibility for maintenance and repair. The ARI-FLV will have no further association with the improvements.

E. **Liaison and Notice** City's and ARI-FLV's Designated Representatives.

(i) City's designated representative is Todd Feezer, Director, Parks & Recreation, P.O. Box C Laramie, WY 82073: telephone number: (307) 721-5260: email tfeezer@cityoflaramie.org.

(ii) The ARI-FLV's project representative is Gayle M. Woodsum, Founder, Feeding Laramie Valley, 968 N. 9th Street, Wyoming 82072: telephone number: (307) 399-3815: email: gayle@feedinglaramievalley.org.

(iii) All notices required in this Agreement shall be in writing, properly delivered to the liaison above. All notices sent via U.S. Postal Services are deemed effective on the date of postmark.

9. **General Provisions.**

A. **Amendments.** Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and 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 the venue shall be the Second Judicial District, Albany County, Wyoming. ARI-FLV agrees to appoint a registered agent in Wyoming for service of process and will notify City in writing of the name and address of the registered agent within fifteen (15) days of effective date of this Agreement.

C. **Confidentiality.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by ARI-FLV in the performance of this Agreement shall be kept confidential by ARI-FLV unless written permission is granted by City for its release.

D. **Compliance with Laws.** ARI-FLV shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.

E. **Entirety of Agreement.** This Agreement, consisting of seven (7) pages, including Attachment A, entitled Attachment "A" – ARI-FLV Kiwanis Park Community Garden consisting of one (1) page, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

F. **Ethics.** ARI-FLV 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 ARI-FLV's profession.

G. **Force Majeure.** Neither 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 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.

H. **Indemnification.** ARI-FLV shall indemnify, defend and hold harmless City, their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of ARI-FLV's failure to perform any of ARI-FLV's duties and obligations hereunder or in connection with the negligent performance of ARI-FLV's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of ARI-FLV's negligence.

I. **Independent Contractor.** ARI-FLV shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of the City for any purpose. ARI-FLV shall assume sole responsibility for any debts or liabilities that may be incurred by the ARI-FLV 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 ARI-FLV to incur any obligation of any kind on the behalf of the City or its staff. ARI-FLV agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to City employees will inure to the benefit of the ARI-FLV or the ARI-FLV's agents and/or employees as a result of this Agreement.

J. Ownership of Documents/Work Product. All documents, reports, records, field notes, materials, and data of any kind resulting from performance of this Agreement are at all times the property of City.

K. Sovereign Immunity. The City does not waive sovereign immunity by entering into this Agreement 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.

L. Taxes. ARI-FLV 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.

M. Insurance. ARI-FLV shall maintain the following insurance:

(i) Commercial General Liability Insurance. ARI-FLV shall maintain coverage, during the entire term of the Agreement, 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, and in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence and One Million Dollars (\$1,000,000.00) general aggregate.

(ii) Workers Compensation or Employers Liability Insurance. ARI-FLV shall provide proof of workers compensation coverage, for all its employees who are to work on the projects described in this Agreement. ARI-FLV's coverage shall be under the Wyoming Workers Safety and Compensation program, if statutorily required, or such other workers compensation insurance as appropriate. ARI-FLV'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. ARI-FLV shall 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. ARI-FLV shall maintain, during the entire term of the Agreement, automobile liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) per occurrence.

(iv) Coverage. All policies required under this Agreement shall be in effect for the duration of this Agreement and projects. All policies shall be primary and not contributory. ARI-FLV 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 Agreement, except workers' compensation, shall name City as an additional insured, and shall contain a waiver of subrogation against City, its agents and employees. ARI-FLV 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 ARI-FLV'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 ARI-FLV'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 ARI-FLV.

(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 ARI-FLV 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.

O. 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 the 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 party's signatory 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.

P. Time is of the Essence. Time is of the essence in all provisions of the Agreement.


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

R. 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.

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IN WITNESS WHEREOF, the Laramie City Council has caused this Memorandum of Understanding 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: 
Andi Summerville, Mayor and President
City of Laramie, City Council

Attest: 
Nancy Bartholomew, City Clerk

FEEDING LARAMIE VALLEY

By: 
Gayle M. Woodsum, President and CEO
Action Resources International

Attest: 
Witness
Celeste Heft:

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF LARAMIE, WYOMING AND
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Attachment "A" – ARI-FLV Kiwanis Park Community Garden

