



ADMINISTRATION
& INFORMATION

GENERAL SERVICES DIVISION

Mark Gordon, Governor | Patricia L. Bach, Interim Director | Rich Merrill, Administrator

Agency Bid Exception Approval (BEA) Request Purchases for Items and Services Exceeding \$7,500.00

Date of Request: _____

Requesting Agency: _____

Agency Authorization Name: _____

Agency Authorization Email: _____

Vendor Name (must match WOLFS or Contract): _____

Amount of Request: \$ _____

Anticipated Term or One-Time Purchase: _____

New Contract, Amendment/Change Order, or Product: _____

OCIO Approval (if applicable): _____

Purpose:

Justification: *Questions to consider: Why was this vendor chosen? Explain the type of competitive process used (i.e. obtaining quotes, research for available vendor, etc.). If a competitive process was not used, why has the agency determined the bid process is not feasible? If the agency considers this a "sole source", what research was done to determine no other vendor could provide this item or service? If this is an amendment or change order, explain what is changing (money, time, contractor's responsibilities, etc.).*

Continued Justification:

**PROFESSIONAL SERVICES CONTRACT BETWEEN THE WYOMING WATER
DEVELOPMENT OFFICE AND HARRY C. LABONDE**

- 1. Parties.** The Parties to this Contract are the Wyoming Water Development Commission (WWDO) whose address is 6920 Yellowtail Road, Cheyenne, WY 82002, and Harry C. LaBonde (LaBonde) whose principal office is located at 7212 Quarter Circle Drive, Cheyenne, WY 82009.
- 2. Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which LaBonde will provide consulting services to the WWDO regarding Wyoming's role in the Platte River Recovery and Implementation Program (PRRIP) Governance, Finance, or other Committees and related activities as requested by the Wyoming Water Development Office.
- 3. Term of Contract.** This Contract is effective when all parties have executed it (Effective Date). The term of the contract is from July 1, 2019 through June 30, 2020. All services shall be completed during this term. This Contract may be extended by agreement of all parties in writing and subject to the required approvals. There is no right or expectation of extension and any extension will be determined at the discretion of the WWDO.
- 4. Payment.**

 - A.** The WWDO agrees to pay LaBonde for the services described herein and in Attachment A according to the hourly rate and expense schedule in Attachment B for work performed under this contract. Attachments A and B are attached to and incorporated into this Contract by this reference. Total payment under this Contract shall not exceed thirty thousand dollars (\$30,000.00). LaBonde shall submit invoices no more than monthly in sufficient detail to ensure that payments may be made in conformance with this Contract. Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602.
 - B.** No payment shall be made for work performed before the Effective Date of this Contract. Should LaBonde fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as LaBonde performs his duties and responsibilities to the satisfaction of the WWDO.
 - C. Travel.** The payment of travel expenses shall be allowed as set forth below. LaBonde is expected to procure the most cost efficient travel arrangements.

 - (i) Air Travel.** The WWDO agrees to reimburse LaBonde's air travel expenses related to the performance of this Contract. Air travel shall be reimbursed based on actual costs, supported by a copy of the original receipt with the invoice. LaBonde must select cost efficient airfare (fares available in the market at the time of booking, preferably well in advance of the trip to attain the lowest possible airfare). LaBonde shall book economy class fares for all domestic travel. First class bookings are not reimbursable.

(ii) Personal Vehicle. Mileage shall be reimbursed at the rate set in Wyoming Statute § 9-3-103 based on standard map mileage.

D. Lodging. The WWDO agrees to reimburse LaBonde's lodging expenses related to the performance of this Contract. Lodging expenses shall be reimbursed at actual costs, supported by a copy of the original receipt with the invoice. LaBonde shall only invoice the WWDO for the basic room rate, taxes, and lodging fees. The WWDO is not responsible for incidentals or miscellaneous expenses charged to the room. Incidental and miscellaneous expenses for which the WWDO shall not be responsible include, but are not limited to, charges such as alcohol, internet, telephone charges, mini-bar, and movies.

E. Per Diem. The WWDO agrees to reimburse LaBonde's meal and incidental expenses related to the performance of this Contract. LaBonde shall be reimbursed for meals and incidental expenses at a rate that shall not exceed the published federal travel regulation rates in effect at the time of travel per day. The meal and incidental expense allowance shall be computed so as to pay seventy-five percent (75%) of the destination rate on the day of departure, one hundred percent (100%) on all interim days of official travel and seventy-five percent (75%) of the previous day's rate on the day of return. This reimbursement amount includes all meal, beverage, and refreshment expenses incurred during the day. Requests for reimbursement shall state the amount allowable for meals and list the actual number of travel days on the invoice.

5. **Responsibilities of LaBonde.** The services to be provided by LaBonde are described in Attachment A.

6. **Responsibilities of WWDO.** The WWDO agrees to pay LaBonde in accordance with Section 4 above.

7. **Special Provisions.**

A. Conflicts of Interest.

(i) LaBonde shall not engage in providing consultation or representation of clients, agencies, or firms which may constitute a conflict of interest or may result in a disadvantage to the WWDO or a disclosure which may adversely affect the interests of the WWDO. LaBonde shall notify the WWDO of any potential or actual conflicts of interest arising during the course of LaBonde's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of this Contract will be subject to a mutual settlement of accounts. In the event this Contract is terminated under this provision, LaBonde shall take steps to ensure that all files, evidence, evaluations, data, or related materials are provided to the WWDO or WWDO designees. This provision does not prohibit or affect LaBonde's ability to engage in consultations, evaluations, or representation under agreement with other agencies, firms, facilities or attorneys so long as no conflict exists.

(ii) A conflict of interest warranting termination of this Contract may include, but is not necessarily limited to, acting on behalf of a client in an adversarial proceeding against the State of Wyoming, its agencies, boards, commissions, or the University of Wyoming, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition, or quo warranto.

- B. Kickbacks.** LaBonde 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 LaBonde breaches or violates this warranty, the WWDO may, at its discretion, terminate this Contract without liability to the WWDO, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.
- C. Monitoring Activities.** The WWDO shall have the right to monitor all activities performed by LaBonde in relation to this Contract. This shall include, but not be limited to, the right to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Contract; and to observe every phase of performance of Contract related work, without exception.
- 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 any party.

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 by all parties to this Contract.
- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Assignment Prohibited and Contract Shall Not Be Used as Collateral.** No party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this contract without the prior written consent of the other party. LaBonde shall not use this Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of the WWDO.
- D. Audit and Access to Records.** WWDO and their representatives shall have access to any books, documents, papers, electronic data, and records of LaBonde which are pertinent to this Contract.
- E. Availability of Funds.** Each payment obligation of the WWDO is conditioned upon the availability of government funds which are appropriated or allocated for

the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the WWDO at the end of the period for which the funds are available. The WWDO shall notify LaBonde 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 WWDO in the event this provision is exercised, and the WWDO shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

- F. Award of Related Contracts.** The WWDO may award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. LaBonde shall cooperate fully with other contractors and the WWDO in all such cases.
- G. Certificate of Good Standing.** LaBonde shall provide to the WWDO a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that LaBonde is authorized to conduct business in the State of Wyoming, if required, before performing work under this Contract. LaBonde shall ensure that all annual filings and corporate taxes due and owing to the Secretary of State's office are up-to-date before signing this Contract.
- H. Compliance with Laws.** LaBonde shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by LaBonde in the performance of this Contract shall be kept confidential by LaBonde unless written permission is granted by the WWDO for its release. If and when LaBonde receives a request for information subject to this Contract, LaBonde shall notify the WWDO within ten (10) days of such request and shall not release such information to a third party unless directed to do so by the WWDO.
- J. Entirety of Contract.** This Contract, consisting of eight (8) pages; Attachment A, Scope of Work, consisting of two (2) pages; and Attachment B, 2019-2020 Hourly Rate and Expense Schedule, consisting of one (1) page, represent the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Contract and the language of any attachment or document incorporated by reference, the language of this Contract shall control.
- K. Ethics.** LaBonde 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 LaBonde's profession.

- L. Extensions.** 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 initiated by the WWDO and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Contract or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Contract.
- M. Force Majeure.** No 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.
- N. Indemnification.** LaBonde shall release, indemnify, and hold harmless the State, the WWDO, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of LaBonde's failure to perform any of LaBonde's duties and obligations hereunder or in connection with the negligent performance of LaBonde's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of LaBonde's negligence or other tortious conduct.
- O. Independent Contractor.** LaBonde shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Contract, LaBonde shall be free from control or direction over the details of the performance of services under this Contract. LaBonde shall assume sole responsibility for any debts or liabilities that may be incurred by LaBonde 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 LaBonde or his agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the WWDO, except for LaBonde's role as Wyoming's representative on the PRIPP Governance Committee and other related committees, or to incur any obligation of any kind on behalf of the State of Wyoming. LaBonde agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance, or similar benefits available to State of Wyoming employees will inure to the benefit of LaBonde or LaBonde's agents or employees as a result of this contract.
- P. Nondiscrimination.** LaBonde 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 thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.

- Q. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract. Assignments of work under this Contract and regular communications may be made by electronic mail.
- R. Ownership and Return of Documents and Information.** The WWDO is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by LaBonde in the performance of this Contract. Upon termination of services, for any reason, LaBonde agrees to return all such original and derivative information and documents to the WWDO in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon the WWDO's verified receipt of such information, LaBonde agrees to physically and electronically destroy any residual WWDO-owned data, regardless of format, and any other storage media or areas containing such information. LaBonde agrees to provide written notice to the WWDO confirming the destruction of any such residual WWDO-owned data.
- S. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Contract has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).
- T. Publicity.** Any publicity given to the projects, programs or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for LaBonde, shall not be released without prior written approval from the WWDO.
- U. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties will renegotiate the terms affected by the severance.
- V. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and the WWDO expressly reserve sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. 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 Contract 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.

W. Taxes. LaBonde 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. This Contract may be terminated, without cause, by the WWDO or LaBonde upon thirty (30) days written notice. This Contract may be terminated by the WWDO immediately for cause if LaBonde fails to perform in accordance with the terms of this contract.

If at any time during the performance of this Contract, in the opinion of the WWDO, the work is not progressing satisfactorily or within the terms of this Contract, then, at the discretion of the WWDO and after written notice to LaBonde, the WWDO may terminate this contract or any part of it. As of the termination date, LaBonde will be entitled to a pro rata payment for all work accomplished and accepted by the WWDO.

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.

Z. Time is of the Essence. Time is of the essence in all provisions of this Contract.

AA. Titles Not Controlling. Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.

BB. Waiver. The waiver of any breach or any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

CC. Counterparts. This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Contract. Delivery by LaBonde of an originally signed counterpart of this Contract by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the WWDO.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

9. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

WYOMING WATER DEVELOPMENT OFFICE

Jason Mead, P.E., Acting Director


Date

HARRY C. LABONDE

Harry C. LaBonde

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

, Senior Assistant Attorney General

Date

Attachment A

Contract between the Wyoming Water Development Office and Harry LaBonde

Scope of Work

Contractor Harry LaBonde (LaBonde) will provide consulting services as described in this Scope of Work to the Wyoming Water Development Office regarding Wyoming's role in the Platte River Recovery Implementation Program (PRRIP) Governance, Finance, or other Committees as requested by the Wyoming Water Development Office (WWDO). Any and all work done by LaBonde will be performed on an as-needed basis as requested by the WWDO. Consulting services are anticipated to include, but are not limited to:

- Preparing for and participating in:
 - Serving as Wyoming's representative on the PRRIP Governance Committee (GC);
 - Quarterly GC meetings;
 - Annual GC budget conference call;
 - GC conference calls as special issues require;
 - GC structured decision-making workshops;
 - GC Signatory meetings;
 - Finance Committee conference calls; and
 - Other Committee meetings as requested.
- Carrying out the duties of appointed positions.
- Approving PRRIP activities and criteria as appropriate, including but not limited to land and water acquisition and management criteria, management actions, and revisions to program milestones or land and water plans, or the Adaptive Management Plan, in coordination with the WWDO. Approval functions will follow the consideration of recommendations from the Executive Director and PRRIP Committees and Subcommittees.
- Approving PRRIP budgets and statements/scopes of work for contracts and amendments as appropriate in coordination with the WWDO.
- Carrying out the Administrative and Advisory responsibilities of a Committee representative.
- Carrying out PRRIP responsibilities as a Signatory for the State of Wyoming in coordination with the WWDO.
- Carrying out the State of Wyoming's contracting and financial responsibilities in coordination with the WWDO.
- Providing coordination with, and updates to, the Wyoming Governor's Office and WWDO.
- Attending Wyoming Water Development Commission meetings and reporting PRRIP updates as requested by the WWDO.
- Testifying in front of Wyoming Legislative Committees and Subcommittees as requested by the WWDO.

- Testifying in front of Congressional Committees and Subcommittees as requested by the WWDO.
- Coordinating with, and between, Wyoming PRRIP Financial Committee, Advisory Committee and Subcommittee members.
- Performing other PRRIP assignments requested by the WWDO.

Attachment B

Contract between the Wyoming Water Development Office and Harry LaBonde

2019-2020 Hourly Rate and Expense Schedule

7212 Quarter Circle Drive, Cheyenne, WY 82009

307.760.7160

Professional Services: Harry LaBonde - \$100.00/hour
Harry LaBonde, Travel Time - \$50.00/hour

Expenses: Travel, Lodging and Per Diem expenses as described in the
Contract and not to exceed federal GSA listed rates.

Photocopies - 10¢ per page
Photocopies (large) - 55¢ per page

The Wyoming Water Development Office will be billed no more than monthly for actual professional time, to the nearest quarter hour, and reimbursable expenses. These hourly rates include all salary costs, overhead, profit, office equipment, computers, and routine office supplies and expenses other than photocopy expenses identified above. Any other directly related expenses will be billed at cost.