AGENDA
CITY OF SHERIDAN
APRIL 8, 2019
STUDY SESSION COUNCIL MEETING START 5:00 P.M.

1. Solid Waste Diversion Goal Setting Discussion - Utilities Director Dan Roberts - 45 Minutes

2. Sheridan Innovation Center Discussion - Chief Executive Officer of Ptolemy Data Systems, Jesus Rios

3. Consideration of the Appropriation of $30,000 to Habitat for Humanity to Fund the Cost of Water and Sewer Plant Investment Fees out of One Cent Contingency Funds for FY19 and FY20 - Habitat for Humanity Executive Director Christine Dieterich - 10 Minutes

4. Consideration of Resolution #17-19, Vista West Estates County Subdivision - Community Development Director Brian Craig - 5 Minutes

5. Consideration of Resolution #16-19 Approving the Purchasing and Procurement Policy - City Treasurer Karen Burtis

6. Consideration of Amendments to the City of Sheridan Tree Ordinance - Public Works Director Lane Thompson - 5 Minutes

7. Consideration of Approval of Amendment No. 1 for the City of Sheridan Hill Slide Stabilization Project Phase I - City Engineer Hanns Mercer

8. Consideration of Building Services Intergovernmental Cooperative Agreement between the City of Sheridan and Sheridan County - Community Development Director Brian Craig - 5 Minutes

CITY OF SHERIDAN, WYOMING

55 Grinnell Street, P.O. Box 848, Sheridan Wyoming 82801
Ph (307) 674-6483 Fax (307) 674-2195

Utilities

MEMORANDUM

Project Name:	Solid Waste Diversion Goal Setting Discussion - Utilities Director Dan Roberts - 45 Minutes
From:	Dan Roberts, Utilities Director
To:	Mayor and Council
CC:	Mark Collins, City Administrator
Date:	04/04/2019

CITY OF SHERIDAN, WYOMING

55 Grinnell Street, P.O. Box 848, Sheridan Wyoming 82801
Ph (307) 674-6483 Fax (307) 674-2195

Clerk

MEMORANDUM

Project Name:	Sheridan Innovation Center Discussion - Chief Executive Officer of Ptolemy Data Systems, Jesus Rios
From:	Cecilia Good, City Clerk
To:	Mayor and Council
CC:	Mark Collins, City Administrator
Date:	04/04/2019

Attachments

Innovation Center Update
Incubator Facility Agreement

Sheridan Innovation Center Pilot
April 2019
Community and Stakeholder Update

Summary

The Sheridan Innovation Center (IC) Pilot implementation continues to move forward. A local IC taskforce will be preparing an application to the Wyoming Business Council (WBC) Board that will request release of funding for the launch of the Pilot, with funding projected to be available in July 2019. Local letters of support will be required for the application. The WBC CEO has requested a two-year pro-forma budget and expects that the IC Pilots in Sheridan and Casper have the potential to be approved for two years of funding, which supplements existing local funding, to fully implement the Pilot concept. The IC will transition from UW's Wyoming Technology Business Center (WTBC) and will be organized under a local public entity, most likely Sheridan County.

Organization

Timelines under discussion will transition the current organization under the WTBC to Sheridan County sometime in the second half of 2019, perhaps as early as July 1.

- A two year operational budget is being created that will convey resources required to implement the Pilot program.
- A month-to-month contractual arrangement for operation of the existing WTBC is in place with UW should extra time be needed past June 30 to complete the IC transition.
- Though the IC will lose direct affiliation with UW, a strong working relationship will be maintained so that Sheridan entrepreneurs can continue to leverage knowledge, training, resources and key connections to help drive business initiatives forward.
- The UW Foundation is currently the custodian of certain funds related to the Sheridan incubator (e.g. the Sheridan Start-Up Challenge), and a local entity will need to be identified to receive these funds for future programming purposes.

IC Program

The biggest benefit to Sheridan is that the IC program will have local control and oversight, which will translate into greater impact and results from IC services.

- An Advisory Board comprised of local stakeholders will be created that will oversee program elements, entrepreneurial events, and provide mentorship and direction for IC start-up and early stage companies.
- In addition to core incubation (i.e. development of business ideas, office space, and creation of plans), the IC intends to offer additional support and consulting to both early-stage high growth potential businesses in the "acceleration" phase of development and established companies with expansion opportunities in the Sheridan community. For example, product line extensions or new technology from established companies can be trialed out in the IC.
- There also are new statewide entrepreneurial resources planned which IC companies will be able to leverage.
- Companies actively involved in the IC program will be well positioned to apply for state Kickstart and SBIR matching grants.
- The Start-Up Challenge will continue to showcase entrepreneurial talent in Sheridan.
- A successful Sheridan Pilot will help other Wyoming communities establish future IC's.

Communication

A re-launch of the IC entrepreneurial program is envisioned, which will include re-branding, marketing, and promotion to clearly articulate the program and resources that are available to both aspiring and existing high-growth potential businesses.

Facility

The IC taskforce continues to evaluate the possibility of relocating the IC offices to a downtown location and make it an anchor portion of a proposed Sheridan economic development co-location facility.

- Discussions are underway with a prominent Main Street business that has 10,000 square feet available to establish a co-location facility.
- A RFP was created for a design and reconfiguration review of this space.
- The RFP closes on April 8, and 2-3 proposal submissions are expected from local Sheridan architectural design firms.
- The selected firm will perform a needs assessment by interviewing all Sheridan economic development organizations interested in co-locating and will produce a layout plan with reconfiguration and remodeling costs.
- Options for funding the office space redesign and refurbishment costs are being studied.

Longer-Term Plans

Sheridan's economic development strategies, in order to be successful, must continue to employ a multi-faceted approach. The launch and establishment of entrepreneurial ventures in our area is one cornerstone aspect, in addition to ongoing retention and expansion of existing businesses and recruitment of companies considering relocation to Sheridan. The collective goal must be encouragement of a diverse composition of businesses across many different industries to reduce exposure to economic cycles.

For the IC and other Sheridan economic development groups to be successful in implementing the strategies, there must be a coordinated and effective public-private effort put into place.

- Sheridan must not assume or rely on state support to accomplish its goals.
- The private sector will need to be heavily involved but will need to be convinced of both program effectiveness and solid return on investment.
- Local support and participation in this process from the City, County, and outlying communities will be essential.
- Once the IC is launched, a Sheridan-area taskforce must be formed to challenge existing economic development activities and create a *sustainable* funding model that will allow our communities to thrive economically while maintaining a high quality of life for residents.

Please let us know if there are questions that we can address. Thank you for your continuing support of our local Sheridan entrepreneurial advancement programs.

AMENDMENT #1
COOPERATIVE FUNDING AGREEMENT
SHERIDAN INCUBATOR FACILITY

THIS AMENDMENT is made and entered into this 18th day of December 2018, by and between SHERIDAN COUNTY (COUNTY), and the CITY OF SHERIDAN ("CITY"), hereinafter referred to as the "Parties" or individually as a "Party".

WHEREAS, the parties entered into an AGREEMENT between Sheridan County and UW on November 4, 2014; and

WHEREAS, the parties, by mutual agreement, wish to amend said AGREEMENT and have hereto set forth this amendment; and

NOW, THEREFORE, IT IS AGREED as follows, that:

I.

Section 1., add a new subsection (I):

I. Forty thousand dollars ($40,000.00) and no cents due and payable before January 10, 2019, and monthly payments of six thousand six hundred sixty-seven dollars ($6,667) before July 10, 2019, and the tenth day of each month thereafter as invoiced by WTBC .

II.

Section 4. delete in its entirety and replace with the following:

This Agreement shall expire on December 31, 2019, unless otherwise extended by mutual agreement of the Parties. Further, this Agreement may be amended by written agreement of the Sheridan City Council and the Sheridan County Board of County Commissioners.

III.

All other terms of the Agreement entered into between the parties, dated November 4, 2014, shall remain in full force and effect, and the provisions of this AMENDMENT #1 are hereby incorporated therein.

BOARD OF COUNTY COMMISSIONERS, SHERIDAN WYOMING

Mike Nickel, Chairman

ATTEST: Edna Schunk Thompson
County Clerk & Recorder

CITY OF SHERIDAN

By: Roger C Miller
Roger Miller, Mayor

ATTEST:
City Clerk

CITY OF SHERIDAN, WYOMING

55 Grinnell Street, P.O. Box 848, Sheridan Wyoming 82801
Ph (307) 674-6483 Fax (307) 674-2195

Planning

MEMORANDUM

Project Name:	Consideration of Resolution #17-19, Vista West Estates County Subdivision - Community Development Director Brian Craig - 5 Minutes
From:	Brian Craig, Community Development Director
To:	Mayor and Council
CC:	Mark Collins, City Administrator
Date:	03/18/2019

Recommendation:

Staff recommends the City Council approve Resolution #17-19, granting approval of the final plat for the Vista West Estates, (PL 19-4), a joint City-County subdivision. Dividing 117.2 acres of unplatted land into 19 single-family residential lots, and 1 outlot. Zoned in the county as Rural Residential (RR). Located north of West Loucks, and south-west of Kendrick Golf Course, in a portion of Section 31, T56N, R84W.

Planning Commission Action:

As a joint City/County Subdivision, this item is not considered by the City Planning Commission. The County Planning and Zoning Commission reviewed it at their April 4, 2019 meeting and recommended approval for the project as presented.

Background:

The property owner, the System Land, LLC, has requested to divide their 117.02 acre parcel located off of W. Loucks/Big Goose Road into 19 single family lots, and one outlot. Since the proposed subdivision is within one mile of the City limits, the plat must be approved by the City Council as well as the County Commissioners.

The property lies within the Sheridan/SAWS Water Service area. Water service is available to the subdivision subject to successful execution and completion of the agreement between Saddlecrest, LLC and the SAWS board.

The City's sewer system does not reach this subdivision nor is there adequate capacity in the nearby mains to serve this subdivision at this time. This subdivision lies beyond the proposed West Beltway Road Loop, which may be a logical boundary for considering future sewer service on West Loucks St. The lots meet the minimum area requirement for septic systems and will be permitted and inspected by the appropriate county staff.

The property is zoned Rural Residential, though the proposed lots meet the requirements of an R-1 subdivision in the city limits.

Discussion:

There are five conditions which must be satisfied as part of subdivision approval. They are with staff commentary:

1. *The City shall not approve any proposed subdivision of land which, by itself, or as a part of a larger tract, is contiguous to or completely surrounded by the boundaries of the City, unless the application is accompanied by a properly-acknowledged petition for annexation to the City.*

City staff is currently working with the applicant and the applicant's attorney to prepare an agreeable pre-annexation agreement that capture's the unique nature of this being a rural subdivision.

2. *The City shall not approve any proposed subdivision of land which is within one mile of the corporate limits of Sheridan but not, at the time of submittal, eligible for annexation, unless the application is accompanied by a properly acknowledged agreement not to contest future annexation proceedings.*

Again, a preannexation agreement is being prepared with the applicant.

3. *Every plat shall conform to the Zoning Ordinance currently adopted at the time of final plat approval.*

The property is presently zoned Rural Residential. As mentioned above, the lots meet the subdivision regulations for the City's R-1 zoning regulations, which would be convenient if this subdivision were ever to be annexed into the City.

4. *All new subdivision developments within the Airport Influence Area within the city limits of the City of Sheridan shall grant an Avigation Easement to the Sheridan County Airport.*

The proposed subdivision falls outside of the Airport Influence Area, so this requirement would not apply.

5. *No subdivision shall be approved within the corporate limits of the City of Sheridan, or one mile thereof, unless City Public Works staff concludes that an adequate long-term water supply exists to support the proposed use and density of the subdivision In accordance with City adopted policy. City elected officials acting as Council representatives on other boards or committees that review development shall likewise consider long-range water supply in making any determination.*

City utilities staff evaluated these lots as part of the review process. While water is provided on a first come first serve basis, there is nothing to indicate at this point that there would be challenges to water capacity.

Staff believes that the criteria for a final plat submittal has been met, and the proposed subdivision meets city code requirements. There are no further comments at this time.

Potential Findings of Fact:

The City Council is required to make the following findings in considering approval of any final plat per SCC Appendix B§202:

1. The City shall not approve any proposed subdivision of land which, by itself, or as a part of a larger tract, is contiguous to or completely surrounded by the boundaries of the City, unless the application is accompanied by a properly-acknowledged petition for annexation to the City.

2. The City shall not approve any proposed subdivision of land which is within one mile of the corporate limits of Sheridan but not, at the time of submittal, eligible for annexation, unless the application is accompanied

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Attachments

final plat

aerial

Draft Res #17-19

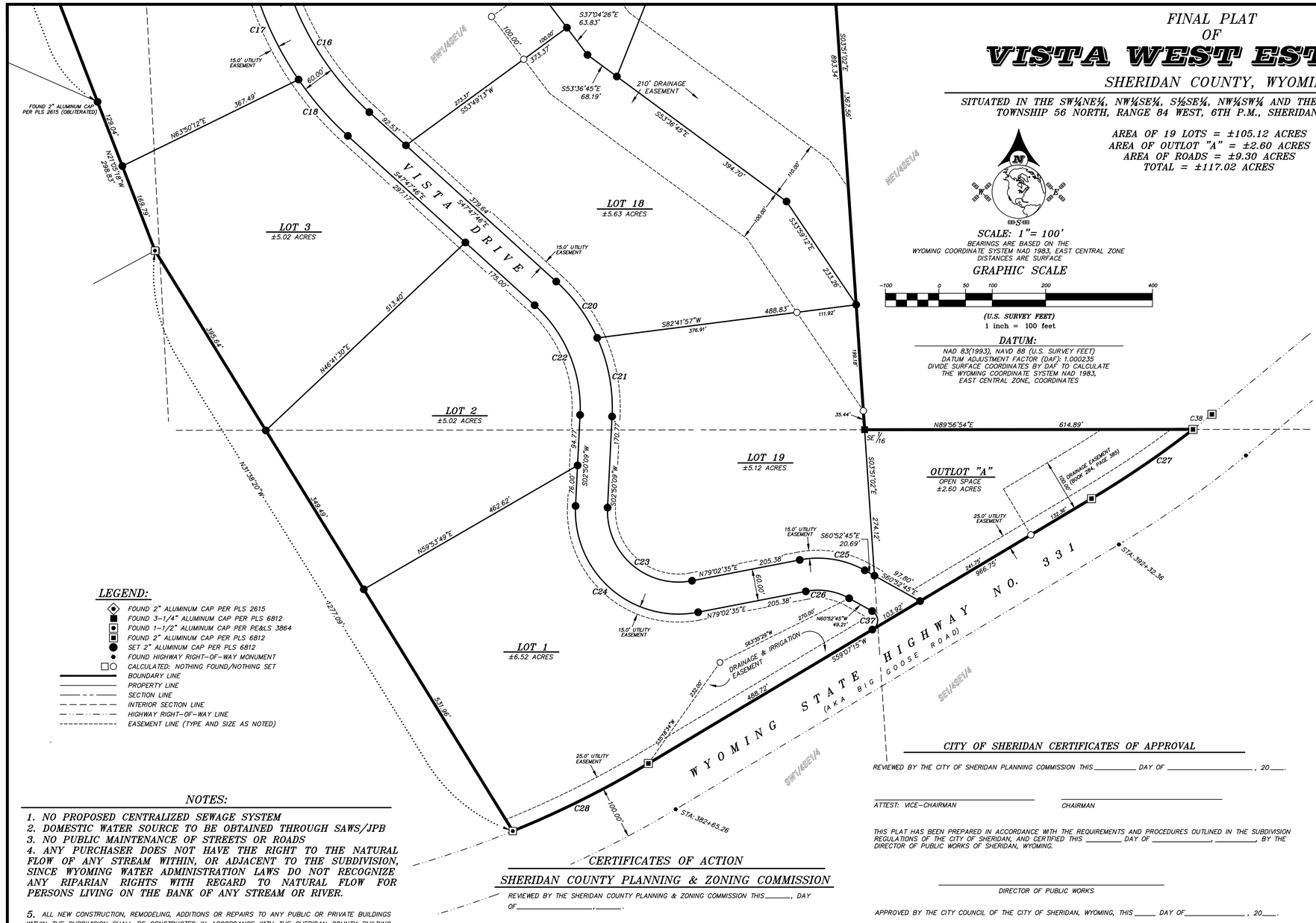
Draft Pre-Annex Agreement

FINAL PLAT OF VISTA WEST ESTATES

SHERIDAN COUNTY, WYOMING

SITUATED IN THE SW¼NE¼, NW¼SE¼, S½SE¼, NW¼SW¼ AND THE SE¼NW¼ OF SECTION 31, TOWNSHIP 56 NORTH, RANGE 84 WEST, 6TH P.M., SHERIDAN COUNTY, WYOMING

AREA OF 19 LOTS = ±105.12 ACRES
AREA OF OUTLOT "A" = ±2.60 ACRES
AREA OF ROADS = ±9.30 ACRES
TOTAL = ±117.02 ACRES



SCALE: 1"= 100'

BEARINGS ARE BASED ON THE WYOMING COORDINATE SYSTEM NAD 1983, EAST CENTRAL ZONE
DISTANCES ARE SURFACE

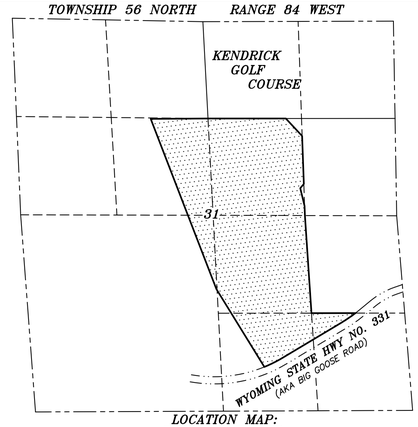
GRAPHIC SCALE

-100 0 50 100 200 400

(U.S. SURVEY FEET)
1 inch = 100 feet

DATUM:

NAD 83(1993), NAVD 88 (U.S. SURVEY FEET)
DATUM ADJUSTMENT FACTOR (DAF): 1.000235
DIVIDE SURFACE COORDINATES BY DAF TO CALCULATE THE WYOMING COORDINATE SYSTEM NAD 1983, EAST CENTRAL ZONE, COORDINATES



LOCATION MAP:
NO TRUE SCALE

LEGEND:

- FOUND 2" ALUMINUM CAP PER PLS 2615
- FOUND 3-1/4" ALUMINUM CAP PER PLS 6812
- FOUND 1-1/2" ALUMINUM CAP PER PE&LS 3864
- FOUND 2" ALUMINUM CAP PER PLS 6812
- SET 2" ALUMINUM CAP PER PLS 6812
- FOUND HIGHWAY RIGHT-OF-WAY MONUMENT
- CALCULATED: NOTHING FOUND/NOTHING SET
- BOUNDARY LINE
- PROPERTY LINE
- SECTION LINE
- INTERIOR SECTION LINE
- HIGHWAY RIGHT-OF-WAY LINE
- EASEMENT LINE (TYPE AND SIZE AS NOTED)

NOTES:

1. NO PROPOSED CENTRALIZED SEWAGE SYSTEM
2. DOMESTIC WATER SOURCE TO BE OBTAINED THROUGH SAWS/JPB
3. NO PUBLIC MAINTENANCE OF STREETS OR ROADS
4. ANY PURCHASER DOES NOT HAVE THE RIGHT TO THE NATURAL FLOW OF ANY STREAM WITHIN, OR ADJACENT TO THE SUBDIVISION, SINCE WYOMING WATER ADMINISTRATION LAWS DO NOT RECOGNIZE ANY RIPARIAN RIGHTS WITH REGARD TO NATURAL FLOW FOR PERSONS LIVING ON THE BANK OF ANY STREAM OR RIVER.

5. ALL NEW CONSTRUCTION, REMODELING, ADDITIONS OR REPAIRS TO ANY PUBLIC OR PRIVATE BUILDINGS WITHIN THE SUBDIVISION SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE SHERIDAN COUNTY BUILDING STANDARDS REGULATIONS AND BUILDING PERMITS AND INSPECTIONS ARE REQUIRED.

6. WHEN PUBLIC SEWAGE FACILITIES BECOME AVAILABLE, ALL EXISTING AND FUTURE DWELLINGS SHALL CONNECT TO SAID SYSTEM.

7. VISTA WEST ESTATES IS LOCATED IN CLOSE PROXIMITY TO THE SHERIDAN COUNTY AIRPORT AND NO OWNER OF ANY LOT, NOR HIS SUCCESSORS OR ASSIGNS SHALL HAVE A CAUSE OF ACTION AGAINST DECLARANT OR COUNTY OF SHERIDAN ARISING OUT OF THE NOISE OR OTHER DISTURBANCE WHICH MAY RESULT FROM LEGAL OPERATION OF AIRCRAFT IN THE AIRSPACE OVER SAID SUBDIVISION.

8. THE SURFACE ESTATE OF THE LAND TO BE SUBDIVIDED IS SUBJECT TO FULL AND EFFECTIVE DEVELOPMENT OF THE MINERAL ESTATE.

9. OUTLOT "A" IS AN OPEN SPACE AND SHALL BE OWNED & MAINTAINED BY THE HOME OWNERS ASSOCIATION. THE HOME OWNERS ASSOCIATION HAS THE AUTHORITY OF GRANTING EASEMENTS, ENCUMBRANCES AND LEGAL ADJUSTMENTS TO THE BOUNDARY.

10. SEPTIC SYSTEMS SHALL BE DESIGNED AND INSTALLED IN ACCORDANCE WITH SHERIDAN COUNTY AND WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY REGULATIONS, WHICHEVER IS MOST STRINGENT. REQUIREMENTS APPLY FOR ABSORPTION SURFACE LOCATIONS WITH RESPECT TO MAXIMUM SLOPES DEPENDENT ON SOIL PERCOLATION RATES AND MINIMUM HORIZONTAL DISTANCES FROM THE TOP OF ANY BREAK IN SLOPE THAT EXCEEDS THE MAXIMUM SLOPE ALLOWED.

11. THIS SUBDIVISION CONTAINS AREAS WITH STEEP SLOPES (>20%) THAT CAN BE SUSCEPTIBLE TO SLUMPS AND LANDSLIDES. ALL STRUCTURES AND OTHER IMPROVEMENTS SHALL BE CONSTRUCTED AWAY FROM STEEP SLOPES AND BE WITHIN THE BUILDING ENVELOPES DEPICTED ON THE BUILDING AND LANDSCAPE ENVELOPES PLAN INCLUDED IN THE PROTECTIVE COVENANTS. ALL IMPROVEMENTS SHALL BE REVIEWED AND APPROVED BY THE HOMEOWNER'S ASSOCIATION PRIOR TO INSTALLATION.

CERTIFICATES OF ACTION

SHERIDAN COUNTY PLANNING & ZONING COMMISSION

REVIEWED BY THE SHERIDAN COUNTY PLANNING & ZONING COMMISSION THIS_____, DAY OF_____, _____.

ATTEST:

_____ _____
CLERK CHAIRMAN

CERTIFICATE OF APPROVAL
BOARD OF COUNTY COMMISSIONERS

PLAT APPROVED AND SUBDIVISION PERMIT ISSUED BY THE BOARD OF COUNTY COMMISSIONERS OF SHERIDAN COUNTY, WYOMING, THIS_____, DAY OF_____, _____.

ATTEST:

_____ _____
COUNTY CLERK CHAIRMAN

CERTIFICATE OF RECORDER

STATE OF WYOMING)
) SS
COUNTY OF SHERIDAN)

I HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN MY OFFICE AT_____ O'CLOCK, THIS_____, DAY OF_____, _____, AND RECORDED IN PLAT BOOK _____, ON PAGE _____.

_____ STAMP RECEIVING NUMBER: _____
COUNTY CLERK

CITY OF SHERIDAN CERTIFICATES OF APPROVAL

REVIEWED BY THE CITY OF SHERIDAN PLANNING COMMISSION THIS_____ DAY OF _____, 20___.

_____ _____
ATTEST: VICE-CHAIRMAN CHAIRMAN

THIS PLAT HAS BEEN PREPARED IN ACCORDANCE WITH THE REQUIREMENTS AND PROCEDURES OUTLINED IN THE SUBDIVISION REGULATIONS OF THE CITY OF SHERIDAN, AND CERTIFIED THIS _____ DAY OF _____, _____, BY THE DIRECTOR OF PUBLIC WORKS OF SHERIDAN, WYOMING.

_____
DIRECTOR OF PUBLIC WORKS

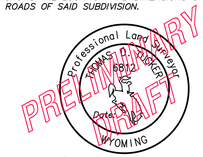
APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERIDAN, WYOMING, THIS_____ DAY OF_____, 20___.

_____ _____
ATTEST: CITY CLERK MAYOR

SURVEYOR'S CERTIFICATE

STATE OF WYOMING
COUNTY OF SHERIDAN :ss

I, THOMAS D. TUCKER, DO HEREBY STATE THAT I AM A REGISTERED LAND SURVEYOR, LICENSED UNDER THE LAWS OF THE STATE OF WYOMING, THAT THIS PLAT IS A TRUE, CORRECT AND COMPLETE PLAT OF **VISTA WEST ESTATES**, AS LAID OUT, PLATTED, DEDICATED AND SHOWN HEREON, THAT THIS PLAT WAS MADE FROM AN ACCURATE SURVEY OF SAID PROPERTY CONDUCTED BY ME OR UNDER MY DIRECT SUPERVISION AND CORRECTLY SHOWS THE LOCATION AND DIMENSIONS OF ALL LOTS, OUTLOT "A", EASEMENTS AND ROADS OF SAID SUBDIVISION.



PRELIMINARY DRAFT

"PLAT IS VALID ONLY IF PRINT HAS ORIGINAL SIGNATURE OF SURVEYOR SIGNED AND DATED"

CERTIFICATE OF DEDICATION

THE ABOVE OR FOREGOING **VISTA WEST ESTATES** BEING A SUBDIVISION SITUATED IN THE SW¼NE¼, NW¼SE¼, S½SE¼, NW¼SW¼ AND THE SE¼NW¼ OF SECTION 31, TOWNSHIP 56 NORTH, RANGE 84 WEST, 6TH P.M., SHERIDAN COUNTY, WYOMING; SAID SUBDIVISION BEING A TRACT OF LAND, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 31 (MONUMENTED WITH A 3¼" ALUMINUM CAP PER PLS 6812); THENCE N89°51'09"W, 1282.75 FEET ALONG THE NORTH LINE OF THE NE¼SE¼ TO THE POINT OF BEGINNING OF SAID TRACT, SAID POINT BEING THE NORTHEAST CORNER OF SAID NW¼SE¼; THENCE S03°51'02"E, 1367.56 FEET TO A POINT, SAID POINT BEING THE SOUTHEAST CORNER OF SAID NW¼SE¼; THENCE N89°56'54"E, 614.89 FEET ALONG THE SOUTH LINE OF SAID NE¼SE¼ TO A POINT, SAID POINT LYING ON THE NORTHERLY RIGHT-OF-WAY LINE OF WYOMING STATE HIGHWAY NO 331; THENCE, ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF WYOMING STATE HIGHWAY NO 331 THROUGH A NON-TANGENT CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 07°05'22", A RADIUS OF 1859.86 FEET, AN ARC LENGTH OF 230.13 FEET, A CHORD BEARING OF S55°41'12"W, AND A CHORD LENGTH OF 229.98 FEET TO A POINT; THENCE S59°07'15"W, 966.75 FEET ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF WYOMING STATE HIGHWAY NO 331 TO A POINT; THENCE, ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF WYOMING STATE HIGHWAY NO 331 THROUGH A NON-TANGENT CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 08°44'46", A RADIUS OF 1859.86 FEET, AN ARC LENGTH OF 283.91 FEET, A CHORD BEARING OF S63°28'58"W, AND A CHORD LENGTH OF 283.63 FEET TO A POINT, SAID POINT BEING THE SOUTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 490 OF DEEDS, PAGE 641; THENCE N31°38'20"W, 1277.09 FEET ALONG THE EASTERLY LINE OF SAID TRACT DESCRIBED IN BOOK 490 OF DEEDS, PAGE 641 TO A POINT, SAID POINT BEING THE SOUTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 497 OF DEEDS, PAGE 448; THENCE N21°05'18"W, 298.83 FEET ALONG THE EASTERLY LINE OF SAID TRACT DESCRIBED IN BOOK 497 OF DEEDS, PAGE 448 TO A POINT, SAID POINT BEING THE SOUTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 497 OF DEEDS, PAGE 451; THENCE N21°05'19"W, 2252.57 FEET ALONG THE EASTERLY LINE OF SAID TRACT DESCRIBED IN BOOK 497 OF DEEDS, PAGE 451 TO A POINT, SAID POINT BEING THE NORTHEAST CORNER OF SAID TRACT DESCRIBED IN BOOK 497 OF DEEDS, PAGE 451; THENCE N89°38'50"E, 800.39 FEET TO A POINT, SAID POINT BEING THE NORTHWEST CORNER OF SAID SW¼NE¼; THENCE N89°59'07"E, 1088.04 FEET ALONG THE NORTH LINE OF SAID SW¼NE¼ TO A POINT, SAID POINT BEING THE NORTHWEST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 574 OF DEEDS, PAGE 25, TRACT 2; THENCE S42°55'52"E, 333.96 FEET ALONG THE SOUTHWESTERLY LINE OF SAID TRACT DESCRIBED IN BOOK 574 OF DEEDS, PAGE 25, TRACT 2 TO A POINT, SAID POINT LYING ON THE EAST LINE OF SAID SW¼NE¼; THENCE S01°59'51"E, 671.26 FEET ALONG SAID EAST LINE OF SAID SW¼NE¼ TO A POINT, SAID POINT BEING THE NORTH CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 574 OF DEEDS, PAGE 25, TRACT 1; THENCE S40°04'16"W, 77.23 FEET ALONG THE NORTHWESTERLY LINE OF SAID TRACT DESCRIBED IN BOOK 574 OF DEEDS, PAGE 25, TRACT 1 TO A POINT; THENCE S13°42'04"E, 255.10 FEET ALONG THE SOUTHWESTERLY LINE OF SAID TRACT DESCRIBED IN BOOK 574 OF DEEDS, PAGE 25, TRACT 1 TO A POINT, SAID POINT LYING ON SAID EAST LINE OF THE SW¼NE¼; THENCE S01°59'51"E, 134.41 FEET ALONG SAID EAST LINE OF SAID SW¼NE¼ TO THE POINT OF BEGINNING OF SAID TRACT.

AS APPEARS ON THIS PLAT, IS WITH FREE CONSENT, AND IN ACCORDANCE WITH THE DESIRES OF THE UNDER-SIGNED OWNER(S) AND PROPRIETORS; CONTAINING 117.02 ACRES MORE OR LESS; HAVE BY THESE PRESENTS LAID OUT AND SURVEYED AS **VISTA WEST ESTATES**, AND DO HEREBY DEDICATE AND CONVEY TO AND FOR THE PUBLIC USE FOREVER HEREAFTER ALL ROADS AS ARE LAID OUT AND DESIGNATED ON THIS PLAT; AND DO ALSO RESERVE PERPETUAL EASEMENTS FOR THE INSTALLATION AND MAINTENANCE OF ROADWAYS, UTILITIES AND FOR IRRIGATION AND DRAINAGE FACILITIES AS ARE LAID OUT AND DESIGNATED ON THIS PLAT HEREBY RELEASING AND WAIVING ALL HOMESTEAD RIGHTS.

EXECUTED THIS_____ DAY OF_____, _____.

BY: _____
SYSTEM LAND LLC,
DONALD B. ROBERTS – MANAGER

STATE OF WYOMING
COUNTY OF SHERIDAN :ss

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BY DONALD B. ROBERTS BEFORE ME THIS _____ DAY OF _____, 2018.

WITNESS MY HAND AND OFFICIAL SEAL. MY COMMISSION EXPIRES _____

_____
NOTARY PUBLIC

FINAL PLAT OF VISTA WEST ESTATES

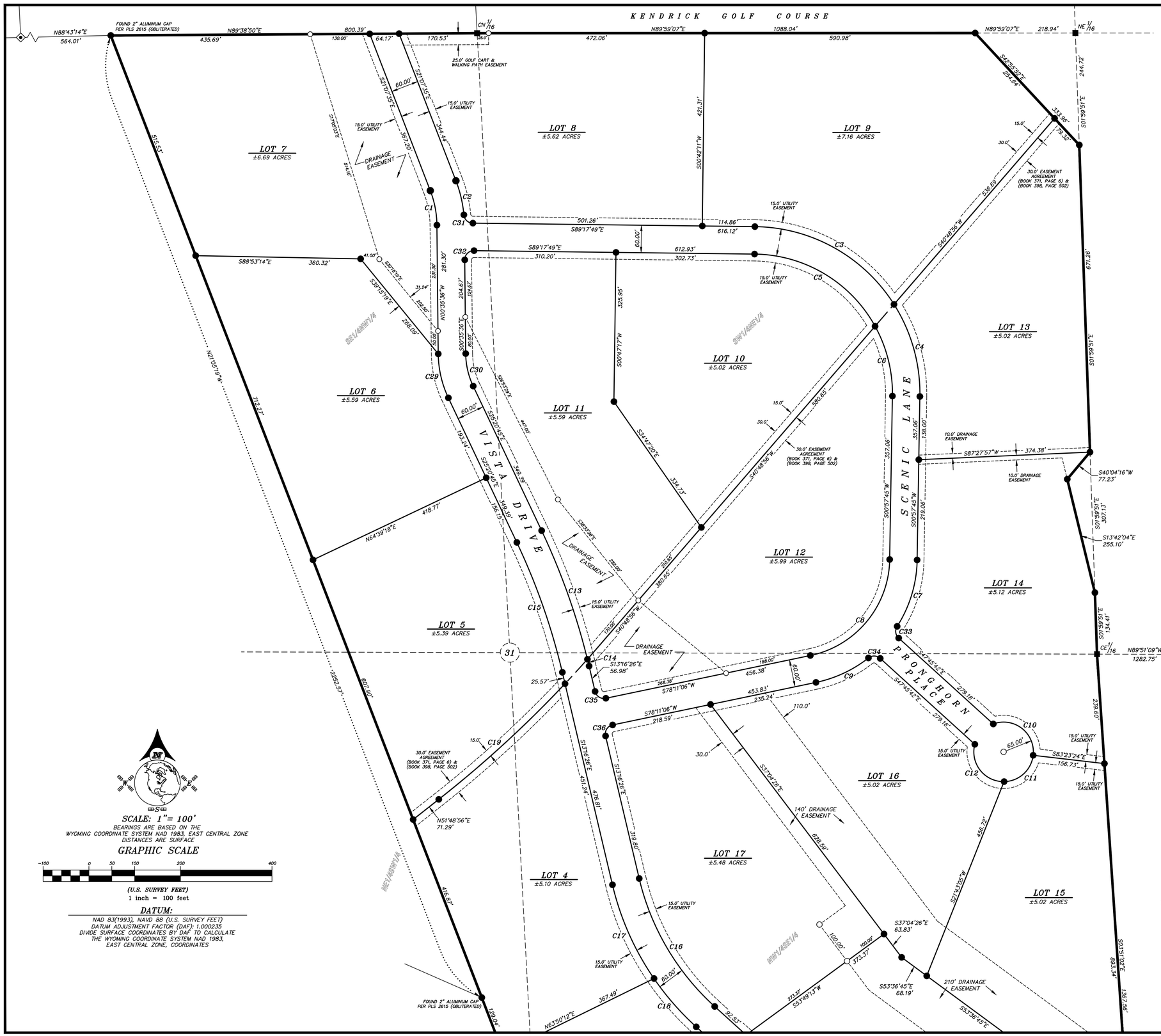
SHERIDAN COUNTY, WYOMING

SITUATED IN THE SW¼NE¼, NW¼SE¼, S½SE¼, NW¼SW¼ AND THE SE¼NW¼ OF SECTION 31, TOWNSHIP 56 NORTH, RANGE 84 WEST, 6TH P.M., SHERIDAN COUNTY, WYOMING

PRESTFELDT SURVEYING
2340 WETLANDS DR., SUITE 100
PO BOX 3082
SHERIDAN, WY 82801
307-672-7415

CLIENT: SYSTEM LAND, LLC
ATTN: DONALD B. ROBERTS
20 PINE LANE
SHERIDAN, WY 82801

JN: 2018-005
DN: 2018-005D
TAB: 24x36 FINAL
PF: T2018-005
MARCH 12, 2019



LEGEND:

- FOUND 2" ALUMINUM CAP PER PLS 2615
- FOUND 3-1/4" ALUMINUM CAP PER PLS 6812
- FOUND 1-1/2" ALUMINUM CAP PER PE&LS 3864
- FOUND 2" ALUMINUM CAP PER PLS 6812
- SET 2" ALUMINUM CAP PER PLS 6812
- FOUND HIGHWAY RIGHT-OF-WAY MONUMENT
- CALCULATED: NOTHING FOUND/NOTHING SET
- BOUNDARY LINE
- PROPERTY LINE
- SECTION LINE
- INTERIOR SECTION LINE
- HIGHWAY RIGHT-OF-WAY LINE
- EASEMENT LINE (TYPE AND SIZE AS NOTED)

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD LENGTH
C1	20°31'59"	215.00'	77.05'	S10°51'36"E	76.64'
C2	15°58'53"	275.00'	76.70'	S13°08'09"E	76.46'
C3	56°58'03"	365.00'	362.91'	S60°48'47"E	348.14'
C4	33°17'30"	365.00'	212.08'	S15°41'01"E	209.11'
C5	60°24'58"	305.00'	321.61'	S59°05'20"E	306.92'
C6	29°50'36"	305.00'	158.86'	S13°57'34"E	157.07'
C7	31°37'00"	278.00'	153.41'	N16°46'15"E	151.47'
C8	77°13'22"	218.00'	293.82'	S39°34'25"W	272.08'
C9	26°17'16"	278.00'	127.55'	S65°02'28"W	126.43'
C10	116°53'07"	65.00'	132.60'	N51°49'58"W	110.78'
C11	82°24'20"	65.00'	93.49'	N47°48'46"E	85.63'
C12	105°44'11"	65.00'	119.95'	S38°06'59"E	103.64'
C13	11°29'33"	1490.00'	298.87'	S19°35'58"E	298.37'
C14	0°34'46"	1490.00'	15.07'	S13°33'49"E	15.07'
C15	12°04'19"	1430.00'	301.29'	S19°18'35"E	300.74'
C16	34°31'20"	547.00'	329.58'	S30°32'06"E	324.62'
C17	21°15'47"	607.00'	225.26'	S23°54'19"E	223.97'
C18	13°15'33"	607.00'	140.47'	S41°09'59"E	140.16'
C19	8°34'47"	2500.00'	374.36'	N47°31'33"E	374.01'
C20	23°32'57"	320.00'	131.52'	S36°01'17"E	130.60'
C21	27°04'58"	320.00'	151.26'	S10°42'20"E	149.85'
C22	50°37'55"	260.00'	229.76'	S22°28'48"E	222.36'
C23	103°47'34"	133.00'	240.93'	S49°03'38"E	209.31'
C24	103°47'34"	193.00'	349.62'	S49°03'38"E	303.74'
C25	40°04'40"	180.00'	125.91'	S80°55'05"E	123.36'
C26	40°04'40"	120.00'	83.94'	S80°55'05"E	82.24'
C27	7°05'22"	1859.86'	230.13'	S55°41'12"W	229.98'
C28	8°44'46"	1859.86'	283.91'	S63°28'58"W	283.63'
C29	24°45'08"	230.00'	99.36'	S12°58'11"E	98.59'
C30	24°45'08"	170.00'	73.44'	S12°58'11"E	72.87'
C31	84°09'06"	20.00'	29.37'	S47°13'16"E	26.80'
C32	91°17'48"	20.00'	31.87'	S45°03'18"W	28.60'
C33	80°20'27"	20.00'	28.04'	S07°35'29"E	25.80'
C34	80°20'27"	20.00'	28.04'	S87°55'56"E	25.80'
C35	88°32'30"	20.00'	30.91'	S57°32'39"E	27.92'
C36	91°27'33"	20.00'	31.93'	S32°27'20"W	28.64'
C37	120°00'00"	20.00'	41.89'	S00°52'45"E	34.64'
C38	1°23'45"	1859.86'	45.31'	N51°26'39"E	45.31'

N

SCALE: 1"= 100'

BEARINGS ARE BASED ON THE WYOMING COORDINATE SYSTEM NAD 1983, EAST CENTRAL ZONE
DISTANCES ARE SURFACE

GRAPHIC SCALE

-100 0 50 100 200 400

(U.S. SURVEY FEET)
1 inch = 100 feet

DATUM:

NAD 83(1993), NAVD 88 (U.S. SURVEY FEET)
DATUM ADJUSTMENT FACTOR (DAF): 1.000235
DIVIDE SURFACE COORDINATES BY DAF TO CALCULATE
THE WYOMING COORDINATE SYSTEM NAD 1983,
EAST CENTRAL ZONE, COORDINATES

FINAL PLAT
OF

VISTA WEST ESTATES

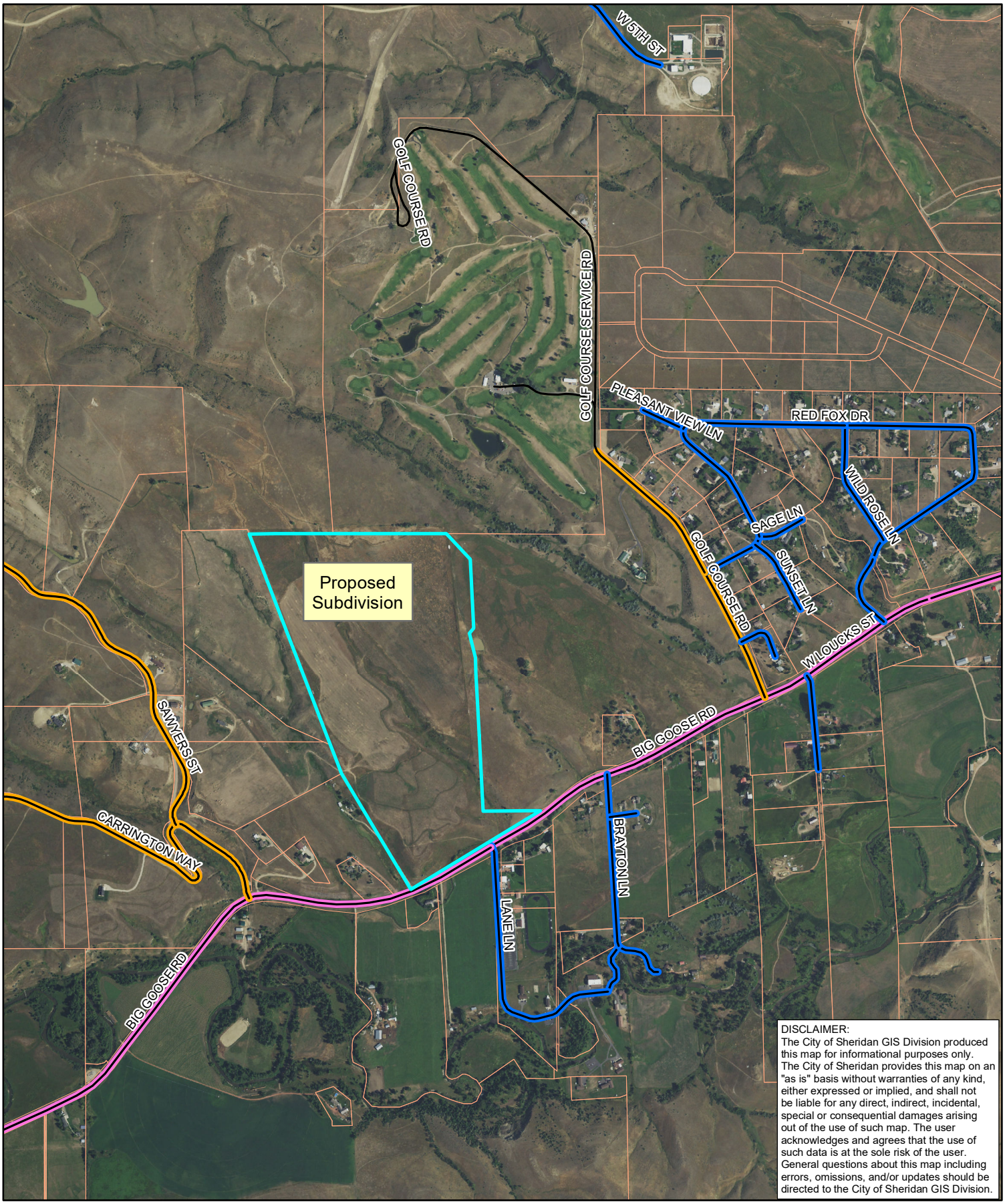
SHERIDAN COUNTY, WYOMING

SITUATED IN THE SW¼NE¼, NW¼SE¼, S½SE¼, NW¼SW¼ AND THE SE¼NW¼ OF SECTION 31, TOWNSHIP 56 NORTH, RANGE 84 WEST, 6TH P.M., SHERIDAN COUNTY, WYOMING

PRESTFELDT SURVEYING
2340 WETLANDS DR., SUITE 100
PO BOX 3082
SHERIDAN, WY 82801
307-672-7415

CLIENT: SYSTEM LAND, LLC
ATTN: DONALD B. ROBERTS
20 PINE LANE
SHERIDAN, WY 82801

JN: 2018-005
DN: 2018-005D
TAB: 24x36 FINAL 2
PF: T2018-005
MARCH 12, 2019
SHEET 2 OF 2



CITY OF Sheridan WYOMING

Vista West

N

0 0.1 0.2 0.4 Miles

Name: sgoodman

Date: 04/03/2019

CITY OF SHERIDAN
RESOLUTION 17-19

A RESOLUTION approving PL 19-4, the final plat of Vista West Estates Major Subdivision, a joint City-County subdivision, dividing a 117.2 acre parcel into 19 lots and 1 outlot, zoned Rural Residential, located on West Loucks southwest of Kendrick Golf Course.

WHEREAS, the final plat of the Vista West Estates Major Subdivision has been reviewed for consistency with Appendix B (Subdivision Regulations) and other applicable City code; and

WHEREAS, all applicable requirements for a final plat, have been met and all documents meet the applicable requirements in Appendix B (Subdivision Regulations); and

WHEREAS, the Vista West Estates Subdivision is a joint City-County subdivision due to its location within 1 mile of City limits requiring City Council approval; and

WHEREAS, the Sheridan County Planning and Zoning Commission recommended the approval of the proposed final plat; and

Now, therefore, be it resolved by the City Council of the City of Sheridan:

That the final plat of the Vista West Estates Major Subdivision, dividing a 117.2 acre parcel into 19 lots and 1 outlot, zoned Rural Residential, located on West Loucks southwest of Kendrick Golf Course,

Is hereby approved by vote of the City of Sheridan's City Council.

In approving Vista West Estates Major Subdivision, the City Council finds the following as required by Sheridan City Code Appendix B §202:

A. The plat, while outside the City limits, is accompanied by a signed pre-annexation agreement.

B. The lots as platted conform to the requirements of the City Zoning Ordinance with the exception of the variance granted.

C. The subdivision falls outside of the Airport Influence Area.

D. As concluded by City Public Works staff, there is adequate long-term water supply to serve this subdivision as of the time of this resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of April 2019.

_____
Roger Miller, Mayor

Attest:

_____
Cecilia Good, City Clerk

State of Wyoming)
)SS
County of Sheridan)

Subscribed and sworn to (or affirmed) before me this _____day of

_____, 2019 by _____.

_____
Notary Public

My commission expires _____.

PRE-ANNEXATION AGREEMENT

THIS PRE-ANNEXATION AGREEMENT, made this _____ day of April, 2019, by and between System Land, LLC, a Wyoming limited liablity company, or its successors in ownership to the lands affected hereby (referred to as LANDOWNER) and the City of Sheridan, Wyoming, a municipal corporation (referred to as CITY).

WHEREAS, the LANDOWNER is the record owner of a certain tract of land, described as follows: See ***Exhibit A***, attached hereto, and this tract of land, or any smaller part or parcel which may be conveyed as a separate tract, whether or not subdivided, shall hereinafter be referred to as the LAND; and

WHEREAS, for the purposes of this agreement, the term "contiguous" and "contiguous to the rest of the City" shall mean real property in which the City incorporated limits extend or surround 75% of the real property; and

WHEREAS, the LAND is currently not contiguous to the CITY's incorporated limits The CITY's Kendrick Golf Course is not contiguous to the rest of the City's jurisdictional boundary and is an island within the County. The LAND, is being platted as a County subdivision an a portion is within one mile of CITY's boundary; and

WHEREAS, the parties recognize that the LAND is unique, is surrounded by County Agriculture-zoned lands and standard policy goals and requirements of the City regarding preannexation agreements are not in the best interest of the CITY or LANDOWNER; and

WHEREAS, the LAND will receive no CITY services at the time of this Agreement nor are any municipal services anticipated to be available to the LAND at any time in the foreseeable future; and

WHEREAS, City of Sheridan Code, Appendix B, Section 202.B requires that the City shall not approve any proposed subdivision of land which is within one mile of the corporate limits of Sheridan but not, at the time of submittal, eligible for annexation, unless the application is accompanied by a properly acknowledged agreement not to contest future annextion proceedings.

NOW, THEREFORE, the parties above named have decided to set forth all of their agreements concerning the annexation of the property as follows:

1. The parties acknowledge that the LAND is currently not contiguous to the City limits of the CITY but may, at some future date, be within the growth area of the CITY. The LANDOWNER agrees not to contest future annexation proceedings, if the LAND becomes continguous to the CITY's corporate boundaries and municipal water, sewer and other City-services become available for connection to and within 400 feet of the LAND.
2. If future annexation proceedings are implemented, LANDOWNER will take all remaining actions necessary at the time, at the direction of the CITY, to comply with State annexation law and to complete the annexation of the LAND into the CITY. To the extent the LAND is included in them, the LANDOWNER shall adhere to the **City Comprehensive Plan**, appropriate restrictions pertaining thereto, and the **2001 City of Sheridan Traffic Study,** and all amendments thereto. A notice of this Agreement shall be recorded and noting that the parcel "shall annex to the CITY without protest, at the discretion and direction of the Sheridan City Council upon becoming contiguous to the City limits and City water and sewer being made available to the LAND". The commitment to annex shall be recorded agains the LAND a covenant running with the property known as the LAND, enforceable by the CITY.
3. Upon annexation to the CITY and upon City services being within 400 feet of the LAND, the CITY shall provide municipal services, including but not limited to water and sewer services, on the same level as provided to other areas of the CITY, according to state statutes and local ordinances. The CITY shall not be responsible for the installation of water and sewer lines or connection lines within the LAND. LANDOWNERS

shall be responsible for all installation costs of municipal utilities, up to a maximum of 400 feet from the LAND, per City of Sheridan Ordinance and recapture agreements.

4. LANDOWNER agrees to sign any petition(s) or any other document(s) reasonably required to comply with State annexation law as they may be required by the CITY to facilitate the annexation. LANDOWNER further waives any irregularities in the annexation process which would permt it to protest the said annexation. The parties acknowledge that the CITY may choose not to complete the annexation of LANDOWNER's LAND until additional logical and adjacent properties may be annexed simultaneously. The LANDOWNER specifically agrees and acknowledges that the timing of the annexation is within the sole discretion of the CITY, and the CITY may initiate the annexation of the LAND described above at any time after the LAND qualifies for annexation and municipal services are available.

5. The term "LANDOWNER" shall refer to System Lands, LLC only for so long as it is the record owner of any lot within the LAND being subdivided at the time of this Agreement, and shall refer to only to its successor record owners of any and all lots conveyed after the date hereof and not to System Lands, LLC.

6. This AGREEMENT shall be governed by the laws of the State of Wyoming. The District Court of the Fourth Judicial District in Sheridan County, Wyoming, shall have venue and jurisdiction exclusively for any action in law or equity which may be instituted to enforce the terms of this AGREEMENT.

7. If any legal action is instituted to resolve a dispute over any of the terms of this AGREEMENT, the unsuccessful party shall pay the successful party's reasonable attorneys' fees and all costs of the action including court costs, expert witness fees and all other actual expenses incurred in the prosecution of the action.

8. If any section, clause, or portion of this AGREEMENT is for any reason held invalid or unconstitutional by any Court or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of any remaining portions hereof that remin lawful.

DATED this _____ day of April, 2019.

CITY OF SHERIDAN:

_____
Roger Miller, Mayor

ATTEST:

_____
Cecilia Good, City Clerk

LANDOWNER:

_____
System Lands, LLC

STATE OF WYOMING)
)ss.
COUNTY OF SHERIDAN)

On April _____, 2019, personally appeared before me Don Roberts as member of System Lands, LLC.

_____
Notary Public
My Commission Expires:

STATE OF WYOMING)
)ss.
COUNTY OF SHERIDAN)

On April _____, 2019, personally appeared before me Roger Miller, Mayor of the City of Sheridan, Wyoming.

_____
Notary Public
My Commission Expires:

CITY OF SHERIDAN, WYOMING

55 Grinnell Street, P.O. Box 848, Sheridan Wyoming 82801
Ph (307) 674-6483 Fax (307) 674-2195

Treasurer

MEMORANDUM

Project Name:	Consideration of Resolution #16-19 Approving the Purchasing and Procurement Policy - City Treasurer Karen Burtis
From:	Karen Burtis, City Treasurer
To:	Mayor and Council
CC:	
Date:	03/18/2019

Recommendation:

Staff recommends that the Mayor and Council approve Resolution #16-19 Approving the Purchasing and Procurement Policy.

Background:

Currently, the City of Sheridan has only one Resolution regarding purchasing and procurement, and that is the "Buy Local" Resolution. Many different versions of a purchasing and procurement policy have been undertaken over the years, but none have been adopted by the City.

Attachments

Purchasing and Procurement Policy

Purchasing and Procurement Policy

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Purchasing and Procurement Policy

The purpose of this policy is to establish procedures for an efficient, fiscally responsible purchasing system capable of providing daily service and support to all City departments and to assure the citizens that the City is receiving maximum value for each dollar spent. This Policy provides City of Sheridan employees a guideline to assure continuity and uniformity in purchasing practices to define the responsibilities of each employee. This Policy also provides guidelines for public works projects and items let by bid. While being fiscally responsible, employees are encouraged to purchase from local Sheridan businesses, per City of Sheridan Resolution 29-11, which is included as **Attachment A**.

This Policy is not intended to address every issue, exception, or contingency that may arise in the course of purchasing activities. Employees should always exercise good sound judgment, seek the best value when using City resources and keep within the budget authorized by the Governing Body. Each purchase shall encourage open competition between suppliers and contractors, while seeking the best value for the City.

This Policy is not all-inclusive. If a question should arise that is not addressed in this Policy, contact the City Treasurer.

1. PURPOSE
   - 1.1. Purchasing objectives serve as a set of guidelines to be used by Administration, City personnel and the Purchasing Agent in achieving responsible and intelligent decisions when purchasing and procuring services, supplies and equipment.
   - 1.2. The objectives of this Policy are as follows:
     - Assure responsible and accountable procurement of commodities, contractual services, equipment, and capital outlay items.
     - Assist management at all levels in reaching responsible, cost-effective decisions in the purchasing of quality supplies and services for City use.
     - Formulate policies and procedures which maximize the efficiency of the City's purchasing process.
     - Promote goodwill and clear communication in City/vendor relations relative to purchasing.
     - Promote equal-opportunity policies through professional relations with vendors.
     - Ensure compliance with Federal requirements for Federally funded purchases.

2. DEFINITIONS
   - "Architectural and/or Engineering Services" means professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;
     - professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
     - other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies,

investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

- “Bid” means the offer made by a contractor or vendor resulting from an advertisement for bid pursuant to Wyoming State Statute.

- “Chief Procurement Officer” means the City Treasurer.

- “Consultant” means engineering firms, architectural firms, surveying firms, and other firms or individuals engaged in providing consulting or other professional services.

- "Contractor," means any person who is a party to a contract with a public entity to construct, renovate or perform major maintenance of any highway, public building, public work or public improvement, structure or system.W.S. § 16-6-701(a)(ii),

- “Department Head” means the person designated as the administrative official who oversees a department. The Departments within the City of Sheridan are Police, Fire, Treasurer, Clerk, Public Works, Utilities, Travel and Tourism, and Human Resources.

- “Division Head” means a supervisory position who reports to the Department Head.

- “Electronic Requisition” hereinafter referred to as an ‘eReq’, is the official document that records information regarding the purchase and encumbers the funds in the budget.

- "Resident," means a natural person, association or business entity authorized to be formed under Wyoming Statute Title 17, or the laws of another state which are the functional equivalent, and that is certified as a resident by the Department of Workforce Services following receipt of an affidavit executed and sworn to by a chief executive officer of the entity setting forth information required by the department to determine compliance with this act and prior to bidding upon the contract or responding to a request for proposal. W.S. § 16-6-101(a)(i)

- “Maintenance” means any repair which does not constitute “Major Maintenance.”

- “Major Maintenance" means the repair or replacement of complete or major portions of building and facility systems at irregular intervals which is required to continue the use of the building or facility at its original capacity for its original intended use and is typically accomplished by contractors due to the personnel demand to accomplish the work in a timely manner, the level of sophistication of the work or the need for warranted work. W.S. § 16-1-101(a)(v).

- “New Vehicle” means any motor vehicle that has had no previous owner and is still covered by the manufacturer’s warranty.

- "Project Manager" means the assigned Department Head or his/her designee responsible to oversee specified projects and tasks.

- "Public Improvement" means an improvement made within any City for which general bonded obligation may be incurred.W.S. § 15-1-101(a)(xi)

- "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any supplies or services.W.S. § 9-2-1016(a)(i)

- "Sealed Bid" means a bid which is not revealed or evaluated until the date of public opening, per W.S. § 15-1-113.

- "Services" means the furnishing of labor, time or effort by a contractor to an agency. The term does not include employment agreements.W.S. § 9-2-1016(a)(ii)

- "Supplies" means all property, including but not limited to, furniture, fixtures, stationery, printing, paper, fuel and equipment of every kind required for use in the offices, service and functions performed by agencies, and for repairing, heating and lighting the state buildings; and insurance and bonds from licensed Wyoming agents as required. W.S. § 9-2-1016(a)(iii)

3. TAX EXEMPT STATUS

3.1. The City of Sheridan is exempt from most city, state sales taxes and some excise taxes. The City may also be exempt from other State's sales taxes if that State participates in the Streamlined Sales & Use Tax Agreement with the State of Wyoming. The City of Sheridan's Federal Tax Identification number is **83-6000090** and the State Tax Exempt number is **69-0830210**. These numbers must only be used for City of Sheridan purposes. It is the expectation that all employees who make purchases on behalf of the City ensure that the vendor is informed of the City's tax exempt status. If proof of exemption is required by the vendor, proper documentation may be obtained from the Treasurer's office.

4. USE OF MUNICIPALITY NAME

4.1. The City of Sheridan's name shall not be used for personal gain. This includes, but is not limited to, the use of the name to receive or request discounts on supplies, equipment, services or any other function that could be construed or perceived as "for personal gain."

5. ORIGINAL CONTRACT DOCUMENTS AND MAINTENANCE AGREEMENTS

5.1. All original contracts will be kept with the City Clerk's office. Copies may be kept by the appropriate departments.

5.2. Original maintenance agreements will be kept on file in the office of the appropriate department.

5.3. Copies of all procurement contracts and maintenance agreements must be given to the Treasurer's office.

6. VEHICLE AND EQUIPMENT REGISTRATION AND/OR INSURANCE

6.1. The City Clerk must be notified and given proper paperwork at least two (2) weeks prior to delivery of vehicles or equipment. Proper paperwork for registration includes a Certificate of Origin for out of state vendors, a Sales Tax Certification form for local vendors, and a Bill of Sale.

6.2. Failure to provide proper notice to the City Clerk within two (2) of delivery shall prohibit the use of vehicles or equipment until proof of insurance has been obtained by the City Clerk.

7. ASSET ADDITION OR DELETION

7.1. Any assets purchased with a value over $5,000 must be reported to the Treasurer's office on a New Asset Form (Attachment C).

7.2. Any asset that is sold, traded, scrapped, or donated must be reported to the Treasurer's office on an Asset Deletion Form (Attachment D).

8. ELECTRONIC REQUISITION (eReq)

8.1. An Electronic Requisition, here-after referred to as an 'eReq', is the official document that records information regarding the purchase and encumbers the funds in the budget.

8.2. An eReq shall be used for all purchases that are not procured by bid or RFP. eReqs shall be completed either before the purchase is made (preferably) or as soon thereafter as possible, but prior to receipt of the supplies/equipment/services, if supplies/equipment/services are being delivered or shipped.

- If possible, the eReq number should be given to vendors to include on packing slips and receipts/invoices.

8.3. eReqs will be converted to a purchase order by the Treasurer's office.

8.4. Exceptions

- Payments required for payroll
- Utility payments

9. COOPERATIVE PURCHASING

9.1. When two or more entities join together to buy one or more items, the venture is called cooperative or collective purchasing. The Treasurer shall approve the use of cooperative agreements bid by other governmental agencies, unless otherwise provided by this Policy. An example would be the City using a State of Wyoming bid for vehicles.

10. PETTY CASH

10.1. Various departments have a petty cash fund. Each department maintaining a petty cash account shall designate a custodian and a reconciler. Departments maintaining petty cash funds shall reconcile the cash on hand, receipts and submit a voucher for replenishment of the fund on at least a monthly basis.

10.2. Excluding funds used for licensing/registrations at the County Clerk's office, use of petty cash is limited to expenditures of $50. Petty cash reimbursements shall comply with sections 11, 12 and 13.

10.3. A Petty Cash Voucher (Attachment E) must be signed by the receiving individual and a receipt must accompany all payments out of petty cash.

11. EMPLOYEE REIMBURSEMENTS

11.1. Requirements

- Any purchases made by City employees where reimbursement will be requested are subject to sections 12 and 13. It is the employee's responsibility to check the purchasing policy of the City before incurring any expense.
- It is preferable that any purchases made for City purposes be paid by the City directly to the vendor.
- Under no circumstance shall a City employee pay a contractor or consultant directly.

11.2. Reimbursement Request

- The purchase shall be described on an eReq with a perjury statement signed by the employee requesting the reimbursement.
- The requesting employee's supervisor shall sign the eReq authorizing the reimbursement.
- The original vendor receipt must be attached to the voucher.

12. PURCHASES FROM EMPLOYEES OR AGENTS OF THE CITY

12.1. The Chief Procurement Officer must authorize all purchases of supplies and services from current employees or agents of the City. This authorization must be in writing, signed by the designated City official and placed in the individual's personnel file. All such purchases shall comply with section 13 and the City of Sheridan Employee Handbook.

13. TYPES OF PROCUREMENT

13.1. General Information

- Any procurement made with federal funds must follow the provisions of 2 CFR 200, as per City of Sheridan Resolution 23-17 passed June 19, 2017, which is included as Attachment B.
- Purchases **SHALL NOT** be split into multiple transactions in order to stay within the purchase limit.
- All procurements must be followed by a detailed receipt/invoice or progress billing, as appropriate.
- A matrix of the types of procurement is attached as Appendix A.
- Due to the uniqueness and complexity of purchasing art, the City of Sheridan Public Arts Committee purchases shall be exempt from the bidding process.

13.2. Micro-purchase

- Procurement by micro-purchase is the acquisition of supplies or services in which the aggregate dollar amount does not exceed $3,500. To the extent practicable, the City must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotes if the City considers the price to be reasonable.
- The micro-purchase limit is applied as follows:
  - With federal funds, the purchase limit is for the life of the grant.
  - With all other funds, the purchase limit is the fiscal year.
- Micro-purchases require approval by the Division Head and review by the Treasurer.

13.3. Small purchase

- Small purchases are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $35,000.

- Small purchases greater than $3,500 but not exceeding $10,000 require three (3) **verbal** quotes and approval by the Division Head, Department Head, and review by the Treasurer.
- Small purchases greater than $10,000 but not exceeding $35,000 require three (3) **written** quotes and approval by the Division Head, Department Head, with review by the Treasurer. In addition, any written contract with the chosen vendor shall be signed by the Chief Procurement Officer.
- The purchase limit for small purchases applies to each purchase, regardless of funding.

13.4. Sealed Bids

A. Requirement

- Sealed bids are required for any type of public improvement if the estimated cost exceeds $35,000, except for professional services, emergency work or maintenance; see W.S. § 15-1-113.
- Sealed bids are required for the purchase or lease of a new automobile or truck regardless of cost; see W.S. § 15-1-113.
- Additionally, sealed bids are required for all purchases of supplies or equipment if the estimated cost exceeds $35,000.
- All bids shall meet the requirements of W.S. § 15-1-113 and W.S. § 16-6-101 through 16-6-118.

B. Specifications

- Detailed specifications shall be prepared by the Project Manager or Department Head and approved by the Department Head. These specifications shall become part of the Standard Bid Package (Attachment F).
- Any restriction in the specifications that could be considered restrictive of competition is prohibited. They include, but are not limited to:
  - Placing unreasonable requirements on firms in order for them to qualify to do business
  - Requiring unnecessary experience and excessive bonding
  - Non-competitive pricing practices between firms or between affiliated companies
  - Non-competitive contacts to consultants that are on retainer contracts
  - Organizational conflicts of interest
  - Specifying only a brand name product instead allowing equal products to be offered. If the use of brand names is used it should be limited to expressing a minimum acceptable specification, in which case "or equivalent" shall follow the name brand, or when procurement of a particular brand name can be otherwise justified.
  - Any arbitrary action in the procurement process

C. Standard Bid Package

- The standard bid package can be accessed through the City's website or from the appropriate department.
- The standard bid package includes the following forms or documents:
  - Advertisement and Invitation to Bid
  - Instructions to Bidder
  - Bid Form/Contract
  - Specifications

    - General Instructions
    - Bid Bond
    - Performance Bond
    - Notice of Award
  - The standard bid package may include the following optional forms or documents:
    - Special Requirements
    - Trade-Ins
    - For non-federally funded public work projects, the 5% Wyoming bidder preference clauses; see W.S. § 16-6-102, W.S. § 16-6-104, W.S. § 16-6-105, W.S. § 16-6-106 and W.S. § 16-6-107.
    - For federally funded projects, the suspension and debarment statement.

D. Advertisement and Invitation to Bid; see W.S. § 15-1-113(b)
  - The Department Head must sign all advertisements and invitations to bid.
  - All legal ads shall be placed by the City Clerk.
  - The advertisement and invitation to bid shall be published on two (2) different occasions, at least seven (7) days apart in the local newspaper, or according to the funding agency's requirements. The published notice shall state:
    - the place, date and time of any pre-bid meetings
    - the place, date and time when the bids will be received
    - the place, date and time when the bids will be publicly opened
    - the place where interested persons may obtain the bid package
    - the bond requirement
    - any automobiles or trucks for trade-in
    - except for federally funded projects, a statement that "preference is hereby given to materials, supplies, agricultural products, equipment, machinery and provisions produced, manufactured or grown in Wyoming, or supplied by a resident of the state, quality being equal to articles offered by the competitors outside of the state;" see W.S. § 16-6-106
  - The City shall make an effort to notify known local vendors of upcoming bids.

E. Awarding the Bid/Notice of Award
  - The Project Manager or Department Head will review the bids and put together a bid tabulation of all bidders and submitted bids.
  - Prior to awarding, the City Attorney shall review all contracts.
  - The contract shall be awarded to the responsible certified resident making the lowest bid if the certified resident's bid is not more than five percent (5%) higher than that of the lowest responsible non-resident bidder; see W.S. § 16-6-102.
  - Upon said determination, the Project Manager or Department Head will write an award letter of recommendation to the Department Head and Chief Procurement Officer to take to Governing Body for approval.
  - The Governing Body will award the bid at a regularly scheduled Council meeting.
  - The contract shall be executed by the Mayor and attested by the Clerk, or his/her designee.
  - The Project Manager or Department Head shall issue the Notice of Award to the successful bidder.
  - The successful bidder shall finish the performance guarantee within 30 days.

F. Advertisement for Final Payment

- Before the City is to make the final payment on any contract for which a bond or other financial guarantee is required, the City shall publish once a week for three (3) consecutive weeks and also post in three (3) conspicuous places at the place of work, forty (40) days before the final payment, a notice that the contractor is entitled to to final settlement and that City will pay to the contractor the full amount due under the contract; see W.S. § 16-6-116.
- No final payments shall be made to a contractor without a sworn statement from the contractor setting forth that all claims for material and labor performed under the contract have been paid and are paid for the entire period of time for which the final payment is to be made. If any claim for material and labor is disputed, the sworn statement shall so state and the amount claimed to be due the laborer shall be deducted from the final payment and retained by the City until the determination of the dispute, either by judicial action or consent of the parties, and then paid by the City to the persons found entitled thereto; see W.S. § 16-6-117.

13.5. Competitive Proposals (RFP or RFQ)

A. Requirement
- Request for proposals/qualifications are required for professional services for construction manager agents, construction manager-at-risk or design-builder if the estimated cost exceeds $35,000; see W.S. § 15-1-113.
- Request for proposals/qualifications are required for all other services, including maintenance, if the estimated cost exceeds $35,000
- Additionally, request for proposals/qualifications are required for all leases of equipment if the estimated cost exceeds $35,000.
- If the project or procurement is receiving funding from an outside funding agency, City staff must receive written approval from the funding agency to utilize the RFP/RFQ process.

B. Scope of Work
- City staff shall prepare a description of the general project, the scope of work or specifications of equipment, set a timetable for completion and estimate the fees for the proposed services or lease noting any extraordinary evaluation factors to be used in the selection process.

C. Advertising
- The Department Head must sign all advertisements and requests for proposals/qualifications.
- All legal ads shall be placed by the City Clerk.
- The advertisement and request for proposal/qualification shall be published on two (2) different occasions, at least seven (7) days apart in the local newspaper, or according to the funding agency's requirements.
- The City shall make an effort to notify known local consultants and vendors of upcoming RFP/RFQs.
- RFP/RFQs can be found on the City's website.

D. Request for Proposals/Qualifications
- The proposal, as submitted by the consultant or vendor, shall include profiles on the company's ability to perform the work or provide the leased equipment, demonstration of understanding of the project, as well as references.

E. Selection Committee

- The selection committee consists of at least three members, but generally not more than five. Each member shall ensure that he or she has no possible conflict of interest that may influence the selection process.

F. Evaluation Factors
- The selection committee shall consider the selection in light of the preliminary scope of work and fee estimate previously established. Factors used to select consultants or vendors may include the following:
    - Experience and expertise of the company in the work needed
    - Qualifications of the company's personnel
    - Previous performance by the company
    - Knowledge about the project or equipment
    - Special product delivery requirements
    - Workload with other clients (if known)
    - Location (In-state or out-of-state consultant location cannot be a factor, but proximity to the project is an allowable factor)
    - Financial stability
    - Reputation
    - References
    - Cost
- At the selection committee's option, additional factors may also be used.

G. Selection by Scoring and Ranking
- To determine the final selection, the committee ranks the consultants or vendors being considered. This process involves prioritizing each factor and developing an overall score. If it becomes apparent that a particular consultant or vendor is not qualified, the committee may eliminate the consultant or vendor from further consideration. The following items should be considered to determine if a consultant or vendor is minimally qualified:
    - The consultant or vendor shall have an exemplary ethical and professional reputation.
    - Individuals the consultant or vendor employs shall possess the levels of education, training and experience necessary to perform the required services satisfactorily.
    - If the consultant will be engaged to perform engineering, surveying, or architectural services for the City of Sheridan, the employee overseeing the work shall be licensed by the Wyoming Board of Registration for Professional Engineers and Professional Land Surveyors or the Wyoming State Board of Architects and Landscape Architects.
    - The consultant or vendor shall be established in the area of expertise for which the company is being considered, with recent experience in a responsible role.
- For architectural or engineering related projects, the selection must be qualification-based. Therefore, the City shall not solicit fee proposals before the consultant selection. Within the RFQ process, fee proposals may be requested in separate sealed envelopes, and only the selected firm's fee proposal will be opened after the selection is complete.
- For leases or projects that are not architectural or engineering related, fee proposals can be considered a part of the selection criteria.

- The City may interview, via phone, the top three (3) consultants or vendors.

H. Negotiations
- Negotiations shall begin with the top-ranked consultant or vendor. At this time, final scope and cost will be discussed. The cost may be determined by on of the following:
    - Salary cost times a multiplier plus direct non-salary costs
    - Cost plus a fixed fee
    - Lump sum
    - Unit of work payment
    - Hourly rate with maximum fee
- These methods are described fully in the American Society of Civil Engineers (ASCE) Manual No# 45. If the contract cannot be negotiated with the top-ranked consultant, negotiations should be terminated and the City should begin discussion with the next ranked consultant until a contract is negotiated. Under no circumstances shall staff negotiate with more than one consultant at a time.

I. Awarding the Proposal
- Prior to awarding, the City Attorney shall review all contracts.
- The Governing Body will award the proposal at a regularly scheduled Council meeting.
- The contract shall be executed by the Mayor and attested by the Clerk, or his/her designee, and copies must be given to the City Clerk , the Treasurer, the consultant or vendor and the Project Manager, if applicable.
- The consultant must be notified to proceed by the Project Manager. The Project Manager must provide all pertinent information to the consultant, monitor their work, render decisions on behalf of the City and authorize payment to the consultant.

13.6. Non-Competitive Proposals

A. Non-Competitive proposals may be used only when one or more of the following circumstances apply:
- Single source
    - A single source procurement is when there is only one good or service that can reasonably meet the need and there is only one vendor who can provide the good or service.
    - Procurement without competition is authorized under limited conditions and subject to written justification documenting the conditions which preclude the use of a competitive process.
    - A requirement for a particular proprietary item (i.e., a brand name specification) does not justify a single source procurement if there is more than one potential vendor for that good or service. Price is not a consideration to justify a sole **s**ource procurement. In cases of reasonable doubt, competition should be solicited. The Department shall determine the price is fair and reasonable.
    - The Department shall take reasonable steps to avoid using single source procurement except in circumstances where it is both necessary and in the best interests of the City. The Department shall take action, whenever possible, to avoid the need to continue to procure the same supplies and/or services without competition.

- The requesting department shall submit a memo to the Treasurer of source justification along with any other pertinent information regarding the single source procurement; e.g. vendor quote, literature, etc.
- The Chief Procurement Officer is the final authority for approval of single source procurements.

- Emergency purchase
  - An emergency purchase is a purchase that is essential to the life, health or convenience to the citizens of Sheridan. Such emergencies may be a breakdown of the electrical system, water supply or critical vehicles.
  - When an emergency condition exists that prevents the use of a competitive procurement method, the City may conduct a procurement on an emergency basis. Emergency procurements may be negotiated on a single source or limited competition basis as dictated by the circumstances surrounding the emergency.
  - Emergency procurements **do not** include:
    - Procurements that need to be rushed because of a failure to plan ahead
    - End of the fiscal year procurements
    - End of a grant/contract procurement
  - Authority to make Emergency Procurements
    - Approval by the Chief Procurement Officer, or his/her designee, shall be obtained prior to the procurement. In the event an emergency arises after normal working hours, the City department shall notify the Chief Procurement Officer.
    - The emergency procurement shall be limited to the procurement of only the types of items and quantities or time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.
  - Documentation
    - As soon as practicable, the City department shall prepare a written justification, to be approved by the Chief Procurement Officer, that sets forth the justification for the emergency procurement. The justification shall include the following:
      - the basis for the emergency procurement including the date the emergency first became known
      - a listing of the supplies and/or services procured
      - a description of the efforts made to ensure that proposals or offers were received from as many potential vendors as possible under the circumstances
      - the basis for the selection of the selected vendor
- Expressly authorized by Federal Agency or Pass-Through
- Inadequate competition

14. RECEIVING OF SUPPLIES AND EQUIPMENT

14.1. Items purchased using a purchasing card may be picked up by the cardholder or delivered. Either way, the vendor should include a packing slip, receipt or invoice. The items received should be verified against these documents and then compared against the purchase order for accuracy and completeness. The receipt or invoice must indicate that

this is a purchasing card purchase.

14.2. A packing slip will generally come inside the box or attached to the outside of the package being delivered. Personnel shall verify that what is on the packing slip is truly what is received and then compare it against the purchase order for accuracy and completeness.

14.3. Upon receipt of supplies or equipment, the receiving department shall inspect the supplies or equipment for damage or defects.

14.4. Items delivered by freight truck shall be inspected prior to signing the bill of lading. Any damage to the package should be pointed out to the driver and noted on the bill of lading. If extensive damage is observed, the shipment should be refused. If no damage is visible, a note must be made on the bill of lading that the "shipment is accepted subject to inspection."

14.5. If damage or defects are discovered, the magnitude of the damage or defects shall be considered, and the vendor shall be contacted. Arrangements shall be made for the return and/or replacement of the supplies or equipment. Any credit memos received for the returned supplies or equipment shall be submitted to the Treasurer's office.

14.6. If, upon inspection, it is determined that duplicate items or the wrong items were received, arrangements shall be made for the return and/or replacement of the supplies or equipment. Any credit memos received for the returned supplies or equipment shall be submitted to the Treasurer's office.

15. PURCHASING CARD

15.1. General Instructions

- The purpose of the purchasing card is to streamline and simplify the purchasing and payment process.
- All other aspects of this Purchasing Policy must be followed, specifically:
  - Section 3 - Tax Exemption
  - Section 8 - Electronic Requisition (eReq)
  - Section 12 - Purchases from Employees or Agents of the City
  - Section 13.1 - General Information
  - Section 13.2 - Micro-Purchases
  - Section 13.6 - Emergency Purchases
  - Section 14 - Receiving of Supplies and Equipment
- Purchasing cards may not be used to avoid or bypass appropriate purchasing policies and procedures.
- Individual purchases may not exceed the micro-purchase threshold, unless for an emergency purchase, as defined in Section 13.6.
- Purchases made with the purchasing card are for supplies and equipment, and travel related expenses only. Under no circumstance shall a City employee pay a contractor or consultant with a purchasing card.
  - Use of purchasing cards for meals is limited to travel outside of the City where at least one overnight stay will occur or when the meal is beneficial to the needs of the City.
- All mailed or delivered orders shall have the cardholder's name and department on the package.
- Any incentive program benefits derived by the use of purchasing cards shall be the property of the City. The Treasurer will determine the use of such incentive program benefits.

- The cardholder is the only person entitled to use the card and the card is not to be transferred to or allowed to be used by anyone other than the cardholder. The cardholder may make procurement transactions on behalf of others in their department however the cardholder is responsible for the validity of purchases made with their card and for obtaining the required receipts.
- Violations of this policy may result in loss of purchase card privileges and discipline up to and including termination.

15.2. Cardholder Eligibility

- In order to receive a purchasing card a cardholder must:
  - Be a current full time or regular part time City of Sheridan employee
  - Receive the approval of their Department Head and the Treasurer
  - Attend a training session before receiving their purchasing card
  - Sign a Cardholder Agreement (Attachment G)

15.3. Limitations and Restrictions

- The following restrictions, including but not limited to, may be placed on each individual card, as determined necessary by the employee's Department Head and the Treasurer:
  - Monthly, daily and per transaction credit limits
  - Limits on number of transactions
  - Merchant category blocking

15.4. Unauthorized Purchases

- The following is a list of unauthorized purchasing card purchases:
  - Alcohol or tobacco products
  - Entertainment related expenses
  - Prescription and non-prescription drugs
  - Weapons and ammunition (except for Police personnel)
  - Cash advances
  - Items for personal use
  - Any transaction which exceeds the limits set on the cards
  - Fuel for personal vehicles
  - Purchases or travel outside of the United States unless authorized by the Chief Procurement Officer
  - Purchases exceeding the appropriated budget amount for the GL code being charged without prior authorization from the appropriate Department Head

15.5. Lost or Stolen Cards

- If the purchasing card is lost or stolen, the cardholder must immediately notify the card issuer and the Treasurer's Office. The Treasurer's Office will follow up with the card issuer to take the appropriate action to have the card canceled and a new card issued.

Appendix A

Types Of Procurement

	Micro-Purchase	Small Purchase 1	Small Purchase 2	Sealed Bids	Competitive Proposals	Non-Competitive Proposals
Limit	< $3,500	$3,500 - $10,000	$10,000 - $35,000	> $35,000	> $35,000	No limit
Purchase Type	supplies services	supplies equipment services	supplies equipment services	construction vehicles equipment	professional services maintenance leases	construction professional services equipment leases
Competition	none	3 verbal quotes	3 written quotes	sealed bids	RFP/RFQ	none
1st Approval	Division Head	Division Head	Division Head	Division Head	Selection Committee	Chief Procurement Officer
2nd Approval	none	Department Head	Department Head	Department Head	none	
Final Approval				Governing Body	Governing Body	

Attachments

- Attachment A - City of Sheridan Resolution 29-11
- Attachment B - City of Sheridan Resolution 23-17

- Attachment C - New Asset Form
- Attachment D - Asset Deletion Form
- Attachment E - Petty Cash Voucher
- Attachment F - Standard Bid Package
- Attachment G - Cardholder Agreement

CITY OF SHERIDAN, WYOMING

55 Grinnell Street, P.O. Box 848, Sheridan Wyoming 82801
Ph (307) 674-6483 Fax (307) 674-2195

Public Works

MEMORANDUM

Project Name:	Consideration of Amendments to the City of Sheridan Tree Ordinance - Public Works Director Lane Thompson - 5 Minutes
From:	Lane Thompson, Public Works Director
To:	Mayor and Council
CC:	Mark Collins, City Administrator
Date:	03/22/2019

Recommendation:

Staff recommends that Mayor and Council approve the adoption of the proposed changes to the current Tree Ordinance documents.

Background:

The City Arborist and the Sheridan Tree Board have been working together over the past six (6) months to update and make changes to Chapter 26 of the Sheridan Municipal Code. In 2008, the City was awarded a Tree City USA designation. This designation requires maintaining a Tree Board and a Tree Care Ordinance for the community. The current Tree Ordinance was created for this reason. With the addition of a City Arborist, the Code needs to be updated. Many of the proposed changes focus on defining the City Arborist's roles and responsibilities within the context of the ordinance. The other major changes to the document focus on requiring any person or business performing tree maintenance activities on public trees to follow the best management practices and safety requirements laid out by the American National Standards Institute (ANSI). Both the *American National Standards Institute, Inc., ANSI A300 (Part 1) -2017* and the *ANSI Z133.1 -2017. Safety Requirements* are documents that are recognized nationally as the standard for arboricultural practices. These documents have been adopted by many municipalities around the state of Wyoming and the United States. Other changes in the ordinance include a change to the required clearance height of trees over roadways (from 20 ft to 14 ft), a change in the definition of Tree Board and it's bylaws, and a change in the amount of insurance required for contractors to obtain a license to work on public trees in the City of Sheridan. A majority of the requirements laid out in the current ordinance will remain intact.

Attachments

Redlined Ordinance

Ordinance _____

AN ORDINANCE AMENDING CHAPTERS 26 OF THE CITY OF SHERIDAN MUNICIPAL ORDINANCES CONCERNING TREES, PLANTS AND SHRUBS, SPECIFICALLY;

WHEREAS, the City of Sheridan Ordinances contain certain provisions concerning the maintenance and removal of trees, plants and shrubs;

WHEREAS, the City of Sheridan desires to amend the City Ordinances to better improve the City of Sheridan Community Forest.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SHERIDAN, WYOMING:

The following Sections of Chapter 26 are hereby amended:

26-1 Purpose.

This Chapter provides for the care of trees, plants, and shrubs on City property and aids in the creation of a Community Forestry Program. The mission of this Program is to effectively promote the wellbeing and saftry of the City of Sheridan Community Forest. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079 § 2, 1-18-10.)

26-2 Definitions.

(a) *City Arborist* is herein defined as the individual who plans, develops, implements and manages the City's Community Forestry Program. This individual organizes the planting and maintenance of all City trees in parks, open space, landscaping and City right-of ways and property.

(b) *Street trees* are herein defined as trees, plants, shrubs, bushes and all other woody vegetation lying in the city right-of-way.

(c) *Rights-of-way* are herein defined as a strip of land occupied or intended to be occupied by a street, sidewalk, crosswalk, alley, boulevard (the strip of land between a sidewalk and street) shade tree or for another special use or otherwise reserved by easement.

(d) *Public sidewalks* are herein defined as sidewalks located within the City right-of-way.

(e) *Park trees* are herein defined as trees, plants, shrubs, bushes and all other woody vegetation in parks having individual scientific names, and all areas owned by the City, or to which the public has free access as a park.

(f) *Public trees* are herein defined collectively as all street trees, park trees and any other trees located on public property.

(g) *Tree Day*. The Mayor of the City shall annually, in the spring, issue his or her proclamation designating a day to be observed by the citizens of the City, calling upon them to devote the day to tree planting and toward the cultivation of trees and shrubbery.

(h) *Tree Pruner*. A person or company who has been issued a license to provide a commercial service to prune or remove trees as specified by this Chapter.

26-3 Tree Board

(a) The City Tree Board shall consists of up to 7 member members who are residents of the City or own a business in Sheridan. One member of the Board shall include the Public Works Director or his designee. One member of the Board shall be the City Arborist. Tree Board members shall be appointed by the Mayor with the approval of the City Council.

(b) It shall be the responsibility of the City Arborist and/or City Tree Board to study, investigate, counsel, and develop written standards, rules and regulations for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in public ways, streets and alleys. Such standards will be presented to the City Council and upon their acceptance and approval, shall constitute the official City tree rules and regulations, and shall constitute the official comprehensive city tree plan for the City of Sheridan, Wyoming.

(c) The City Tree Board, when requested by the City Council, shall consider, investigate, make findings, report, and recommend upon any special matter or question.

(d) The City Tree Board shall choose its own officers, make its own rules and regulations consistent with the provisions of this chapter, and keep a journal of its proceedings. A majority of the members shall be quorum for the transaction of business. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079 § 2, 1-18-10.)

26-4 Tree size and species.

The following tree size classification shall apply in subsequent sections:

Small tree	Up to twenty-five feet (25') projected height at maturity.
Medium tree	Twenty-five (25') to forty feet (40') projected height at maturity.
Large trees	Over forty feet (40') projected height at maturity.

Specific tree choices and prohibited tree species shall be adopted by the City Tree Board through its regulations. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

26-5 Distance from street corners and fire hydrants.

No street trees shall be planted closer than thirty feet (30') from any street corner, measured from the point of the nearest intersecting curbs or curb lines. No street tree shall be planted closer than ten feet (10') from any fire hydrant. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

26-6 Distance from curbs and public sidewalks.

The distance trees may be planted from curbs or curb lines and public sidewalks will be in accordance with the tree species size classes as adopted in the regulations of the City Tree Board, and no trees may be planted closer to any curb or public sidewalk than the following: small trees—two feet (2'), medium trees—three feet (3'), and large trees—four feet (4'). (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

26-7 Utilities.

No street trees other than those permitted by the City Tree Board in its regulations, may be planted under or within ten lateral feet (10') of any overhead utility wire, or over or within five lateral feet (5') of any underground water line (with the exception of underground irrigation systems), sewer line, transmission line or other utility. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

26-8 Public tree care.

The City shall have the right to plant, prune, preserve, and remove trees, plants, and shrubs within the rights-of-way of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure safety when servicing City utilities or to preserve the symmetry and beauty of such public grounds. The City may, at its option, remove or cause to be removed any public tree or part thereof which presents an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

26-8.01 Property owner responsibilities.

The owner of property abutting any public street, alley or sidewalk, rights-of-way, boulevards or other public place, shall properly maintain and care for all trees, shrubs, hedges or vines located upon or affecting these areas pursuant to the terms set forth in Sections 26-9 through 26-14. (Ord. No. 2079, § 2, 1-18-10.)

26-9 Height—Corner clearance.

(a) Street trees shall be maintained with the following clearance: eight feet (8') above the pedestrian thoroughfare and eighteen feet (18') above driving surface.

(b) In order to provide clear visibility at street intersections, a minimum of eight feet (8') vertical clearance along the pedestrian thoroughfare must be maintained and eighteen feet (18') above driving surface within the triangular area at any street intersection corner which is formed by the intersecting back of curb lines. A thirty-foot (30') distant, as measured horizontally, must be maintained as measured along said back of curb lines, from their projected points of intersection.

i. If owners do not correct such problems, the City shall notify property owners in writing. If owners are advised of the above-mentioned problems and they are not corrected within fifteen (15) days, the City may remove the problem trees or limbs and the cost thereof shall be assessed to the owner. Such trimming will be confined to the area immediately above the right-of-way.

ii. If such costs are not paid by the owner within thirty (30) days from the date the City notifies the owner of the costs incurred to abate the issue, the City may: (1) issue a citation for a misdemeanor punishable as set forth in Chapter 9 of the Sheridan City Code (section 9-1 et seq.); and may (2) file notice of the claim and lien against the property affected in the Sheridan City Clerk's Office and the Sheridan County Clerk's Office against the owners of the real property.

iii. Provided, the owners, after submitting a formal request for financial assistance, may be eligible for reimbursement through the City's abatement fund for no more than fifty percent (50%) of the costs. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

26-10 Application/permit for trees located in the right-of-way.

No person or company shall plant, remove, cut above the ground, or disturb any tree on any street, park, or other public place without first filing an application and procuring a permit from the City. The person receiving the permit shall abide by the standards set forth in this Chapter. Permits are issued by the City and shall be approved by the City Arborist. The City reserves the right to deny a permit for any reason with or without cuase. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

26-11 Performance Standards.

(a) Any person and/or business performing tree maintenance on public trees shall be required to adhere to the requirements adopted in the American National Standards Institute, Inc., ANSI A300 (Part 1)-2017. American National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices (Pruning) practices outlined in the document: American National Standards Institute, Inc., ANSI A300 (Part 1)-2017. American National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices (Pruning).

(b) If a tree is to be removed from a public right of way, the stump of that tree must then be ground out at least six (6) inches below the surface grade of the area. Utilities must be located before any stump grinding or digging can occur.

(c) Any person or company proposing to apply pesticides to shrubs, trees or plants located on public property must possess the proper pesticide qualifications and provide proof of their qualifications to the City.

(d) No person shall willfully destroy, break, or mutilate any growing trees in the City. It is unlawful for anyone to top any street tree, park tree, or other tree on public property. Topping, is the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this chapter at the determination of the City Arborist.

26-12 Dead or diseased tree removal on private property.

(a) Should trees located on private property constitute a hazard to life or property, or harbor insects or disease which constitutes a potential threat to other trees within the City. Owners shall be advised of the above-mentioned issue. The owner shall take action to correct the problem within fifteen (15) days from the date of the issuance of the notice. Should the owner fail to correct the problem, the tree may be removed or caused to be removed by the City and the cost thereof shall be paid by the owner.

(b) If such costs are not so paid the owner within thirty (30) days from the date the City notifies the owner of the costs actually incurred to correct the problem, the City may: (1) issue a citation for a misdemeanor punishable as set forth in Chapter 9 of the Sheridan City Code (Section 9-1 et seq.); and may (2) file notice of the claim and lien against the property affected in the Sheridan City Clerk's Office and the Sheridan County Clerk's Office, which if filed.

(c) Provided, the owners, after submitting a formal request for financial assistance, may be eligible for reimbursement through the City's abatement fund for no more than fifty percent (50%) of the costs.

(d) Should the property owner contest the fact that the tree is diseased, they may request a hearing in front of the City Council of the City of Sheridan. Said hearing shall be conducted pursuant to the Wyoming Administrative Procedures Act. If a hearing shall be requested, the City shall not cause the removal of the dead or diseased tree until the completion of the hearing. The provisions of this paragraph shall not apply in case of an emergency. Cases of emergency are defined as conditions, which pose an immediate safety or health hazard to the public. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

26-13 Trees already in place.

Trees already in place and growing at the date of the ordinance codified in this Chapter shall be exempt from sections 26-5, 26-6, and 26-7. However, any new or replacement trees shall subject to the exempt sections. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

26-14 Improper planting on private property.

(a) Whenever a tree or shrub is planted in conflict with the provisions of this Chapter, the City shall notify the landowner in writing. If the landowner has not corrected the problem within fifteen (15) days, the same may be removed or caused to be removed by the City and the cost thereof shall be assessed to the owner.

(b) If such costs are not so paid by the owner within thirty (30) days from the date the City notifies the owner of the costs actually incurred to correct the problem, the City may: (1) issue a citation for a misdemeanor punishable as set forth in Chapter 9 of Sheridan City Code (section 9-1 et seq.); and may (2) file notice of the claim and lien against the property affected in the Sheridan City Clerk's Office and the Sheridan County Clerk's Office.

(c) Provided, the owner, after submitting a formal request for financial assistance, may be eligible for reimbursement through the City's abatement fund for no more than fifty percent (50%) of the costs. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

26-15 License and bond.

(a) It is unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing public trees, or trees on public property within the City without first applying for and procuring a license from City. Applicants shall pass a written examination to insure they are qualified and knowledgeable in tree pruning standards and provide a list of at least three references from past clients or certified arborists attesting to applicant's skill, ability and professionalism. Arborists certified by the International Society of Arboriculture (ISA) will be exempt from the examination. License fee and licenses will not be required for any public service employee or City employee doing such work in the pursuit of their public service endeavors.

(b) A tree pruners' license fee shall be set by City Council. Before issuance of the license, the licensee shall execute and deposit in the office of the City Clerk a surety bond to the City, in form approved by the City Council, in the sum of five thousand dollars ($5,000.00). In addition to such bond, each applicant shall, for the protection of the public, place on file in the office of the City Clerk, a policy of public liability insurance, in force and effect during the license period, issued by an insurance company authorized to do business in the state, in the following minimum amounts: Personal and bodily

injury liability with limits of one million dollars ($1,000,000.00) per occurrence and one million dollars ($1,000,000.00) for property damage per occurrence.

(c) All tree pruners' licenses issued under this section shall expire one (1) year from date of issuance. The City shall maintain a list of licensees.

26-15.01 Duties of care toward public.

(a) Any person or company performing any type of tree maintenance on public property will be required to adhere to the requirements adopted in the American National Standards Institute, Inc., ANSI A300 (Part 1)-2017. American National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices (Pruning) practices outlined in the document: American National Standards Institute, Inc., ANSI A300 (Part 1)-2017. American National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Standard Practices (Pruning).

(b) Tree pruners will safeguard all persons and property from injury during the operation of cutting down trees or by trimming off parts thereof, and will exercise every precaution in connection therewith by giving warning to all persons who might possibly be injured by falling trees and limbs and by erecting street and sidewalk barriers to avoid accidents of every nature.

(c) Tree pruners shall clean up all branches, stumps, logs, chips, leaves and twigs scattered as a result of their work and will thoroughly and completely pick up and remove all of the same from streets, sidewalks and alleys.

(d) Tree pruners shall transport logs, stumps, limbs, twigs, chips, leaves and tree trimmings of every nature over the streets and alleys of the City so that there shall be no scattering of such debris during the transportation thereof, to a dumping place approved and designated by the solid waste manager of the City.

(e) Persons pruning trees on their own property are not required to comply with the terms of this article pertaining to licensing or posting of a bond and insurance, but are otherwise regulated by and subject to this section.

(f) Upon more than one conviction of any person for the violation of this section, the license of such person to prune trees shall be revoked. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

26-16 Interference with City Arborist/City Tree Board.

(a) It is unlawful for any person to prevent, delay, or interfere with the City tree board, or any City employee, while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any trees or shrubs authorized in this Chapter.

26-17 Review by the City Council.

The City Council of the City of Sheridan shall have the right to review the conduct, acts, and decisions of the City Arborist and/or City Tree Board. Any person may appeal from the ruling of order of the City Arborist and/or City Tree board to the city council that may hear the matter and make final decision. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

26-17 Penalty.

Any person violating any provision of this chapter shall be, upon conviction or a plea of guilty, punished as provided in the City Code, Section 9-1. Any tree, shrub or other plant found to be in violation of this section or found to be diseased, dangerous, improperly planted, or dead shall be deemed and declared a nuisance. (Ord. No. 2043, § 2, 2-19-08; Ord. No. 2079, § 2, 1-18-10.)

WHEREUPON, a motion was passed and the Ordinance declared adopted this ____ day of _____ _____, 2019.

CITY OF SHERIDAN, WYOMING

_____
Mayor

ATTEST:

_____
City Clerk

FIRST READING:

SECOND READING:

PUBLISHED:

EFFECTIVE THE _____ DAY OF _____, 2019.

CITY OF SHERIDAN, WYOMING

55 Grinnell Street, P.O. Box 848, Sheridan Wyoming 82801
Ph (307) 674-6483 Fax (307) 674-2195

Public Works

MEMORANDUM

Project Name:	Consideration of Approval of Amendment No. 1 for the City of Sheridan Hill Slide Stabilization Project Phase I - City Engineer Hanns Mercer
From:	Hanns Mercer, City Engineer
To:	Mayor and Council
CC:	Mark Collins, City Administrator
Date:	03/22/2019

Recommendation:

Staff recommends that Mayor and City Council approve Amendment No. 1 to the original contract between the City of Sheridan and Hayward Baker, Inc. of Commerce City, CO. in the amount of the Guaranteed Maximum Price (GMP).

Background:

The City of Sheridan and Hayward Baker, Inc. entered into a contract on August 16, 2018 for the services of Design-Build for Hill Slide Stabilization Project. The GMP cost proposal is broken into two sections; Construction Services and Professional Services. The Construction Services section will include Hayward Baker's bid or the lowest successful bid, to complete the construction of the project. The Professorial Services section of the GMP includes the costs associated with Project Management, Inspection Services and Testing. The Hillslide Stabilization Project has followed all of the Wyoming State Statues for Capital Construction bidding requirements.

- Secured USDA Grant August 14, 2018
- Contracted with Hayward Baker, Inc. on August 16, 2018
- 30% Design Submittal on October 19, 2018
- 60% Design submittal on December 3, 2018
- 90% Design Submittal on December 24, 2018
- 100% Design Submittal on February 15, 2019
- Bid Advertisement: March 25, April 1 and April 11
- Bid Opening on April 25, 2019
- Award at City Council Meeting May 6, 2019
- Construction from June 3, 2019 through October 3, 2019

Funding:

The City of Sheridan Hill Slide Stabilization Project Phase I funding:

USDA Grant = $3,750,000
MRG = $350,000
SRF Loan = $1,630,000
SCSD2 = $1,600,000

Attachments

AGREEMENT BETWEEN the City of Sheridan AND DESIGN/BUILDER ON BASIS OF GUARANTEED MAXIMUM PRICE

THIS AGREEMENT made this **16th day of August, 2018,** by and between the City of Sheridan, Sheridan County, Wyoming, hereinafter called the Owner, and **Hayward Baker Inc.**, 5775 Eudora Street, Commerce City, CO 80022, hereinafter called the Design/Builder, WITNESSETH, that the Owner and Design/Builder for the considerations hereinafter named agree as follows:

ARTICLE 1 Scope of Work

The Design/Builder shall furnish and provide complete design and construction services including all professional design services, furnish and install all of the materials, and perform all of the work shown or reasonably inferred in the Owner's Project Description and on the approved construction documents for a project entitled **Hillslides Stabilization Project**, and shall do everything required by this Agreement, the approved construction documents including the Drawings, the Specifications and any duly issued Addenda thereto. The Design/Builder acknowledges receipt of the following Addenda:

Number:	Date:
N/A	

ARTICLE 2 Design/Builder Compliance – P.L. 99-603

The Design/Builder warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 (P.L. 99-603, November 6, 1986), which prohibits the hiring, referral or recruitment of aliens not authorized to work, and provides for employer verification that an individual is not an unauthorized alien.

The Design/Builder agrees to send notice to all subcontractors regarding the requirements of the Immigration Reform and Control Act of 1986 and notice that they are expected to comply with all of its provisions.

ARTICLE 3 Time of Completion and Liquidated Damages

The work to be performed under this Contract shall start upon receipt of written Notice to Proceed and shall be Substantially Completed as referenced in Amendment No. 1 – Guaranteed Maximum Price Proposal. See Addendum B for schedule for design and bid package.

If the work under this Contract is not Substantially Completed in accordance with the approved Contract Documents on or before the agreed Substantial Completion date, then liquidated damages shall become payable on the next succeeding day in the amount of **two hundred fifty dollars ($250.00)** for each day the work is not Substantially Completed. The amount so charged may be deducted by the Owner from any monies which might otherwise be or become payable to the Design/Builder. Nothing herein shall be construed to preclude the Owner from the recovery of damages for causes other than the delay by the Design/Builder.

A. Daily liquidated damages due the Owner is fixed and agreed upon by the Owner and Design/Builder as inconvenience and added costs of administration, design services, supervisions and other costs of the Owner resulting from Design/Builder's default and not as penalty. Actual damages related to delay cannot be ascertained at the time of execution of this Agreement.

B. To the extent liquidated damages exceed any amounts that would otherwise be due to Design/Builder, the Design/Builder shall be liable for such excess to the Owner.

C. Owner may seek enforcement of such obligation by legal action, and if such is necessary, shall recover the related costs and attorney's fees.

Permitting the Design/Builder to continue any part of the construction work defined by this Agreement after the time fixed for substantial completion or beyond any authorized extension thereof, shall in no way operate as a waiver on the part of the Owner of any of its rights under this Agreement, including the right to liquidated damages or any other remedies or compensation.

ARTICLE 4 Contract Sum

The Owner shall pay, and the Design/Builder agrees, to accept for the full performance of the design work and construction work under this Agreement, subject to the additions and deductions provided therein, the Guaranteed Maximum Price of:

Four Hundred Twenty-four thousand, Eight Hundred Eighty-one dollars ($424,881.00)
which sum shall include all sales and use taxes and user fees as described herein.

The Guaranteed Maximum Price for the construction work shall be set forth in Amendment No. 01 – Guaranteed Maximum Price Proposal.

In no case shall the Design/Builder be entitled to additional monies beyond said Guaranteed Maximum Price; and Guaranteed Maximum Price shall include, but not be limited to, all costs of coordination and management of work of Design/Builder's Architect, subcontractors, and material suppliers, including any substitution or replacement of same required to properly complete the design and construction work. All such substitutions or replacements must be approved by the Owner in accordance with this Agreement.

A. The Guaranteed Maximum Price shall include the Design/Builder's contingency, a sum established by the Design/Builder for the Design/Builder's use to cover costs arising under Article 5 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order as approved by the Owner.

B. Allowances and Contingencies: Allowances and Contingencies shall be as described in Article 22 of this Agreement.

C. The Guaranteed Maximum Price shall include a statement of the cost organized by trade categories, allowances, contingency and other items and the fee that comprise the Guaranteed Maximum Price.

D. Exclusions: The fees for special inspections or the normal materials testing during construction such as soils compaction, concrete strength, structural masonry, site welding, or site bolt tension shall be the responsibility of the Owner as accepted by the Owner in approving the Construction Documents.

E. All funds not expended within the Guaranteed Maximum Price for the cost of the work, plus the Design/Builders fee, shall be returned to the Owner.

Payments may commence upon full execution of this Agreement; all bonds and insurance, and the cost breakdowns or schedule of accounts and budgets have been received and approved by the Owner.

ARTICLE 5 Cost of the Work

A. Costs to Be Reimbursed

01. The term "Cost of the Work" shall mean costs necessarily incurred by the Design/Builder in the proper performance of the Work. Such costs shall be at basic

rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 5.

02. As the Drawings and Specifications will not be finished at the time the Guaranteed Maximum Price Proposal is prepared, the Design/Builder shall provide in the Guaranteed Maximum Price for development of the Drawings and Specifications by the Design/Builder's Architect that is consistent with these Contract Documents and reasonably inferable therefrom. Notwithstanding, Design Builder shall provide its Guaranteed Maximum Price Proposal three (3) days before public opening, based on 95% drawings.

03. Labor Costs

a. Wages of construction workers directly employed by the Design/Builder to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops. Owner agrees to compensate Design/Builder for wages of its construction workers at rates set forth in Addendum A.

b. Wages or salaries of the Design/Builder's supervisory and administrative personnel when stationed at the site with the Owners agreement. Owner agrees to compensate Design/Builder's wages or salaries of its supervisory and administrative personnel at rates set forth in Addendum A.

c. Wages and salaries of the Design/Builder's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

d. Costs paid or incurred by the Design/Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 5.A.03.a through 5.A.03c.

04. Subcontract Costs

a. Payments made by the Design/Builder to Subcontractors in accordance with the requirements of the subcontracts and provisions of this Agreement. Any competitive procurement of construction services required hereunder may be bid and contracted as lump-sum items.

05. Costs of Materials and Equipment Incorporated in the Completed Construction.

a. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

b. Costs of materials described in the preceding Section 5.A.05a in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any shall be handed over to the Owner at the completion of the Work or, if practical and at the Owner's option, shall be sold by the Design/Builder; amounts realized if any,

from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

06. Costs of Other Materials and Equipment, Temporary Facilities and Related Items

a. Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Design/Builder at the site and fully consumed in the performance of the Work; and cost less salvage value on such items not fully consumed, whether sold to others or retained by the Design/Builder. Cost for items previously used by the Design/Builder shall mean fair market value.

b. Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Design/Builder at the site, whether rented from the Design/Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be at the rates set forth in Addendum A.

c. Costs of removal of debris from the site.

d. Reproduction costs, costs of telegrams, facsimile transmissions and long distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

e. That portion of the reasonable travel and subsistence expenses of the Design/Builder's personnel incurred while traveling in discharge of duties connected with the Work.

07. Miscellaneous Costs

a. That portion directly attributable to this Contract of premiums for insurance and bonds.

b. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Design/Builder is liable.

c. Fees and assessments for the building permit and for other permits, plan review fees, utility fees, plant investment fees, development fees, licenses and inspections for which the Design/Builder is required by the City of Sheridan and the State of Wyoming to pay.

d. Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted under Section 6.1.8a ii.

e. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

f. Data processing costs related to the Work.

g. Deposits lost for causes other than the Design/Builder's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

h. Expenses incurred in accordance with the Design/Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

08. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

09. Emergencies and Repairs to Damaged or Nonconforming Work.

a. The cost of the Work shall also include costs described in Section 5.A.01, which are incurred by the Design/Builder:

i. In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided.

ii. In repairing or correcting damaged Work executed by the Design/Builder or the Design/Builder's Subcontractors or suppliers, provided that such damaged Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement of the Design/Builder or the Design/Builder's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Design/Builder, or the failure of the Design/Builder's personnel to supervise adequately the Work of the Subcontractors or suppliers.

10. The costs described in Articles 5.A.1 through 5.A.9 shall be included in the Cost of the Work notwithstanding any provision of the General Conditions or other Conditions of the Contract which may require the Design/Builder to pay such costs, unless such costs are excluded by Section 5.B.

B. Costs not to Be Reimbursed

01. The Cost of the Work shall not include:

a. Salaries and other compensation of the Design/Builder's personnel stationed at the Design/Builder's principal office or offices other than the site office, except as specifically provided in Article 5 A 03b and 5.A.03c.

b. Expenses of the Design/Builder's principal office and offices other than the site office except as specifically provided in Section 5.A.

c. Overhead and general expenses, except as may be expressly provided in Article 5.A.

d. The Design/Builder's capital expenses, including interest on the Design/Builder's capital employed for the Work.

e. Rental costs of machinery and equipment, except as specifically provided in Article 5.A.06b

f. Costs due to the sole negligence of the Design/Builder or its material breach of this Agreement.

g. Costs not specifically and expressly described in Article 5.A.

h. Subject to changes and the other provision of this Agreement, Costs which would cause the Guaranteed Maximum Price to be exceeded

ARTICLE 6 Acceptance and Final Payment

Final payment under this Agreement shall not be due or payable until the work has been accepted by the Owner and notice thereof given by publication and posting for the time and in the manner required by the laws of the State of Wyoming (Wyoming Statutes Annotated, Section 16-6-116 and 16-6-117).

ARTICLE 7 The Contract Documents

This Agreement, Owner's Request for Proposal, and Project Description dated **March 16, 2018**, Design/Builders Proposal dated April 4, 2018 the approved Construction Documents and any duly issued Addenda, duly issued Change Orders, Performance and Payment Bonds, form the Contract and they are as fully a part of the Contract as if hereto attached or herein repeated. The Contract Documents are complementary and what is required by one shall be as binding as if required by all.

ARTICLE 8 Time and Schedule

Time is hereby expressly made and declared to be of the essence of this Contract and of each and every part thereof, and no act of forbearance by the Owner or extension by it of the time for the performance of any of the terms of this Agreement, and no delay or failure on the part of the Owner in the exercise of any of its rights hereunder shall in any way constitute or operate as a waiver of or excuse for any future default on the part of the Design/Builder, or as a waiver, release or relinquishment of any of the rights or powers herein conferred upon the Owner, or which may otherwise be conferred by operation of law.

Commencement of Services: The Design/Builder shall not prematurely commence operations on the site or elsewhere prior to the issuance of a Notice to Proceed by the Owner or prior to the execution of this Agreement and receipt and approval of all bonds and insurance required by this Agreement.

Schedule Preparation: Design/Builder shall promptly and before the first request for payment prepare and submit for the Owner's review a reasonably detailed schedule for the design and construction work. The schedule shall indicate the order, sequence and interdependence of all items known to be necessary to complete the design and construction work including procurement, design services and delivery of documents for approval, construction, fabrication and delivery of materials, submittals and approvals of samples, Shop Drawings, procedures and other documents. Work items of the Owner or Owner's other contractors, utilities, and other third parties that may affect or be affected by the Design/Builder shall be included. If the Owner is required, by the Contract Documents, to furnish any materials, equipment, or services to be incorporated or provided during the construction work the Design/Builder shall submit with the first schedule submittal a letter clearly indicating the dates that such items are required at the project site. A critical path shall be identified, including the critical paths for interim completion dates and milestones. The schedule shall be developed using Primavera P6 unless otherwise authorized in writing by the Owner. The Design/Builder's schedule shall be updated and submitted with each payment application.

SECTION 1. GENERAL PROVISIONS

ARTICLE 9. Laws Concerning City of Sheridan a Part Hereof

This Agreement is made and entered into under and subject to all provisions of the Constitution, laws of the State of Wyoming and Ordinances of the State of Wyoming governing, controlling, or affecting the Owner. Design/Builder shall perform his agreements and undertakings entered into by virtue of the terms of this Contract in accordance with and subject to all provisions of the Constitution, laws of the State of Wyoming and

Ordinances of the City of Sheridan.

ARTICLE 10. Definitions

ACT OF GOD means an act occasioned exclusively by violence of nature without the interference of any human agency.

APPROPRIATE AUTHORITIES AND AGENCIES shall mean any private, local, municipal, county, state, regional or federal authority or agency with which the Project may be involved. This term is intended to include those agencies and authorities, which may require information or the filing of plans, specifications, or other documentation or verifications in connection with the Project on either a voluntary or non-voluntary basis.

BONDS mean the bid bond, performance and payment bonds, and other instruments of security or surety.

CONSTRUCTION CHANGE DIRECTIVE means a written order signed by the Owner, directing a change in the construction work and stating a proposed basis for adjustment, if any, in the Contract Price or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the construction work within the general scope of the Contract consisting of additions, deletions, or other revisions; even if it may impact the Contract Price and Contract Time.

CHANGE ORDER means a written order to the Design/Builder, signed by the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Price or the Contract Time. A Change Order executed by the Design/Builder indicates his agreement with the order and its terms.

CONTRACT means all the Contract Documents. These form the contract for design and construction. The Contract may only be amended by change order or by written instruction issued by the Owner.

CONTRACT DOCUMENTS shall include the Agreement Between the City of Sheridan and the Design/Builder and all documents designated in this Agreement as part of the design and construction contract, including plans, specifications, addenda, general conditions and supplementary general conditions of the contract, change orders, written instructions issued by the Owner and payment and performance bonds. The Contract Documents shall not be construed to create any contractual relationship between the Owner and any subcontractor or sub-subcontractor.

CONTRACT PRICE is the total amount payable by the Owner to the Design/Builder for the performance of the work under the Contract Documents.

CONTRACT TIME is the period of time allotted in the Contract Documents for substantial Completion of the work, including adjustments thereto reflected by duly executed change orders.

CONSTRUCTION DOCUMENTS shall include working drawings, specifications, general conditions, and supplementary general conditions, developed to set forth in detail all aspects of design, function, construction, and administration, and will be used for securing subcontracts for constructing the Project and for use by the Design/Builder in construction of the Project. The Construction Documents shall be approved by the Owner prior to constructing the Project.

DESIGN/BUILDER is the person or persons, entity or entities who execute this Owner –

Design/Builder Agreement. The Design/Builder may issue separate contracts between Design/Builder and others such as architects, engineers, subcontractors, material suppliers, and manufacturers which may become necessary to execute this agreement.

DESIGN/BUILDER'S ARCHITECT is the person or persons with whom the Design/Builder contracts to perform the design of the Project. The design shall be performed by engineers properly licensed in the State of Wyoming. Engineers shall perform only those particular services for which they are statutorily authorized or licensed by the State of Wyoming.

DAY means calendar day unless otherwise specifically designated.

FIELD ORDER means a written order issued by the Owner which directs minor changes in the construction work but does not involve a change in the Contract Price or Contract Time.

FINAL COMPLETION shall mean the time when the Owner notifies the Design/Builder of its' acceptance of the Project.

LABOR AND MATERIALS INCORPORATED IN THE WORK means the work done and materials furnished and in permanent place.

MAJOR CATEGORIES OF WORK, are those applicable categories of construction work necessary for completion of construction of the entire Project and may include, but not be limited to, the following construction categories: general site work, concrete, masonry, metals, wood and plastics, thermal and moisture protection, doors and windows, finishes, specialties, equipment, furnishings, special construction, conveying systems, mechanical and electrical.

OR EQUIVALENT appearing in the Specifications means, or equivalent in the opinion of the Owner.

OWNER means the City of Sheridan.

PROJECT means the total design and construction of which the work performed under the Construction Documents may be the whole or a part.

PROJECT DATA are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design/Builder to illustrate a material, product or system for some portion of the work.

SAMPLES are physical examples, which illustrate materials, equipment or workmanship and establish standards by which the materials and workmanship will be judged.

SHOP DRAWINGS means drawings, diagrams, schedules, and other data specially prepared for the construction work by the Design/Builder or subcontractor or sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

SPECIFICATIONS are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, installation, and workmanship for the Work, and performance of related systems and services.

SUBSTANTIAL COMPLETION shall mean the time when the "Certificate of Substantial Completion" is agreed to and signed by the Owner, and the Design/Builder designating the date upon which the Project or the designated portion thereof is sufficiently complete so as

to not interfere with the Owner's intended use or occupancy.

WARRANTY PERIOD shall mean one year from the date of final acceptance of the completed work by the City of Sheridan, during which time the Design/Builder shall be responsible for damages resulting from defects in materials or workmanship; and for correcting all work then known not to have been done in accordance with the Contract Documents.

WORK means the completed construction required by the approved Construction Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

ARTICLE 11. Assignment

Upon termination as provided in this Agreement or by mutual agreement of the parties, Design/Builder assigns to Owner (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by Design/Builder for performance of any part of the work, which assignment will be effective upon acceptance by Owner in writing and only as to those subcontracts and purchase orders which Owner designates in its acceptance.

It is agreed and understood that Owner may accept said assignment at any time during the course of construction prior to final completion. It is further agreed that all subcontracts and purchase orders shall provide that they are freely assignable by Design/Builder to Owner and its assigns. It is further agreed and understood that such assignment is part of the consideration to Owner for entering into this agreement with Design/Builder and may not be withdrawn prior to final completion. Other than as aforestated, neither party to this Agreement shall assign the Contract without the written consent of the other, nor shall the Design/Builder assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

ARTICLE 12. Emergencies

In an emergency affecting the safety of persons or property, the Design/Builder shall take all necessary and proper steps to prevent any threatened damages or injury. If practical, the Design/Builder shall communicate with the Owner concerning the emergency. However, the inability of the Design/Builder to establish communication with the Owner will not relieve the Design/Builder of the responsibility for mitigating injury or damage to persons or property. Any increase in cost due to such reasonable actions taken by Design/Builder as a result of the emergency shall be grounds for increase in the GMP and Contract Time.

ARTICLE 13. The Contract Administration

The Owner will provide administration of the Contract as provided for in the Contract Documents. The Owner will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. The Owner will not be responsible for or have control or charge over the acts or omissions of the Design/Builder, Design/ Builder's Architect, Subcontractors, or any of their agents or employees, or any other persons performing any of the work. The Owner shall, at all times, have access to the work wherever it is in preparation and progress, subject at all times to Design/Builder's safety procedures. The Design/Builder shall provide safe facilities for such access so the Owner may perform his functions under the Contract Documents. The Owner has authority to stop the work whenever such stoppage may, in his opinion, be necessary to

insure the proper execution of the Contract.

ARTICLE 14. The Design/Builder's Decision

A. The Design/Builder's Architect shall be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the Design/Builder and the Owner. Should the Design/Builder discover any conflicts, omissions, errors or inconsistencies in the approved drawings or specifications, or have any question about the interpretation or clarification of the Contract Documents or whether work is within the scope of the Contract Documents, or if it appears that work required is not sufficiently detailed or explained, then, before proceeding with the work affected, the Design/Builder shall notify the Design/Builder's Architect and the Owner in writing and request from the Design/Builder's Architect an interpretation, clarification or the furnishing of additional detailed instructions. Such questions shall be responded to with reasonable promptness by the Design/Builder's Architect. Should the Design/Builder proceed with work affected before receipt of a response to the Design/Builder's Architect, any work, which is not in accordance with the Design/Builder's Architects interpretation or instructions shall be removed or replaced and the Design/Builder shall be responsible for any resulting damage, defect or added cost.

B. If the Design/Builder disagrees with an interpretation, clarification or instruction given by the Design/Builder's Architect, or that the work is within the scope of the Contract Documents, the Design/Builder shall proceed diligently with the performance of such work and shall comply with any instructions, interpretation or clarification given by the Design/Builder's Architect and/or Owner. Within fourteen (14) days after receipt of an interpretation, clarification or instruction from the Design/Builder's Architect and/or Owner, the Design/Builder may submit a claim to the Owner in accordance with Article 14:C. Failure to submit such a claim within the period specified shall constitute a waiver of any and all right to adjustment of compensation or Contract Time due to such work. If a timely written claim is rejected by the Owner, the decision may be litigated in accordance with Articles 14:C, Article 14:D, and Article 72. For any such work, which is found to exceed the contract requirements either by the Design/Builder's Architect or Owner, or as the result of litigation, there shall be an adjustment in compensation and, if applicable, in Contract Time, in accordance with Article 53.

C. Except as otherwise provided in the Contract Documents, any claim or dispute relating to this Contract, or its breach, which is not disposed of by agreement, shall be promptly submitted to the Design/Builder's Architect for decision. The claim or dispute shall be identified, submitted in writing with adequate supporting data, and shall include a demand for the Design/Builder's Architect decision. "Claim" means a request for:

01. Compensation or damages;

02. A determination that described performance is required, adequate or unacceptable; or

03. An adjustment in the contract Time;

04. Provided however, that the subject matter is not excluded by Article 14:E.

"Dispute" means a disagreement with the other party to the Contract about the requirements of the Contract Documents, whether the Contract has been breached, or the performance of the Contract by the Owner or the Design/Builder. An issue may or may not be both a "claim" and "dispute." A claim or dispute may be asserted by either the Design/Builder or the Owner. "Adequate Supporting Data" means a statement of the reasons for the asserted entitlement, interpretation, determination of performance, or time

adjustment sought, and shall include, if applicable, an itemized breakdown of the compensation, time extension or other relief requested. A copy of the request for decision and supporting data shall be mailed to the other party to the Contract.

The right to obtain a ruling from the Design/Builder's Architect on a claim or dispute and any right to litigate shall be deemed waived unless the matter is submitted to the Design/Builder's Architect and Owner promptly but in no event later than fourteen (14) days after the date on which the claim or dispute arises.

The Design/Builder's Architect's decision shall be rendered within the time stipulated in Article 14:D and such a decision may be litigated as hereafter provided.

The Design/Builder's Architect shall render a decision on the claim or dispute in writing and mail, or furnish, a copy of it to the Design/Builder and the Owner. The decision of the Design/Builder's Architect shall be final and conclusive when accepted in writing by the Owner and the Design/Builder, unless within thirty (30) days from the date on which the decision was received, the Design/Builder mails or otherwise furnishes a written notice of intention to litigate it in accordance with the procedures set forth in Article 72.

D. The Design/Builder's Architect shall issue a written decision on a claim or dispute not exceeding Fifty Thousand Dollars ($50,000.00), or for an adjustment in Contract Time, within sixty (60) days after receipt of the claim or dispute. The decision on a claim or dispute exceeding Fifty Thousand Dollars ($50,000.00) shall be issued within ninety (90) days after receipt of the claim or dispute.

If a decision is not issued on a claim or dispute for Fifty Thousand Dollars ($50,000.00) or less, or for an adjustment of Contract Time, within the sixty (60) day period herein provided, or on a claim or dispute exceeding Fifty Thousand ($50,000.00) within ninety (90) days after the Design/Builder's Architect 's receipt of the claim or dispute, the claim or dispute shall be deemed to have been denied and the Design/Builder shall have an immediate right thereafter, exercisable for a period of thirty (30) days, to give notice of intention to litigate the claim or dispute, however, the parties agree that mediation is a condition precedent to litigation. The failure to give notice of the intention to litigate within the thirty (30) day period will result in the Design/Builder's Architect's decision on the claim or dispute becoming final and conclusive.

E. The procedures and remedies provided in this Article 14 and in Article 72 do not apply to:

01. Any claim for or dispute about the penalties or forfeitures prescribed by statute or regulation which another state, federal or local agency is specifically authorized to administer, settle or determine;

02. Any claim for or respecting personal injury or death or reimbursement or other compensation arising out of or resulting from liability for personal injury or death;

03. Any claim by the Owner related to:

a. a latent defect:
b. a breach of warranty of a product, system, item of equipment or all or part of the project or;
c. the Design/Builder's guarantee and warranty to correct, repair or replace defective work or work not done in accordance with the Contract Documents, during the Warranty Period;
d. the assessment of liquidated damages.

04. Any claim or dispute relating to releases and lien waivers or the procedures authorized by Article 60.

05. Any claim or dispute related to the approval, refusal to approve, or substitution of subcontractors, regardless of tier, and suppliers.

06. Any claim or dispute related to the Owner's termination of the Contract because of Design/Builder's default or because of any act of God.

07. Any dispute concerning the Design/Builder's Architect's decision in matters relating to artistic effect. These decisions will be final if consistent with the intent of the Contract Documents.

F. Pending a decision by the Design/Builder's Architect, the Design/Builder shall proceed diligently with the performance of the Contract and in accordance with the Owner's instructions, unless the parties to the Contract otherwise agree in writing, and Owner shall continue to make payments.

ARTICLE 15. Separate Contracts.

A. The Owner reserves the right to let other contracts in connection with this work. The Design/Builder shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work and theirs.

B. If any of the Design/Builder's work depends for proper execution or results upon the work of any other contractor, the Design/Builder shall inspect and promptly report to the Owner any defects in such work that render it unsuitable for such proper execution and results. His failure so to inspect or report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work except as to defects which may develop in the other contractor's work after the execution of his work and which could not have been discovered or readily anticipated by or as the result of inspection.

C. To insure the proper execution of his subsequent work, the Design/Builder shall measure work already in place and shall at once report to the Owner any discrepancy between the executed work and the drawings.

SECTION 2. OBLIGATIONS OF DESIGN/BUILDER

ARTICLE 16. General Services

A. Design services shall be performed by engineers and other professionals qualified and properly licensed in the State of Wyoming, selected by the Design/Builder referred to hereinafter as Design/Builder's Architect and approved by the Owner.

B. Construction services shall be performed by such persons qualified and properly licensed in the State of Wyoming. Construction services shall be competitively bid based on 95% drawings.

C. Consult, to the extent required by the Owner, with authorized employees, agents, and/or representatives of the Owner and the State of Wyoming, relative to the design and construction of the Project.

D. Cooperate with other design professionals employed by the Owner for the design of other work related to the Project.

E. Contract for or employ at Design/Builder's expense engineers, or consultants to the extent it deems necessary for design of the Project and development of plans and specifications, including structural and civil. Design/Builder shall submit for approval by the Owner, architects, engineers and consultants for each professional element of service of the Project. Nothing in the foregoing procedure shall create any contractual relation between the Owner and any architects, engineers or consultants employed by Design/Builder under the terms of this Agreement.

F. Designate a principal or member of Design/Builder's staff satisfactory to the Owner as the Project Manager who shall, so long as their performance continues to be acceptable to the Owner, remain in charge of the Design/Builder's services for the Project from beginning of design through completion of construction.

G. Assist the Owner in fulfilling requirements and contingencies set forth or required by appropriate authorities and agencies whose interest bears on the design and construction of the Project.

H. Abide by all regulations imposed by funding sources or governmental agencies, such as auditing requirements, payroll affidavits, and other documentation or verification.

I. The Design/Builder's professional services shall be consistent with sound engineering practices and shall incorporate those federal, state and local laws, regulations, codes and standards that are applicable at the time the Design/Builder renders services. In the event of a change in laws, regulations, etc., the Design/Builder shall inform the Owner of the change and its impact on work already performed or to be performed, fees and costs involved, and scheduling. If either the Owner or the Design/Builder believes the change requires a renegotiation of the Agreement, both parties will renegotiate the Agreement promptly and in good faith. If a renegotiated Agreement cannot be agreed to, either party may terminate this Agreement in accordance with Article 32.

J. Prepare minutes of all Project meetings for distribution to the Owner and all subcontractors.

ARTICLE 17. Construction Development Services

The construction development services shall consist of the following two phases:

A. Construction Documents Phase

Upon receipt of written authorization from the Owner to proceed with the preparation of Construction Documents Phase, the Design/Builder's Architect shall use usual and customary professional care and skill to:

01. Prepare six (6) complete sets of construction documents consisting of plans and specifications, all of which set forth in detail the requirements for construction of the entire Project.

02. Submit for Owner review construction documents when 30%, 50% and 95% complete.

03. Prepare construction documents in full compliance with building codes, ordinances, and all regulatory and governmental authorities and laws that are applicable at the time

Design/Builder renders services.

04. Upon written approval by the Owner of a final set of drawings, and a final draft of specifications, provide to the Owner six (6) complete sets of plans and six (6) complete sets of typed specifications. Owner's review of Construction Documents in no way shall relieve the Design/Builder and the Design/Builder's Architect of design liability or contractual responsibility under this Agreement.

05. Submit completed plans and specifications to appropriate authorities and agencies for proper approvals, permits, and licenses prior to construction.

B. BIDDING/NEGOTIATION PHASE

Upon completion of the Construction Documents and acceptance by the Owner, the Design/Builder shall solicit bids from subcontractors, manufacturers and material suppliers for the related construction activities as shown in the Construction Drawings. The Design/Builder or the Design/Builder's Architect shall:

01. Provide complete sets of Construction Documents to those subcontractors, manufacturers or suppliers to obtain bids or proposals.

02. Prepare necessary bidding information and bidding forms to be used by Design/Builder. Multiple bidding packages may be used as approved by the Owner and as consistent with the approved schedule.

03. Prepare addenda and clarification documents, interpret construction documents as required.

04. Review, evaluate, award construction contracts.

05. Prior to the award of any contracts prepare for Owner's approval a complete list of subcontractors and material suppliers along with a summary of all bids and proposals.

06. If Design Builder will bid on any portion of the work to self-perform, Design Builder's bid shall be due to the Owner three (3) days prior to bid opening date.

07. Design Builder to comply with the Wyoming State Revolving Fund (SRF) Program requirements as follows:

The Wyoming State Revolving Fund (SRF) Program requirements must be included in all bidding and contractual agreements with the subcontractor. The bidding and contract documents, including drawings, project manual, and SRF checklist, must be approved by the SRF prior to advertising for bids. A public pre-bid conference must be coordinated with the SRF. SRF must approve the bids prior to awarding of the contract.

Advertising for bids:

- Advertise twice minimum, at least one week apart, in a newspaper of general circulation for the project owner, following W.S. 15-1-113 (a) and (b). More stringent requirements apply for water and/or sewer districts; see W.S. 41-10-101(a)(xiv).
- As part of DBE good faith effort, ad must appear minimum 30 days before bid due date. Do not count bid due date as one of the 30 days.
- Bid opening must be public; see W.S. 16-6-1001(a)(iii).
- Do not advertise until you get SRF approval.

- Provide a copy of the affidavit of publication to SRF.

Bid security, W.S. 15-1-113(f):

- Require 5% minimum bid security.
- Must be a bid bond for bids greater than $150,000. Owner can allow other types of security only for bids that are $150,000 or less. EJCDC based documents often erroneously allow checks or other types of security and therefore should be revised.
- Successful bidder has 30 days to execute the contract once it is awarded. EJCDC based documents often allow only 15 days and therefore should be revised.
- State the bid security requirements in the advertisement for bids.
- Also modify as necessary any language on bid security or time to execute contract in the instructions to bidders, bid form, and notice of award.

Require contract security (performance and payment bonds); see W.S. 15-1-113(d) and 16-6¬112. State the required contract security in the advertisement for bids; see W.S. 15-1-113(d) and (f).

Insert into Advertisement for Bids:

Qualified Disadvantaged Business Enterprises (DBEs) are encouraged to submit bids on this project. Bidders that use a subcontractor(s)/supplier(s) are required to make a good faith effort at soliciting DBE subcontractor/supplier participation. Bidders shall submit the required DBE Good Faith Effort Documentation form and other related forms with their bids.

Pursuant to W.S. 16-6-106, "preference is hereby given to materials, supplies, agricultural products, equipment, machinery and provisions produced, manufactured or grown in Wyoming, or supplied by a resident of the state, quality being equal to articles offered by the competitors outside of the state".

Instructions to Bidders:

PREFERENCE FOR RESIDENT CONTRACTORS
The Contract shall be let to the responsible certified resident making the lowest bid, if the certified resident's bid is not more than five percent (5%) higher than that of the lowest responsible nonresident bidder and the resident bidder does not propose to subcontract more than thirty percent (30%) of the work to nonresident contractors. A resident for this purpose must be certified as a resident by the Wyoming Department of Workforce Services prior to bidding upon the Contract. See W.S. 16-6-101, et seq. A resident bidder shall submit a copy of its certificate of residency with its bid.

All Bidders must submit the following with their Bids (in addition to the bid security, etc.):

- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
- DBE Good Faith Effort Documentation form
- Bidders List (listing all entities, DBE or not, that submitted a quote to Bidder; see form)
- EPA Form 6100–3—DBE Program Subcontractor Performance Form(s) (if using any DBEs)
- EPA Form 6100–4—DBE Program Subcontractor Utilization Form (if using any DBEs)
- Copy of Certificate of Residency, if bidding as a resident

The instruction to bidders must include SRF Special Conditions section (pages 1-46) in the project manual, and complete the following:

- Specifically identify the SRF Special Conditions as part of the Contract Documents, in the Agreement/Contract.
- Fill in the blank on page 16 near the end of the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)" with the correct county where the project is located.
- Insert the appropriate Davis Bacon Wage Decision and the WYDOT DBE directories in place of pages 45 and 46. Follow the additional directions on pages 45 and 46.
- The requirements known as "Buy American/Use of American Iron and Steel" apply to most SRF projects. If you believe Buy American may not apply to your project, check with SRF. You will be able to leave out the Buy American related pages (43 and 44) if SRF confirms it does not apply to your project.

Sub-contractors shall be notified that they are not exempt from sales taxes on this project. See Wyoming Department of Revenue Rules and Regulations Chapter 2 Section 10(e).

C. Construction Phase Services

The Design/Builder's Architect shall use usual and customary professional care and skill to:

01. Provide all of the administration services required by the Construction Documents.

02. Provide a color schedule, samples of textures and finishes of all materials in the Project for review and approval of the Owner.

03. Without additional cost to the Owner, make all revisions and changes to the Construction Documents as directed by the Owner to correct errors, conflicts or omissions.

04. Notify the Owner promptly, in writing, of deficiencies known or observed in construction of the Project and advise as to satisfactory methods for corrections of such deficiencies. If the Design/Builder's Architect sees or is informed of defective work, it must direct its efforts toward obtaining compliance.

05. Analyze and advise the Owner, in writing, as to acceptability of test reports, methods, materials, equipment and systems.

06. Review and advise the Owner in writing as to the acceptability of substitutions proposed by subcontractors.

07. Author punch lists and separate warranty work lists, and inspect punch list.

08. Assemble and deliver to the Owner written guarantees, operating and maintenance instruction books, diagrams, and charts of equipment provided under the construction contract for the Project.

09. Notify the Owner in writing when, in the Design/Builder's opinion, the Project is finally complete.

10. Promptly, after recording of Notice of Completion by the Owner, furnish the Owner, at no expense to the Owner, with an Owner approved form of final Plans and Specifications which are in AutoCAD latest version electronically filed to computer disk, including such revisions that may have been made in the course of construction.

Revisions or changes shall be properly annotated on the electronic plans and cross-referenced. Each sheet of the electronic documents shall be prominently noted, "record drawings."

ARTICLE 18. Superintendent, Supervision

A. The Design/Builder shall keep on the construction work, during its progress, a competent and full-time superintendent and any necessary assistants, all satisfactory to the Owner. The superintendent shall not be changed except with the consent of the Owner, unless the superintendent proves to be unsatisfactory to the Design/Builder and ceases to be in his employ. The superintendent shall represent the Design/Builder in his absence and all directions or instructions given to him shall be as binding as if given to the Design/Builder.

B. The Design/Builder shall use his best skill and attention in supervising the work. He shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the Owner, any error, conflict, inconsistency, omission or conflict which he may discover. Failure to promptly report any such error, inconsistency, omission or conflict shall constitute a waiver by Design/Builder of any claim based thereon.

ARTICLE 19. Subcontracts

A. Those portions of the Work that the Design/Builder does not customarily perform with the Design/Builder's own personnel shall be performed under subcontracts or by other appropriate agreements with the Design/Builder. The Design/Builder shall obtain competitive proposals from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work, and after analyzing such proposals, shall deliver such proposals to the Owner. The Design/Builder shall then determine, subject to the reasonable objection of the Owner, which proposals will be accepted. The Design/Builder shall not be required to contract with anyone to whom the Design/Builder has reasonable objection. Lump-sum proposals and subcontracts for construction work are acceptable.

B. The Design/Builder shall not enter into any contract with any design architect or engineer or subcontractor for the performance of any part of the work called for hereunder, without the written approval of the Owner, which shall not be unreasonably withheld. In the event the Owner shall be unwilling to approve any design architect or engineer or subcontractor named by the Design/Builder in his proposal and bid, the Design/Builder shall, upon notification thereof by the Owner, engage in his place a design architect or engineer or subcontractor satisfactory to the Owner. Nothing herein shall be deemed to entitle the Design/Builder, without the written approval of the Owner, to substitute other design architects or engineers or subcontractors for those named in the Design/Builder's proposal and bid, and except with such approval, no such substitutions shall be made. In the event the Owner disapproves of any design architect or engineer or subcontractor named in the Design/Builder's proposal and bid, and a substitute subcontractor acceptable to the Owner enters into a subcontract with the Design/Builder for a price different than the original subcontractor's proposal, the Guaranteed Maximum Price shall be equitably adjusted in accordance with the procedures set forth in Article 54.

C. The Design/Builder agrees that he is as fully responsible to the Owner for the acts and omissions of his design architect or engineer and subcontractors and their agents, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

D. Nothing contained in this Agreement shall create any contractual relation between any design architect or engineer and subcontractor and the Owner.

E. By written agreement, the Design/Builder shall require each design architect or engineer or subcontractor, to the extent of the work to be performed by the design architect or engineer or subcontractor, to be bound to the Design/Builder by the terms of this Agreement, and to assume toward the Design/Builder all obligations and responsibilities which the Design/Builder, by these documents, assumes toward the Owner and Design/Builder. Said agreement shall preserve and protect the rights of the Owner under this Agreement with respect to the work to be performed by the design architect or engineer or subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Design/Builder shall require each design architect or engineer or subcontractor to enter into similar agreements with his sub-subcontractors. The Design/Builder shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of this agreement to which the subcontractor will be bound by this Article. Each subcontractor shall similarly make copies of such documents available to his sub-subcontractors. Copies of all subcontracts and sub-subcontracts shall be filed with the Owner.

ARTICLE 20. Site Conditions

A. Examination of Site. By executing this Agreement, the Design/Builder represents that he has examined the site, and has satisfied himself as to the conditions under which the design and construction work is to be performed before entering into this Agreement. Except as provided in Article 20: B, no allowance shall subsequently be made to the Design/Builder for site conditions differing materially from those indicated in this Agreement and in no event, shall any allowance subsequently be made to the Design/Builder on account of any error or omission on his part or his negligent failure to acquaint himself with the conditions of the site or of adjacent improvements.

B. Differing Site Conditions. The Design/Builder shall promptly and within 15 days notify the Owner in writing of:

01. Subsurface or latent physical conditions at the site differing materially from those indicated in this Agreement; or

02. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement. The Design/Builder shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Design/Builder's cost of, or the time required for performance of any part of the work under this Agreement, whether or not changed as the result of such conditions, an equitable adjustment may be made and the Contract Price modified in writing accordingly. No claim of the Design/Builder under this clause shall be allowed unless the Design/Builder has given the notice required in this Article 20 and provided further that no claim by the Design/Builder for an equitable adjustment hereunder shall be allowed if asserted after Final Payment under this Contract. The claims procedure specified in Article 14 shall apply to claims based on differing site conditions.

ARTICLE 21. Means, Methods and Coordination

A. The Design/Builder shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under this Agreement.

B. Mutual Responsibility of Design/Builder and other contractors. Should the Design/Builder

cause damage to any other contractor or any subcontractor on the project, the Design/Builder agrees to use his best efforts to settle the controversy with such contractor or subcontractor by agreement. If such contractor or subcontractor sues the Owner on any account of any damage alleged to have been sustained, the Owner shall notify the Design/Builder, who shall indemnify and hold harmless the Owner, including the costs and expenses associated with the defense of the action, and if any judgment against the Owner is entered, the Design/Builder shall pay or satisfy it.

ARTICLE 22. Allowances and Contingencies

A. Should the Design/Builder include in the proposal or bid any allowances acceptable to the Owner:

01. These allowances shall cover the cost to the Design/Builder, less any applicable trade discount, of the materials and equipment required by the allowance delivered to the site, and all applicable taxes;

B. Should the Design/Builder include in the proposal or bid any contingencies acceptable to the Owner:

01. The use of any contingencies shall be approved by the Owner prior to application to the Contract Price or any subcontract.

02. The Design/Builder shall provide a complete written cost analysis and detailed description of the conditions requiring the use of contingencies prior to approval of the Owner.

ARTICLE 23. Cleaning Up

The Design/Builder shall at all times keep the premises free from accumulation of waste material or rubbish. At the completion of the work, he shall remove all rubbish from and about the building and all tools, scaffolding, construction equipment, machinery and surplus materials, whether his or his subcontractors', and shall leave the work "broom clean" or its equivalent, unless more exactly specified. In case of dispute between the Design/Builder and any other contractor employed on or about the structure or structures upon which the work is to be done, as herein provided, as to the responsibility for the removal of waste material, rubbish, tools, scaffolding and surplus materials, or in case the same are not promptly removed as herein required, the Owner may remove the waste materials, rubbish, tools, scaffolding and surplus materials and charge the cost to the several contractors, at the sole discretion of the Owner.

ARTICLE 24. Cutting, Fitting, Patching and Digging

A. The Design/Builder shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fitted to receive or be received by the work of other contractors shown upon, or reasonably implied by, the plans and specifications for the completed structure, and shall do all that is necessary to accomplish the joining of said several parts in a neat and workmanlike manner to the satisfaction of the Owner.

B. The Design/Builder shall not damage or endanger any portion of the work to be performed under this Contract, or the work of the Owner or that of any separate contractor, by cutting, patching, excavating or otherwise altering any work. The Design/Builder shall not cut or otherwise alter the work of the Owner or any separate contractor, except with the written consent of the Owner and of such separate contractor. The Design/Builder shall

not withhold from the Owner or any separate contractor his consent to altering the work when, in the opinion of the Owner, such alteration is necessary.

ARTICLE 25. Use of Premises

A. The Design/Builder shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits, the Construction Documents, or directions of the Design/Builder or Owner and shall not unreasonably encumber the premises with his materials or equipment.

B. The Design/Builder will preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation that will remain in place. Any limbs or branches or trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the Owner.

C. T Design/Builder will protect from damage all existing improvements or utilities at the site of the work and will repair or restore any damage to such facilities resulting from failure to comply with the requirements of this contract or the negligence or willful misconduct in the performance of the work. If the Design/Builder fails or refuses to repair any such damage promptly, the Owner may have the necessary work performed and charge the cost thereof to the Design/Builder.

D. The Design/Builder shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

E. The Design/Builder shall enforce the Owner's instructions, given through the Design/Builder, regarding signs, advertisements, fires and smoking. No advertising signs or name labels of any description shall be placed on or near the premises without the Owner's written consent thereto.

ARTICLE 26. Safeguards

A. The Design/Builder shall erect and maintain satisfactory and sufficient safeguards and warnings against the occurrence of accidents, injuries or damage to any person or property and shall alone be responsible for such accidents, injuries or damage if the same should occur.

B. The Design/Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

C. The Design/Builder shall designate a responsible member of his organization employed at the site whose duty shall be the prevention of accidents. This person shall be the Design/Builder's superintendent unless otherwise designated by the Design/Builder in writing to the Owner.

ARTICLE 27. Protection of Work and Property

.01 The Design/Builder shall continuously maintain adequate protection for all his work and materials, from damage, destruction, or loss, He shall indemnify the Owner against any such damage, destruction, loss or injury resulting from Design/Builder's negligence.

ARTICLE 28. Assumption of Risk

Owner acknowledges the sensitive nature of the Project, understands the nature and risk of Design-Builder's operations, and specifically acknowledges the possibility of injury to persons, property, and existing structures through no fault of negligence of Design-Builder. Design-Builder shall indemnify and hold harmless Owner and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, to the extent of Design-Builder's sole or comparative negligence. , , Except to the extent of Design-Builder's negligence or willful misconduct, Design-Builder will not be responsible for damage or failure of the embankment, maintenance access road, overhead or subsurface utilities, and adjacent structures during Design-Builder's design and construction activities. If this occurs, the event will constitute a Contract Change and Design-Builder's related costs will be negotiated in good faith.

Except to the extent of Design-Builders negligence or willful misconduct, Owner expressly agrees to defend, indemnify, insure and hold harmless Design-Builder and Design-Builder's subcontractors, agents, consultants and employees for damages, property damages or other consequential damages in the event of such failure or significant movement

The Design/Builder shall, and he does, hereby assume the responsibility for damage to his work and materials resulting from all risks of physical loss or damage, prior to the completion and acceptance of his work and shall, at his own cost and expense, repair and/or replace any work or materials damaged or destroyed and shall obtain insurance to pay for the cost of making any such replacement or repair as provided in Article 47 of this Agreement. Nothing in this Article shall be construed to relieve the Design/Builder of full responsibility for the risk of injury, loss or damage to materials not yet incorporated in the work and to materials, tools and equipment used to perform the work, or to relieve the Design/Builder of his responsibility under Article 47 of this Agreement.

SECTION 3. RIGHTS AND RESPONSIBILITIES OF THE OWNER

ARTICLE 29. The Owner will:

A. Provide Project requirements, in such detail as deemed necessary by the Owner, including information as to the space and facility requirements, and scheduling.

B. Furnish any site survey of the Project site in the possession of the Owner at the time of this Agreement, including any grades and lines of streets, pavements, and adjoining property; rights-of-way, restrictions, easements, boundaries, and topography of the applicable site; locations, dimensions and floor elevations of existing buildings where necessary, other improvements and trees; and what information it has as to the available service and utility lines, both public and private.

C. Furnish any subsoil data in the possession of the Owner at the time of this Agreement, including any test logs, soil classifications, soil bearing values, and other data necessary to define sub-soil properties. Incorporating this subsoil data into the design and Construction Documents of the Project shall be the Design/Builder's responsibility and at its expense.

D. Furnish inspections, tests, methods of remediation for all hazardous materials known or discovered in or on the project site.

E. Furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as indicated by this Agreement and the approved Construction Documents.

F. Provide all fees directly related to the project not expressly made a part of the requirement of this Agreement.

G. Provide resident construction observers as the Owner may deem advisable. The duties of the resident construction observers are to observe the construction process and report to the Owner's Project Representative. The provision for resident construction observers by the Owner shall not modify the duties and responsibilities of the Design/Builder as set forth in any provision of this Agreement.

H. The Owner may make visits to the project to become familiar with the progress of the work; and determine if the character, scope and detail of construction, the quantity and quality of materials and equipment and the standard of workmanship conforms to the approved Construction Documents and the Owner's written directives. The Owner may attend Project meetings.

I. Determine amounts of progress payments and final payment due to the Design/Builder. The Owner shall determine these amounts based on observations at the site and on evaluation of the Design/Builder's Applications for Payment, and shall issue payment in such amounts as provided in this Agreement and which are in accord with its observations and evaluations. The issuance of an Application for Payment shall constitute a representation by the Design/Builder to the Owner, based on the Design/Builder's observations at the site and on its evaluation of the data, that the work has progressed to the point indicated; that, to the best of the Design/Builder's knowledge, information and belief, the quality of the work is in accordance with the approved Construction Documents; and that the Design/Builder is entitled to the payment requested.

J. Furnish such legal advice and services as may be required in the opinion of the Owner to protect the Owner's interests in the Project.

K. Notify the Design/Builder of Owner-required administrative procedures and name the Owner's representative authorized to act in its behalf.

L. The Owner shall review documents submitted by the Design/Builder and shall render decisions pertaining thereto to avoid unreasonable delay in the progress of the Project.

M. Notify the Design/Builder upon awareness of any deficiencies or defects in materials or workmanship during Design/Builder's warranty period.

N. Notify the Design/Builder, in writing, of the acceptance of the Project.

O. Nothing in this Agreement nor any act or failure to act on the part of the Owner shall be construed as a waiver of a claim by the Owner for any defects or deficiencies in the approved Construction Documents or of the Project administration required of the Design/Builder.

ARTICLE 30. Owner's Right to do the Work

A. Should the Design/Builder, at any time during the progress of the work, refuse or neglect, to supply a sufficiency of quality materials, competent workmen, equipment and tools to complete this Agreement within the time specified in this Agreement (or any extension thereof previously granted by Change Order) for a period of more than ten (10) days after having been notified by the Owner in writing to supply the same, the Owner shall have the option to furnish and provide said materials and/or workmen to finish said work, and the reasonable expenses thereof shall be charged against the Design/Builder by the Owner and may be deducted from any monies which might otherwise be or become payable to the

Design/Builder.

B. After having received written notice from the Owner, should the Design/Builder, during the Warranty Period, fail, refuse or neglect to promptly cure any defect in his work, or to remedy any work not done in accordance with the approved Construction Documents, the Owner may do the corrective work, or cause it to be done by others, and the reasonable expenses thereof shall be promptly reimbursed to the Owner by the Design/Builder or his surety. The reasonable expense of corrective work may be deducted from any moneys which might otherwise be, or become payable, to the Design/Builder.

ARTICLE 31. Termination

A. For Default.

01. Grounds. The following are grounds for terminating the Design/Builder for default and for the Design/Builder terminating any subcontractor for default:

a. Violation of any material provision of this Agreement;

b. Failure to make prompt payment to subcontractors or for materials or labor (upon receipt of corresponding payment from Owner);

c. Failure to supply an adequate working force of properly skilled workmen;

d. Failure to provide material of proper quality or quantity;

e. Disregarding the written instructions or interpretations of the Owner;

f. Failure or refusal to prosecute the work or any separable part thereof with such diligence as will result in its completion within the time specified in this Agreement;

g. Failure to complete the work within the time specified in this Agreement;

h. Failure to correct defective work or work not done in accordance with the approved Construction Documents;

i. Solely or comparative negligent performance;

j. It is recognized that if the Design/Builder is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such can impair or frustrate the Design/Builder's performance of this Agreement.

Accordingly, it is agreed that upon the occurrence of any such event, the Owner shall be entitled to request of Design/Builder or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten (10) days of delivery of the request shall be grounds for default hereunder and shall entitle Owner to terminate this Agreement and the accompanying rights set forth herein. In all events, pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be back-charged against the contract price.

02. Notice. If any ground for termination exists, the Owner may give written notice to the Design/Builder and the Design/Builder's sureties that, if specified defaults are not remedied within the time set forth in said notice, the Design/Builder's right to proceed with the work will automatically terminate.

03. Owner's Remedies. Upon such termination, the Owner may:

    a. Require the Design/Builder's sureties to complete the work, or

    b. Take over the work directly; or

    c. Employ another contractor to complete the work. In any event, the Owner or his representatives may utilize, in completing the work, such materials, tools, equipment and appliances which are on the site of the work and necessary for its completion. The remedies specified above shall be in addition to all other remedies which the Owner may otherwise have.

04. Effect of Termination. If the Owner terminates the Design/Builder, or if the Design/Builder abandons the work, the Design/Builder shall not be entitled to receive any portion of the amount to be paid under the Contract until the work is fully completed. After completion, if the unpaid balance exceeds the sum of the amount paid by the Owner to finish the work, plus all damages sustained, including, but not limited to, such liquidated damages as are provided for in this Agreement, the excess not required by this Agreement to be retained shall be paid to the Design/Builder. If such sum exceeds the unpaid balance, the Design/Builder and his sureties shall be liable to the Owner for the excess. Provided Owner shall be obligated to establish that its actions in terminating the Contractor were proper and justifiable under the circumstances and that its costs in completing the work were reasonable and proper under the circumstances and in which event Design/Builder shall be liable for such damages as are awarded to Owner by a mediator, arbitrator or other proper adjudicatory authority.

B. Termination for Acts of God or Owner's Convenience.

01. Should an act of God result in substantial damage to all or a portion of the work, or should the Owner's convenience necessitate termination, the Owner shall have the option of terminating the Contract. If the Owner exercises the option to terminate, a Notice to Terminate so providing will be issued. Such Notice to Terminate may provide for the Design/Builder to perform any work deemed by the Design/Builder as necessary to put the project in satisfactory condition for the termination of all work, and the Design/Builder shall be paid for such work as provided in Article 54 of this Agreement. Upon the issuance of such Notice of Termination, the Design/Builder shall be relieved of further responsibilities for damage to the work (excluding materials not already incorporated into this work) which responsibilities are specified in Article 28 of this Agreement, and will not be required to perform any further work on the project other than that specified in the Notice of Termination.

02. When the Design/Builder determines that the work specified in the Notice of Termination has been completed, the Owner shall accept the project, and immediately upon such acceptance, the Design/Builder will not be required to perform any further work thereon.

03. After acceptance of the work pursuant to Article 31:B:02, the Design/Builder will be paid for the work done prior to termination. The Design/Builder will determine the value of the partially completed work as follows: The Design/Builder will be paid for all

work to the date of the Notice of Termination in accordance with Article 57. This amount shall be computed by determining the percentage of the total contract work completed prior to termination and multiplying that percentage against the total contract amount. The amount to be paid shall not exceed the amounts previously paid or due the Design/Builder from the amounts retained. The Design/Builder shall not be entitled to his anticipated profits for the work, which would have been performed but for termination.

04. If the Design/Builder has placed an order, prior to such termination, for materials specially manufactured for the project, which materials are not suitable for use in other projects of the Owner or sale to others in the ordinary course of the vendors' business, the Design/Builder will be paid the actual cost to the Design/Builder or the cancellation charges, if any, assessed by the vendor. The determination of whether the order shall be completed or canceled shall be made by the Owner.

    Any material paid for shall become the property of the Owner and the actual cost of any further handling will be paid for by the Owner.

05. No payment will be made to vendor for materials which have been damaged and are not acceptable for incorporation in the work in accordance with the requirements of this Agreement. The Design/Builder shall reimburse the Owner for any amounts previously paid by the Owner for such unacceptable materials, and agrees that the Owner may deduct the amount of such previous payments made by the Owner from any moneys due or which may become due the Design/Builder. If the Owner has paid for acceptable materials not incorporated into the work under Article 57:E, the Owner will have the option of taking title to all or any portion of such materials or of receiving reimbursement from the Design/Builder for any amounts previously paid to the Design/Builder. The Design/Builder agrees to pay to the Owner upon demand any amounts previously paid for such materials, and agrees that the Owner may deduct the amount of such previous payments from any moneys due or which may become due the Design/Builder.

C. Design/Builder's Responsibility on Receipt of Notice of Termination. On receipt of a notice of termination from the Owner, whether for default or convenience of the Owner, the Design/Builder shall:

    01. Stop all work under the Contract on the date of and to the extent specified in the notice of termination;

    02. Place no further orders or subcontracts for design services, materials, equipment or services except as may be necessary for completion of such portions of the work expressly excluded under the notice of termination;

    03. Cancel or terminate all orders or subcontracts to the extent that they relate to the performance of work covered by the notice of termination, and;

    04. Comply with all other requirements of the Owner as may be specified in the notice of termination.

D. Subcontract Provision. The Design/Builder shall insert in all subcontracts a provision that the subcontractor will stop all work on the date of or to the extent specified in a notice of termination from the Owner and shall require the subcontractors to insert the same provision in their subcontracts.

E. Duty to Notify Subcontractors. The Design/Builder shall immediately, upon receipt,

communicate any notice of termination issued by the Owner to the affected subcontractors and sub-subcontractors.

SECTION 4. CORRECTION OF THE WORK

ARTICLE 32. Correction of Work Before Final Payment

A. The Design/Builder shall promptly remove from the premises all materials reasonably condemned by the Owner as failing to conform to the Contract, whether incorporated in the work or not, and where materials and/or work have been condemned by the Owner, the Design/Builder shall promptly replace and re-execute his work in accordance with the approved Construction Documents and without expense to the Owner, and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement or re-execution of the work. Correction of any such condemned work shall be a condition precedent to any further payment under the Contract.

B. If the Design/Builder does not remove such condemned work and materials within three (3) calendar days after demand for such removal, the Owner may remove and store them. The expense of removal and storage shall be reimbursed to the Owner upon demand. If the Design/Builder does not promptly pay the expense of such removal and storage, the Owner may, upon ten (10) days notice, sell such materials at auction or private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Design/Builder, including expenses of auction or sale.

ARTICLE 33. Deductions for Uncorrected Work

If the Design/Builder deems it inexpedient to correct work which has been damaged or which has not been done in accordance with the approved Construction Documents, the difference in value, together with a fair allowance for damage, as determined by the Owner, shall be deducted from the sum agreed to be paid the Design/Builder for the performance of the Contract.

ARTICLE 34. Correction of Work After Final Payment

In addition to the specific guarantees and warranties required by the Contract Documents, the Design/Builder guarantees and warrants all the work to be performed and all the materials to be furnished under this Contract against defects in materials or workmanship, including work not done in accordance with the Contract Documents, for a period of five (5) years from the date of final acceptance of the completed work by the Owner. Design/Builder shall be responsible for damages resulting from such defects and such work not done in accordance with the Contract Documents. In the event that Owner occupies all or a portion of the premises, in advance of substantial completion, pursuant to Article 63, the warranty period for that portion of the premises shall commence as of the actual date of occupancy. Design/Builder shall, within a reasonable time, but in no case longer than thirty (30) days after receipt of written notice thereof, repair any defects in materials or workmanship, and replace any defective material, and/or correct any work not done in accordance with the Contract Documents, which may be discovered within the warranty period, and repair any damage resulting from the repair or replacement of such defects, or the correction of work not done in accordance with the Contract Documents, at his own expense, and without cost to the Owner. In the event the Design/Builder fails to remedy any such defect within a reasonable time, which in no case shall be longer than thirty (30) days after receipt of such written notice, the Owner may do the work or proceed to have such defect remedied at the Design/Builder's expense, and Design/Builder shall pay all costs and charges accruing for such work and any other damages sustained by the Owner.

Nothing contained in this Article 34 or in any specific warranty required by the approved Construction Documents, shall operate to relieve the Design/Builder from responsibility, after expiration of the guarantee or warranty period(s), for damages resulting from latent defects, departures from the requirements of this Agreement, fraud or gross mistakes. Neither final acceptance, nor final payment, nor expiration of the warranty period, nor any provision in this Agreement shall be deemed to be a waiver by the Owner, nor to relieve the Design/Builder of any responsibility or duties imposed by this Agreement, nor to be a period of limitation.

SECTION 5. PLANS, DRAWINGS, SPECIFICATIONS, SAMPLES AND MODELS

ARTICLE 35. Reproduction of Documents

A. Design/Builder shall provide copies of all documents required by the Owner for review and approval by the Owner and the appropriate authorities and agencies at the expense of the Design/Builder.

B. Design/Builder shall provide copies of the Construction Documents for bidding and construction purposes in the number required by the Owner and the Design/Builder; the expense of reproduction will be borne by the Design/Builder.

ARTICLE 36. Ownership of Documents

A. "Deliverable Instruments of Service" as used in this Agreement shall mean the drawings, specifications, calculations, manuals, reports, official project meetings, project observation reports, presentation drawings, slides, models and/or other information, regardless of medium, identified in and required to be delivered or submitted to the Owner under this Agreement.

B. It is acknowledged and agreed that all documents developed pursuant to this Agreement are Instruments of Service. Deliverable Instruments of Service are the sole property of the Owner. Owner shall have unlimited rights, for the benefit of the Owner, in all said deliverable instruments of service, including, but not limited to use, reuse, modification, and transferability for reference only related to the site.

C. The Design/Builder and the Design/Builder's Architect hereby grants the Owner a nonexclusive license to any copyrighted portion of Deliverable Instruments of Service. Such license shall include, but not be limited to, the right to use and reuse such copyrighted materials to construct the buildings, facilities, or other matters covered by such copyrighted materials for additional use and to license such copyrighted materials for reuse. The Owner's rights and licenses in and to said Deliverable Instruments of Service are conditioned upon Design/Builder receiving all sums related to the Owner-approved deliverables due under this Agreement.

D. The Owner's use on other projects, Owner's reuse, or Owner's modification of the Deliverable Instruments of Service shall be at Owner's sole risk and without recourse against Design/Builder, its sub-contractors at any tier and their respective principals, agents and employees. Owner, to the extent of its obligations and abilities under Wyoming law and its applicable insurance, shall hold harmless, indemnify and defend Design/Builder, its sub-contractors at any tier and their respective principals, agents and employees from and against any and all actions, claims, loss or damages of any nature whatsoever to the extent related to and resulting from any said use, reuse, or modification of all or any portion of the Deliverable Instruments of Service by or on behalf of Owner, irrespective an any actual or alleged fault on the part of the indemnitee(s). Under no circumstances shall Design/Builder be indemnified for the use of the Deliverable

Instruments of Service for the Project that is the subject of this Agreement.

E. If the Design/Builder or Design/Builder's Architect is not the same design consultant commissioned for the reuse or modification, prior to reusing or modifying the Deliverable Instruments of Services, Owner shall reasonably remove all indicia of authorship, including the title blocks, names, initials, signature, and profession stamps of the Design/Builder or Design Builder's Architect, its subconsultants at any tier, and their agents and employees.

ARTICLE 37. Correlation and Intent of Documents

A. The Drawings and the Specifications are intended to be complementary so that any work exhibited in the Plans and not mentioned in the Specifications, or vice versa, is to be done as if the work was mentioned both in the Specifications and exhibited in the Plans in accordance with the true intent and meaning of said Plans and Specifications when taken together. In case of conflict or inconsistency, the Specifications shall take precedence over the Drawings. Large scale and full size Drawings shall be followed in preference to small scale Drawings. Figured dimensions shall be followed in preference to scaled measurements. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work.

B. Title and headings to sections and paragraphs, tables of contents and indexes in the Contract Documents are set forth for convenience and shall not be taken as a correct or complete segregation of the several units of materials, labor and requirements. No responsibility, either direct or implied, will be assumed by the Owner for omissions or duplications by the Design/Builder or his subcontractors, due to real or alleged error in arrangement of matter in the Contract Documents.

C. No portion of the work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been reviewed by the Owner. All such work shall be in accordance with approved submittals.

ARTICLE 38. Detail Drawings, Interpretations and Instructions

The Design/Builder shall furnish, with reasonable promptness, additional interpretations and instructions, by means of Drawings or otherwise, necessary for the proper execution of the work. All such Drawings, interpretations and instructions shall be consistent with the Contract Documents and reasonably inferable therefrom. The work shall be executed in conformity therewith and the Design/Builder shall do no work without proper Drawings and, if needed, additional interpretation or instructions. In giving such additional interpretations and/or instructions, the Design/Builder shall have authority with approval of the Owner to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes for which the work is being done.

The Design/Builder and the Owner, if either so requests, shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the work, fixing the dates at which the various detail Drawings will be required. The Design/Builder shall prepare a schedule fixing the dates for the submission of Shop Drawings, for the beginning of manufacture and installation of materials and for the completion of the various parts of the work.

ARTICLE 39. Copies Furnished

The Design/Builder, at its expense, shall furnish the Owner, with reasonable promptness, six (6) complete sets of the Drawings and Specifications referred to in this Agreement in

addition to the set attached to the Design/Builder's copy of this Agreement.

ARTICLE 40. Shop Drawings and Schedules

A. The Design/Builder shall review, approve and submit, with such promptness and in such sequence as to cause no delay in his work or in that of any other contractor, all shop or setting drawings, schedules, samples, product data, templates and models as required. The Owner shall review them with reasonable promptness. The Design/Builder shall make any corrections required by the Owner, file with him one (1) transparency, and furnish such other copies as may be needed. The Owner's review of such drawings, samples, models or schedules shall not relieve the Design/Builder from responsibility for deviations from the Contract Documents, unless he has in writing called the Owner's attention to such deviation(s) at the time of submission, and the Owner has, in writing, approved such deviation(s). The Design/Builder shall not be relieved from responsibility for errors or omissions in the shop drawings, product data, samples, models or schedules by the Owner's review.

B. By approving and submitting shop drawings, product data, samples, models and schedules, the Design/Builder represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, and that he has checked and coordinated the information contained within such submittals with the requirements of the work and/or the Construction Documents.

C. Prior to final payment, the Design/Builder shall forward all Shop Drawings to the Owner.

D. Schedules:

01. The Design/Builder shall submit a schedule to the Owner for review, within ten (10) days after Notice to Proceed, showing the order in which the Design/Builder proposes to carry on the work, the dates on which he will start the several major features (including design, procurement of materials, plant and equipment) and the contemplated dates for completing the same. Unless otherwise specified, the Design/Builder shall enter on the schedule the actual progress at monthly intervals and shall immediately deliver to the Owner two (2) copies thereof.

02. If the Design/Builder fails to submit the progress schedule within the time prescribed, or the updated monthly schedule within the requested time, the Owner may withhold approval of progress payment applications until such time as the Design/Builder submits the required progress schedules.

03. If, in the opinion of the Owner, the Design/Builder falls significantly behind the approved progress schedule, the Design/Builder shall take any and all steps necessary to improve his progress. The Owner, in this instance, may require the Design/Builder to increase the number of shifts, initiate or increase overtime operations, increase days of work in the work week, or increase the amount of construction plant, or all of them. The Owner may also require the Design/Builder to submit for approval supplemental progress schedules detailing the specific operational changes to be instituted to regain the approved schedule, all without additional cost to the Owner.

04. Failure of the Design/Builder to comply with the requirements of the Owner under this provision shall be grounds for determination by the Owner that the Design/Builder is not prosecuting the work with such diligence as will insure completion of the work within the time specified. Upon such determination, the Owner may invoke the remedies specified in Articles 30 or 31.

ARTICLE 41. Documents and Samples Required at the Site

The Design/Builder shall maintain at the site, one record copy of all Drawings, Specifications, addenda and change orders, in good condition and marked currently to record all changes made during construction. Additionally, the Design/Builder shall keep and maintain at the site, approved shop drawings, schedules, product data and samples. All documents and samples required to be kept at the site shall be available for review and inspection by the Owner, or its representatives. Upon completion of the work, these shall be delivered to the Owner for his review and permanent records.

ARTICLE 42. Samples

The Design/Builder shall furnish for approval all samples as directed. Samples are the property of the Owner.

SECTION 6. MATERIALS AND INSPECTIONS

ARTICLE 43. Materials Furnished

A. The requirements of "Buy American/Use of American Iron and Steel apply to this Project.

B All materials shall be new and the best of their respective kinds and subject to the approval of the Owner. All work is to be performed in the best manner by skilled workmen. The Design/Builder shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

C. Approval by the Owner of a substitute proposed by the Design/Builder for a specified method or material shall not relieve Design/Builder of the responsibility for full compliance with approved Plans and Specifications and for adequacy of the substituted method or material. Design/Builder shall also be responsible for the resultant changes which the substitution requires in his work, the work of his subcontractors and of other contractors, and shall effect such changes without cost to the Owner.

D. In accordance with W.S. 16-6-104, Wyoming made materials and products, and Wyoming suppliers of products and materials of equal quality an desirability shall have preference over materials or products produced or supplied outside the state.

ARTICLE 44. Inspection of Work

A. The Owner and their representatives shall, at all times, have access to the work wherever it is in preparation or progress and the Design/Builder shall provide safe and proper facilities for such access and for inspection. Nothing contained in this Article 44 shall restrict the Owner's rights under any warranty or guarantee.

B. If law, ordinance or public authority, or the Contract Documents, require any work to be tested or approved, the Design/Builder shall give the Owner timely notice of its readiness for inspection or testing, and if the inspection or testing is by authority other than the Owner, or is at a location other than the project, timely notice of the date fixed for such inspection. If any such work should be covered up without approval or consent of the Owner, it must, if required by the Owner, be uncovered for examination, testing or approval, at the Design/Builder's expense. The Design/Builder shall bear all costs of inspections, tests or approvals ordered by any authority other than the Owner.

C. Reexamination of questioned work may be ordered by the Owner. If, after reexamination it is determined that the work has been done in accordance with the Contract Documents,

the cost of such reexamination shall be at the Owner's expense. If, on the other hand, it is determined after reexamination that the questioned work has not been done in accordance with the Contract Documents, then the cost of such reexamination, including the cost of uncovering the work, shall be borne by the Design/Builder.

ARTICLE 45. Materials, Services and Facilities

It is understood that except as otherwise specifically stated in the Contract Documents, the Design/Builder shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever which are necessary to execute, complete and deliver the work within the specified time.

SECTION 7. INSURANCE, BONDS AND LIABILITY

ARTICLE 46. Payment and Performance Bonds

Upon execution of this Agreement, the Design/Builder shall furnish to the Owner a bond in the amount of the contract price, guaranteeing the faithful performance of the Contract, and a bond for one-half (1/2) the amount of the contract price, guaranteeing the payment of claims of mechanics, materialmen, and others, the bond carrier shall have an AM Best rating of not less than A11, said bonds to be in substantially the forms approved by the Owner and with sureties approved by the Owner. The premiums for all such bonds shall be paid by the Design/Builder. Upon demand and at its cost, the Design/Builder shall promptly furnish such additional security as may be required by the Owner from time to time to protect its interests and those of persons supplying labor or materials in the prosecution of the work required by this Contract.

ARTICLE 47. Design/Builder's Liability and Insurance Requirements

A. General Liability. In connection with the work to be performed hereunder, the Owner shall not be liable or responsible for any accidents; loss, injury (including death) or damages and the Design/Builder shall fully indemnify and protect the Owner from and against the same. In addition to the liability imposed by law upon the Design/Builder for damage or injury (including death) by reason of the negligence of the Design/Builder or his agents, which liability is not impaired or otherwise affected hereby, the Design/Builder hereby assumes liability for and agrees to save the Owner harmless and indemnify him from every expense, liability or payment by reason of any damage or injury (including death) suffered or claimed to have been suffered through any act or omission of the Design/Builder or any of his subcontractors, or anyone directly or indirectly employed by either of them, or from the condition of the premises or any part of the premises while in the control of the Design/Builder or any of his subcontractors or anyone directly or indirectly employed by either of them, or arising out of the performance of the work called for by this Contract.

B. Public Liability Insurance Requirements. The Design/Builder shall, before the commencement of the work herein specified, take out, and during the life of this Contract, maintain in full force and effect, comprehensive general liability insurance, including protection for automobiles owned or non-owned, in the amount of $1,000,000.00, with an insurance carrier or carriers approved by the Owner, under an insurance policy or policies satisfactory in form and substance to the Owner. The required insurance shall include contractual liability insurance applicable to the Design/Builder's obligations under Article 47:A.

C. Workers' Compensation and Employers Liability. Workers' Compensation coverage and limits as required by the State of Wyoming and Employers Liability (stopgap) limits of one

million dollars per accident or disease. (Employers Liability/Stop Gap coverage may be provided on a separate policy or included in the general liability policy.)

D. The Design/Builder is responsible for the professional quality, technical accuracy and coordination of all designs, drawings, specifications and other services furnished by the Design/Builder under this Agreement. The Design/Builder shall be liable to the Owner for all damages including consequential damages and every expense, cost, exclusive of betterment, attorneys' fees and payment incurred by the Owner as the result of negligence, negligent acts, errors or omissions in any of the services furnished under this Agreement.

E. Professional Liability. One million dollars ($1,000,000.00) of professional (errors or omissions) liability coverage. The Design/Builder or its design subcontractor(s) shall maintain professional liability coverage for a minimum of five (5) years following the completion of services under this Agreement. Such coverage shall include retroactive coverage to the contract inception date if coverage is provided on claims made form.

F. Payment of Premiums and Notice of Revocation. Premiums for all insurance policies shall be paid by the Design/Builder and each insurance policy in this paragraph provided for shall expressly provide therein that it shall not be revoked or canceled by the insurer until thirty (30) days written notice of the intended revocation, cancellation or change in policy terms shall have first been given to the Owner by such insurer.

G. Owner May Insure for Design/Builder. In case of the breach of any provision of this Section, the Owner may, at the Owner's option, take out and maintain, at the expense of the Design/Builder, such insurance in the name of the Design/Builder, or subcontractor, as the Owner may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which may be found to be due or become due to the Design/Builder under this Agreement.

H. Certified Copies of Policies. Prior to commencing any work under this Contract, the Design/Builder shall furnish to the Owner certified copies of all insurance policies required under this Article 47.

I. All insurance policies required by this Article shall name the City of Sheridan as an additional insured and shall require the insurers to provide thirty (30) days advance notice prior to revocation, cancellation or change in policy terms, and shall contain a waiver of subrogation against the Owner, his agents and employees.

J. All Risk Insurance Requirements. The Contractor shall insure all work done and materials supplied hereunder against loss or damage resulting from all risks of physical loss or damage, and such insurance shall be provided by an insurance carrier or carriers approved by the Owner, under an insurance policy or policies satisfactory to the Owner in form and substance. All policies taken out by the Contractor insuring work done and materials supplied hereunder shall be payable to the Contractor and Owner as their interests may appear. Said policy or policies shall be kept in full force and effect by the Contractor until final acceptance of the work by the Owner, and such insurance at all times during the progress of the work to be done shall be carried in an amount equal to the full insurable value of the portion of the work and building done. Insurance policies shall:

01. Include a provision that the policies are primary and do not participate with nor are excess over any other valid and collectible insurance;

SECTION 8. LABOR AND RECORDS

ARTICLE 48. Employees

A. The Design/Builder shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

B. Should the Owner deem anyone employed on the work incompetent or unfit for his duties, and so inform the Design/Builder, the Design/Builder shall dismiss such person, and he shall not again, without permission of the Owner, be employed upon the work.

ARTICLE 51. Payroll Records

For construction work performed on the project, the Design/Builder, and each subcontractor under it, shall keep, or cause to be kept, an accurate payroll record, showing the name, address, Social Security number and classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each employee employed in connection with the construction and installation work. The payroll record shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Design/Builder. Copies of payroll records shall be furnished to the Owner, at its request. Owner shall reimburse the Design/Builder for the cost of reproduction.

ARTICLE 50. Preference for Wyoming Laborers

Wyoming laborers shall be employed exclusively under this Agreement, provided that non-resident laborers may be used when Wyoming laborers are not available for such employment from within the State, or are not qualified to perform the work involved. The Contractor shall inform the State Employment Office nearest the construction site of the Contractor's employment needs. As used in this paragraph "Laborer" means a person employed to perform unskilled or skilled manual labor for wages in any capacity, but does not include independent contractors. "Resident" as used in this paragraph shall mean any person who is a citizen of the United States and has resided for at least one (1) year in the State of Wyoming immediately preceding his application for employment (Wyoming Preference Act of 1971, § 16-6-201 through 206 and 16-6-101 Definitions).

A preference for Wyoming Labor shall be applied in accordance with W.S. 16-6-203, as amended by SF 107 from the 2012 Legislative Session, and its penalties, as enforced by the Wyoming Department of Workforce Services, all persons employed on this project to perform unskilled or skilled labor for wages must be residents of Wyoming. Other laborers may be used when Wyoming laborers are not available for employment within the State or not qualified to perform the work involved as allowed by the Wyoming Department of Workforce Services.

ARTICLE 51. Work Hours on Public Works - Wyoming Statute, Section 16-6-110

No person shall require laborers, workmen or mechanics to work more than (8) eight hours in any one (1) calendar day or forty (40) hours in any one (1) week upon any public works of the state or any of its political subdivisions except as hereafter authorized. An employee may agree to work more than eight (8) hours per day or more than forty (40) hours in any week, provided the employee shall be paid at the rate of one and one-half (1 1/2) times the regularly established hourly rate for all work in excess of forty (40) hours in any one (1) week.

ARTICLE 52. Prevailing Wages

Contractor to comply with the Davis Bacon Act and the pertinent Wage Determination included in Addendum C.

SECTION 9. DELAYS AND CHANGES

ARTICLE 53. Delays

A. The time during which the Design/Builder is delayed in the work by negligent act or omission of the Owner, or of his employees or agents, or by strikes, boycotts, or like obstructive action by employees or labor organizations which delay said work and which are not caused by or the continuance of which is not due to any act or conduct on the part of the Design/Builder, shall be added to the time for the completion of work called for by this Agreement. Such extension of time on account of such delays shall not be allowed unless applied for in writing by the Design/Builder within seven (7) calendar days of the commencement of any such delay and then only upon written approval of the Owner. It is agreed by the parties hereto that a waiver of any requirement in this Article 54 including, but not limited to, time within which application for extension of time may be made, or requirement for written application and written approval thereof in connection with any or all past delays, shall not constitute a waiver by Owner of any such requirements in connection with any present or future delays. Design/Builder agrees and understands that no verbal approval, either express or implied, of any grant of time extension by the Owner or its agents shall be binding upon the Owner unless and until such approval is expressly ratified in writing by the Owner. Extensions of contract time shall only be made by change order.

B. In the event the Design/Builder is delayed in the work by any of the above causes, and providing the delay is not caused by or the continuance of the delay is not due to any act or conduct on the part of the Design/Builder, the Design/Builder's remedy, if at all, shall be limited solely to an extension of time. The Design/Builder agrees and understands that in no event shall it be entitled to a monetary payment over and beyond that which is specified in the Contract Documents, for any damages of any kind whatsoever arising by reason of such delay, including but not be limited to, money actually expended on the job by reason of such delay for salaries, equipment and materials, loss of anticipated profits, overhead or any other direct or indirect cost.

C. If, in the opinion of the Owner, the Design/Builder is not proceeding with the prosecution of the work as scheduled, the Owner may avail himself of the remedies provided in Article 40:D:03.

ARTICLE 54. Changes in the Work.

A. The Owner reserves the right, without notice to the Design/Builder's sureties, to require alterations in, additions to, and/or omissions from the work called for by this Agreement.

01. If any changes ordered by the Owner cause an increase or decrease in the Design/Builder's cost or in the time required for performance of this Agreement, appropriate adjustments to the contract price and/or contract time shall be made as hereinafter provided.

02. The Design/Builder shall not be entitled to any compensation for extra work or any extension in the time for performance of this Agreement unless orders therefore are given in writing duly executed by the Owner and the Design/Builder.

03. Failure to agree on an adjustment of the Contract price or extension of time for performance of this Agreement shall not excuse the Design/Builder from proceeding with the prosecution of the work as changed.

B. Adjustments in the contract price for work covered by a change order shall be made as follows:

Compensation for extra work shall be computed on the basis of one or more of the following:

01. Unit prices or lump sum agreed upon by the Owner and the Design/Builder for the extra work or portion thereof.

02. Actual costs agreed upon by Owner and Design/Builder of the extra work, plus the Design/Builder's fixed fee.

C. Extra work of the Design/Builder, subcontractors, and material suppliers shall be computed on the basis of actual cost, plus the fixed fee 54:B-C.

01. Actual cost is determined from job records for the completion of the extra work and shall consist of those items listed in Article 5 above.

02. The fixed fee shall be the percentage of actual costs approved by the Owner as a part of the Guaranteed Maximum Price of the Design/Builder, subcontractor, or sub-subcontractor.

For work done under this Article 54, the Design/Builder shall keep and maintain, and make available as directed by the Owner or Design/Builder, accurate accounts of all costs and supporting data. Failure to do so shall be considered a waiver of the right to any extra compensation on account of extra work.

03. For work to be omitted, the reduction in the contract price will be computed pursuant to one or more of the following:

a. Unit prices agreed upon by the Owner and the Design/Builder;

b. A lump sum agreed upon by the Design/Builder and Owner based on the estimated costs of the omitted work. No fixed fee shall be added to the estimated cost of such work; or

c. If the parties are unable to agree on the reduction in the contract price, the Owner shall make a final and binding determination of the reduction in price to be allowed for any deductive change.

04. If a change in the work consists of both extra and omitted items of work, any fixed fees shall be computed upon the excess of the additive cost over the deductive cost.

D. Adjustments in the time required for performance of the Contract for work covered by change order shall be made by one of the following:

01. The time extension or reduction agreed upon by the Owner and the Design/Builder.

02. If the parties are unable to agree on the time extension or reduction, the Owner shall make a determination of the time extension or reduction to be allowed.

E. Construction Change Directives may be issued in the case of an immediate need for Work to commence.

01. Upon receipt of a Construction Change Directive, the Design/Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design/Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. Any disagreement is still subject to the requirements of claims resolution in Article 54.

02. Design/Builder and Owner shall use best efforts to promptly reach an agreement as to the impact of the Construction Change Directive on the Contract Sum and Contract Time and have such agreement reduced to a Change Order. If the Owner is not able to reach agreement with the Design/Builder, the Owner shall prepare a proposed Change Order which shall become affective as a Change order twenty-one (21) days after issuance to the Design/Builder unless the Design/Builder files a claim under Article 55 before the expiration of the twenty-one (21) days.

03. Pending final determination of cost to the Owner, Owner shall pay any amount not disputed by the Owner and Design/Builder of the costs indicated on the Construction Change Directive as the Work under the Construction Change Directive progresses.

F. Field Order: The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order and shall be binding on the Owner and Design/Builder. The Design/Builder shall carry out such written orders promptly. If the Design/Builder wishes to contend the said minor change does involve an adjustment in the Contract Sum and/or Contract Time, the Design/Builder shall promptly notify the Owner of the Design/Builder's position regarding compensation and time. If such contention is not resolved with the Owner, the Design/Builder may file a claim in accordance with Article 55.

ARTICLE 55. Claims for Extras

If the Design/Builder claims that any instruction or interpretation, by drawings or otherwise, involve extra cost under this Agreement, he shall give the Design/Builder's Architect and the Owner written notice thereof, together with proper itemization and supported by sufficient substantiating data to permit evaluation, before proceeding to execute the work, and, in any event, within fourteen (14) calendar days of receiving such instructions. No such claim shall be entitled to consideration by Owner unless so made. No claim by the Design/Builder shall be entitled to consideration by the Owner if asserted after final payment under this Agreement.

SECTION 10. PAYMENT PROVISIONS

ARTICLE 56. Cost Breakdown

Upon providing the GMP and execution of any subcontracts, the Design/Builder shall submit to the Owner a breakdown of cost of the Contract price, itemizing the estimated cost of each major category of work, together with his total allowance for profit, insurance and overhead expense, the total of which shall equal the Contract price. The breakdown, if properly itemized and substantiated and approved by the Owner, shall become the basis for determining the value of work performed for the purpose of making payments.

ARTICLE 56. Application for Payments

The Design/Builder shall submit to the Owner an application for each payment. Along with each application for payment, the contractor shall provide to the Owner a payroll report for all contractors and subcontractors involved in the project in a form that is consistent with federally certified reporting requirements and includes residency status for each laborer.

In each request for payment, the Design/Builder shall certify that such request for payment represents a just estimate of costs reimbursable to Design/Builder under the terms of this Agreement and shall also certify as follows:

"All materialmen, subcontractors and laborers have been paid for completed work through the date of the most recent previous progress payment. There are no known mechanics' or materialmen's liens, or claims for unpaid material, labor or equipment, outstanding as of the date of this requisition, that all due and payable bills with respect to the work have been paid to date and are included in the amount requested in the current application, and that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on the work, or the filing of any claims for unpaid bills for labor, material or equipment on the project and that waivers from all subcontractors and materialmen have been obtained in such form as to constitute an effective waiver of lien or claim under the laws of Wyoming."

Design/Builder shall provide a completed Affidavit Acknowledging Payment to Materialmen, Subcontractors and Laborers (form attached, Addendum D) with all requests for progress payment beginning with the second request. See W.S. 16-6-1001(a)(iv).

Design/Builder shall, within fifteen (15) days after receipt of notice of the existence of any lien or claim for unpaid labor, material or equipment, filed against the project by any subcontractor, supplier of materials or any other person or entity claiming to be a creditor of Design/Builder, cause the same to be removed of record and/or bonded, at Design/Builder's sole cost and expense. Any payment due Design/Builder hereunder shall be reduced by an amount up to two hundred percent (200%) of the amount of any lien or claim arising out of or related to Design/Builder's performance under this agreement until such lien or claim is removed as of record and/or bonded.

ARTICLE 58. Payments

A. If the Design/Builder has made application as above provided, the Design/Builder shall, not later than the date when each payment falls due, issue to the Owner a certificate for such amount as the Design/Builder determines to be properly due.

B. All payments called for by this Contract shall be made when due after presentation of said applications to the Owner. The making of progress payments shall not be considered as an acceptance by the Owner of the whole or any part of the work done, but the entire work is to be subject to inspection and approval by the Owner when it shall be claimed by the Design/Builder that this Agreement and the work called for thereby is completed.

C. Based upon Applications for Payment submitted to the Owner by the Design/Builder and Certificates for Payment issued by the Design/Builder, the Owner shall make to the Design/Builder progress payments proportionate to the Contract price, as established by the Agreement Between the Owner and Design/Builder and as adjusted by the Contract Documents, for the period ending the last day of each month during the performance of this Contract. Progress payments shall be due and payable not later than thirty (30) days following receipt of the Design/Builder's Application for Payment by the Owner and

payments will be made as required by the laws of the State of Wyoming (see Wyoming Statutes Annotated, Sections 16-6-701 through 16-6-706, as amended).

D. In determining the right to a progress payment, the Owner may, in its sole discretion, consider the invoiced value of acceptable materials delivered to the site but not yet incorporated in the work. If the Design/Builder wishes the Owner to consider the value of acceptable delivered materials for purposes of establishing the amount of a progress payment, the Design/Builder shall furnish evidence satisfactory to the Owner: (1) Of the value of such materials; and (2) that such materials are under the exclusive control of the Design/Builder. Only materials to be incorporated in the structure will be considered for purposes of partial payment under this paragraph. Partial payment shall not be construed as acceptance of such materials, nor relieve the Design/Builder from sole responsibility for the care and protection of such materials, nor relieve the Design/Builder from risk of loss to such materials from any cause including, but not be limited to: theft, casualty, act of God, vandalism or levy by creditors, nor shall it be considered as a waiver of the right of the Owner to require fulfillment of all terms of the Contract.

F. Should the Owner make progress payment for the invoices of acceptable materials delivered to the site but not yet incorporated in the work, title to all equipment and materials shall pass to the Owner upon payment therefore or incorporation in the work, whichever shall first occur, and Design/Builder shall prepare and execute all documents necessary to effect and perfect such transfer of title.

G. Final payment cannot be made until the requirements of W.S. 16-6-116, 16-6-117, and 15-1-113(h) are met.

H. 10 %retainage willbe withheld on progress payments; see W.S. 16-6-702. Contractor may designate an interest-bearing account for retainage in accordance with W.S. 16-6-702, -704, and -705.

ARTICLE 59. Payments Withheld

A. The Owner may decline to pay a current Application for Payment, or on account of subsequently discovered evidence, nullify the whole or a part of any Application for Payment to such extent as may be necessary to protect the Owner from loss on account of:

01. Defective work not remedied

02. Claims filed or reasonable evidence indicating probable filing of claims.

03. Failure of the Design/Builder to make payments to subcontractors, or failure to make payment for material, labor or equipment.

04. A reasonable doubt that the Contract can be completed for the balance then unpaid.

05. Damage to the Owner or another contractor.

06. Default of the Design/Builder in the performance of the terms and/or conditions of this Agreement, or in the performance of any of such terms and/or conditions.

B. Any subcontractor, materialman, or workman, or anyone else having any claim against the Design/Builder for or on account of work done or material furnished for the performance of the work provided for hereunder, may, at any time prior to final completion, give notice of

said claim and the amount thereof to the Owner, who may, but shall not be obligated to, withhold any and all payments due or to become due thereafter to the Design/Builder until said claims are resolved. The provisions of this Article shall not lessen or diminish, but shall be in addition to, the right or duty of the Owner to withhold any payments under the provisions of the laws of the State of Wyoming respecting the withholding of sums due to the Design/Builder upon final payment (See Wyoming Statutes Annotated, Sections 16-6-116 and 16-6-117, as amended).

ARTICLE 60. Releases and Lien Waivers

A. The Design/Builder agrees that at any time upon request of the Owner, he will submit a sworn statement setting forth the work performed or material furnished by subcontractors and materialmen, and the amount due and to become due to each, and that before the Final Payment called for hereunder he will, if requested, submit to the Owner a complete set of vouchers showing what payments have been made for materials and labor used in connection with the work called for hereunder.

B. Neither the Final Payment nor any part of the retained percentages shall become due until the Design/Builder, if required, shall deliver to the Owner a complete release of all claims asserted against the Design/Builder and arising out of this Contract, or receipts in full, in lieu thereof, in such form as the Owner may require, and if required in either case, an affidavit that so far as the Design/Builder has knowledge or information the releases and receipts include all the labor and material for which a claim could be filed.

C. The provisions of this Article shall not lessen or diminish, but shall be in addition to, the duty of the Design/Builder to submit to the Deputy Treasurer to the City of Sheridan a sworn statement setting forth that all claims for materials and labor performed under the Contract has been and are paid for the entire period of time for which the final payment is to be made and, with respect to disputed claims, to identify such and the amount claimed to be due. (Wyoming Statutes, , 16-6-117).

SECTION 11. COMPLETION AND OCCUPANCY

ARTICLE 61. Substantial Completion

When the Design/Builder considers that the work is Substantially Complete, he will so notify the Owner and shall prepare a punch list. The Owner shall review the Design/Builder's punch list and supplement where necessary, author separate warranty work lists, and observe punch list and warranty list work in progress where appropriate. If the Owner concurs with the Design/Builder's assertion of Substantial Completion, the Design/Builder will prepare a Certificate of Substantial Completion for the Owner's consideration. When the Certificate of Substantial Completion is agreed to and signed by the Design/Builder and the Owner, the Date of Substantial Completion will thereby be established. The Design/Builder shall expeditiously and with diligence complete all punch list and warranty work. Advertisement for final payment, in accordance with Wyoming Statutes, will commence within ten (10) days, and final payment will be then due forty-one (41) days thereafter, provided all punch list items are complete.

ARTICLE 62. Beneficial Occupancy as of Substantial Completion

Owner may, at its sole discretion, beneficially occupy the premises as of the Date of Substantial Completion. If it chooses so to do, such beneficial occupancy shall be subject to the following conditions:

A. Occupancy or use shall not constitute acceptance by the Owner either of the completed

work or any portion thereof, nor will it relieve the Design/Builder from full responsibility for correcting defective work or materials found before final completion and acceptance of all the work or during the warranty period specified in Article 34.

B. Occupancy or use shall not be deemed to be the equivalent of completion or acceptance.

C. There shall be no added cost to the Owner due to its occupancy or use.

D. Design/Builder shall not be required to repair damaged premises if the same was caused by Owner's occupancy or use.

E. The period of any special warranties required by the Contract Documents for equipment shall start as of the date of use.

ARTICLE 63. Beneficial Occupancy Before Substantial Completion

The Owner reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the project premises at any time prior to Substantial Completion, upon ten (10) days written notice to the Design/Builder. Beneficial occupancy shall be subject to the following conditions:

A. Owner shall use its best efforts to prevent its occupancy from interfering with the conduct of Design/Builder's remaining work.

B. Design/Builder shall not be required to repair damaged premises if the same was caused by Owner's occupancy or use.

C. The warranty period for those portions of the premises occupied and equipment utilized by the Owner shall start as of the date of actual occupancy or use by the Owner.

D. Occupancy or use shall not constitute acceptance by the Owner either of the completed work or any portion thereof, nor will it relieve the Design/Builder from full responsibility for correcting defective work or materials found before final completion and acceptance of all the work or during the warranty period specified in Article 34.

E. Occupancy or use shall not be deemed to be the equivalent of completion or acceptance.

F. There shall be no added cost to the Owner due to occupancy or use.

G. Design/Builder and its surety shall execute a "no change in price change order" prepared pursuant to this Article 63.

H. Effective 12:01 A.M., Mountain Standard Time or Mountain Daylight Savings Time, whichever is in effect, at the project site on the date of beneficial occupancy stipulated in the change order, Design/Builder shall be released from the obligations of maintaining fire and extended coverage insurance covering those portions of the premises occupied by the Owner pursuant to this Article, but shall maintain all other insurance required by the Contract in full force and effect.

ARTICLE 64. Final Completion

When the Design/Builder has completed all punch list and known warranty work and believes the work to have been fully and finally completed in accordance with the Contract Documents, he shall so notify the Owner who will inspect the work and, if the Owner concurs, will so notify the Design/Builder. When the Owner notifies the Design/Builder of

its acceptance of the Project, the Design/Builder's site responsibilities and duties shall cease, required insurance policies may be canceled, utilities and security shall become the responsibility of the Owner. Nothing herein shall be construed as terminating the Design/Builder's responsibilities and duties under Article 34.

SECTION 11. MISCELLANEOUS PROVISIONS

ARTICLE 65. Taxes

The Design/Builder agrees and states that the amount of all taxes required or which may be required to be paid by the Design/Builder incident to performance of this Agreement, including sales taxes, have been separately computed by the Design/Builder, and that the amount so computed has been and is included in the contract price.

ARTICLE 66. Federal Manufacturer's Excise Tax

The Owner is exempt from payment of Federal Manufacturer's Excise Tax. The manufacturer of items subject to that tax and subsequently furnished to Owner pursuant to this Contract is entitled to a refund of or credit for payment of such tax on presentation of Owner's exemption certificate therefore. Upon request by the Design/Builder, Owner will furnish the Design/Builder with a certificate to the effect that items were supplied pursuant to the Design/Builder for the exclusive use of the Owner.

ARTICLE 67. Patented Devices, Materials, and Processes

If the Design/Builder is required or desires to use any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner. The Design/Builder and the surety shall indemnify and save harmless the Owner, any third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the prosecution or after the completion of the work.

ARTICLE 68. Permits and Regulations

The Design/Builder shall give all notices and pay all fees necessary or proper to be given or paid in connection with the performance of the Contract, and shall obtain and pay for all permits and licenses (except permanent easements and rights of way) and all inspections and certificates of inspection and occupancy required or made by any governmental authority having jurisdiction over all or any part of the work included in this Agreement. In the performance of the Contract, the Design/Builder shall comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. Any work performed or materials or equipment furnished which do not conform to the requirements of said laws, ordinance, rules and regulations shall be changed to conform thereto by the Design/Builder at his sole expense. Before Final Payment, the Design/Builder shall deliver to the Owner all licenses, permits, and certificates of inspection.

ARTICLE 69. Non-Discriminatory Practices

In connection with the performance of work under this Contract, the Design/Builder agrees as follows:

A. The Design/Builder will not willfully discriminate against any employee or applicant for

employment because of race, sex, gender, color, religion, national origin, disability, age, veteran status, sexual orientation, genetic information, political belief, or other status protected by state and federal statutes or City of Sheridan Ordinances.

B. The Design/Builder will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, advising the said labor union or workers' representatives of the Design/Builder's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

ARTICLE 70. Unanticipated Hazardous Materials

A. The Design/Builder shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials not reasonably anticipated to be present, or known to exist, at the Project except to the extent that harm to persons and property is caused by the negligence, negligent acts or omissions of the Design/Builder. Hazardous materials shall be those materials identified by the Environmental Protection Agency or the National Institute for Occupational Health and Safety as materials hazardous to the health and safety of persons or property.

B. Upon discovery of any unanticipated hazardous material, the Design/Builder shall take all reasonable precautions to protect the health and safety of all persons present at the site and provide all reasonable protection to prevent damage, injury or loss to the Project and all other property adjacent thereto. The Design/Builder shall promptly notify the Owner of the discovery of any unanticipated hazardous materials.

ARTICLE 71. Federal Grants

In the event a federal grant or other federal financing participates in the funding of this Project, the Design/Builder shall permit access to and grant the right to examine its books covering its work under this Agreement. It shall comply with federal agency requirements as to work hours, overtime compensation, non-discrimination, contingent fees, and any other requirement now in existence or which may be required during the term of this Agreement.

ARTICLE 72. Litigation

A. The Design/Builder may elect to litigate the Design/Builder's Architect's or Owner's decision or denial of a claim, or decision on a dispute, pursuant to Articles 14:C and 14:D. No notice of intention to sue shall be given or suit filed until the earlier of:

01. The date on which the Design/Builder's Architect or Owner has issued a written decision as provided in Article 14, or

02. The sixty-first (61st) day after the date of the Design/Builder's Architect's receipt of a claim or dispute, if a decision has not been issued by that date and the claim or dispute is for $50,000.00 or less or relates to an adjustment of Contract time or other non-monetary subject.

03. The ninety-first (91st) day after the date of the Design/Builder's Architect's receipt of a claim or dispute, if a decision has not been issued by that date and the claim is for $50,000.00 or more.

B. The following are prerequisites to an effective election to litigate:

01. Timely filing of a detailed, written claim, together with supporting documentation, with the City Clerk of the City of Sheridan; and

02. Timely notice of an intention to sue filed with City Clerk of the City of Sheridan.

C. In addition to the requirement of mediation in Article 14:D, the following is prerequisite to an effective election to litigate by the Owner: Timely notice of an intention to sue filed with the Design/Builder.

D. The decision of the Design/Builder's Architect or Owner, as provided in Article 14, shall be final and conclusive unless within thirty (30) days from the date on which the decision was received, or the applicable period specified in Article 14:D, if a written decision has not been timely issued, the Design/Builder gives, mails or otherwise furnishes a written notice of the intention to litigate to the Design/Builder's Architect or Owner. The parties hereby elect the District Court of the State of Wyoming having proper jurisdiction and venue as the exclusive forum for any such litigation.

E. Pending final adjudication by the courts, the Design/Builder shall proceed diligently with the performance of the Contract and in accordance with the Design/Builder's Architect or Owner's decision unless the parties to this Agreement otherwise agree in writing.

ARTICLE 73. Design/Builder's Accounting Records

All accounting records of the Design/Builder pertaining to the costs of the Work of this Agreement and any Guaranteed Maximum Price shall be available to the Owner and the Owner's authorized representative at mutually convenient business hours and times at Design/Builder's office in Commerce City, CO.

ARTICLE 74. Title of Work

Except where progress payments have been made for the invoiced value of acceptable materials delivered to the site but not yet incorporated in the work, as provided in Article 58:D, immediately upon the performance of any part of the work, as between Design/Builder and Owner, title thereto shall vest in Owner; provided, however, the vesting of such title shall not impose any obligations on Owner or relieve Design/Builder of any of its obligations hereunder.

ARTICLE 75. Notices

Any notice may be served upon the Owner by delivering it in writing by email, certified mail with return receipt, hand delivery with signature or delivery receipt provided by a third party courier service (such as FedEx, UPS, etc.), fax transmission if verification of receipt is obtained, or email with return receipt to the Owner at the address set forth on the last page of this agreement and in the case of the Design/Builder, may be served upon the Design/Builder by delivering in writing by certified mail with return receipt, hand delivery with signature or delivery receipt provided by a third party courier service (such as FedEx, UPS, etc.), fax transmission if verification of receipt is obtained, or email with return receipt to the Design/Builder, at the address as set forth on the last page of of this Agreement, or any notice may be served by delivering or mailing it, as in this Paragraph provided, addressed to any other place or places the Owner or the Design/Builder, by written notice served upon the other, from time to time may designate.

ARTICLE 78. Joint and Several Liability of Joint Ventures

If the Design/Builder hereunder is comprised of more than one legal entity, each such

entity shall be jointly and severally liable hereunder.

ARTICLE 79. Waiver

Design/Builder shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of this Agreement by the Design/Builder, and Owner may withhold any payments to Design/Builder for the purpose of set-off until such time as the exact amount of damages due the Owner from the Design/Builder is determined. The waiver by either party of any breach to this Agreement shall not constitute a waiver as to any succeeding breach.

ARTICLE 78. Governing Law

This Agreement and all claims and disputes arising under it shall be construed in accordance with the laws of the State of Wyoming. Any and all claims or disputes arising out of this Agreement shall be resolved in accordance with the terms and conditions of the Governmental Claims Act, Wyoming Statutes, Section 1-39-101 through 1-39-119.

ARTICLE 79. Sovereign Immunity

Owner does not waive its sovereign or governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

ARTICLE 80. Severability

This Agreement represents the mutual understandings and responsibilities of the Design/Builder and the Owner. Any provision of the Agreement held to violate any law or regulations shall be deemed void, and all remaining provisions shall continue in force. However, the Design/Builder and the Owner will, in good faith, attempt to renegotiate or replace any invalid or unenforceable provision with a valid and enforceable provision expressing the intent of the original provision.

ARTICLE 81. Entire Agreement

This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral.

The Design/Builder and the Owner, for themselves, their successors, executors, administrators, and assigns, hereby agree to the full performance of the covenants herein contained. Neither the Design/Builder nor the Owner shall assign or transfer an interest in the Agreement without the written consent of the other.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first written above.

Hayward Baker Inc.
5775 Eudora Street
Commerce City, CO 80022
PH: 303-321-6680
FX: 303-321-6781

Joe Harris, Vice President

City of Sheridan
PO Box 848
Sheridan, WY 82801

Lane Thompson P.E., Public Works Director

CITY OF SHERIDAN, WYOMING

55 Grinnell Street, P.O. Box 848, Sheridan Wyoming 82801
Ph (307) 674-6483 Fax (307) 674-2195

Planning

MEMORANDUM

Project Name:	Consideration of Building Services Intergovernmental Cooperative Agreement between the City of Sheridan and Sheridan County - Community Development Director Brian Craig - 5 Minutes
From:	Brian Craig, Community Development Director
To:	Mayor and Council
CC:	Mark Collins, City Administrator
Date:	03/15/2019

Recommendation:

Staff recommends the City Council approve the Building Services Intergovernmental Cooperative Agreement between the City and Sheridan County.

Background:

In late 2018 the Sheridan County Public Works Department inquired with City staff whether a contract for plan review and inspection services could be arranged. Due to the limited staffing available at the County and in an interest of preserving reasonable response times for customers, the County is seeking to have the necessary arrangment in place for as-needed assistance with serving their building permit customers in times of staff absences. City Community Development and Legal staff met several times with County staff to prepare an agreeable intercooperative agreement for services. The agreement outlines the basic steps involved in requesting City services, anticipated response times, and the method for tracking and invoicing for the services. The agreement can be terminated by either the County or City with 30 days notice. Both the County and City legal respresenatives have reviewed the draft agreement and there are no outstanding concerns to address.

Funding:

There will be off-setting revenue for any incurred travel and material expense from the hourly rate the City will bill to the County for the plan review and inspection services. The rate, consistent with private industry practices and temporary labor contracts, is set at $93.50 per hour, which is three times the hourly wage without benefits of our staff performing the contracted services. It is difficult to determine the anticipated quantity of work and thus revenue anticipated from this contract as it is intended as a contingency for the County in times of employee absences.

Attachments

Draft Intergovernmental Building Services Agreement

INTERGOVERNMENTAL COOPERATIVE AGREEMENT
BETWEEN THE CITY OF SHERIDAN AND SHERIDAN COUNTY

This Agreement is entered into this ____ day of _____, 2019, by and between the City of Sheridan (City) and Sheridan County (County) pursuant to W.S. 16-1-101.

WHEREAS, the parties are political subdivisions duly authorized and existing under the laws of the State of Wyoming; and

WHEREAS, County lacks sufficient personnel to provide plan review and building inspection services at all times; and

WHEREAS, City has sufficient personnel to assist County in providing plan review and building inspection services from time to time;

NOW THEREFORE, it is mutually agreed by the parties hereto as follows:

1. Responsibilities of City:

a) City inspectors shall provide, on behalf of County, plan review and building inspection services to applicants seeking those services from County upon request by County.

b) In performing plan reviews and building inspections on behalf of County, City inspectors shall apply only the building codes adopted by County.

c) City inspectors shall schedule and perform County inspections after the relevant information, such as location and type of inspection, is received from County and as the inspections can be worked into the City inspector's schedule.

d) City shall inform County when an inspection is scheduled. If City is unable to perform an inspection within 3 days following receipt of the inspection request, City shall inform County of its inability perform the inspection.

e) City shall, upon completion of the inspection, provide plan review comments within 5 business days and inspection results within 2 business days to the County.

f) City will charge County for the time spent on plan reviews or building inspections at the rate of $93.50 per hour. City will maintain records of time spent for invoice purposes. The City may request the rate to be negotiated on an annual basis with 30 days' notice to the County prior to the anniversary of this agreement.

g) City will submit an invoice with attached detailed schedule of serviced performed to County monthly for services rendered.

2. Responsibilities of County:

a) County shall pay City invoices submitted to County within forty-five (45) days of receipt.

b) County shall request services under this Agreement from City only if County is unable to perform the services with its own personnel.

3. Effective Date. This Agreement shall be effective on May 1, 2019.

4. Term. This Agreement shall remain in full force and effect until either Party provides the other with a written 30-day Notice of Termination.

5. Notices. Notice to the Parties shall be given in writing to the following individuals on behalf of their respective entity:

City of Sheridan
Director of Community Development
55 E. Grinnell Plaza
Sheridan, WY 82801

Sheridan County
County Planner
224 S. Main Street
Sheridan, Wyoming 82801

6. 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. AMERICANS WITH DISABILITIES ACT (ADA). The parties shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act P.L. 101-336, 42 U.S.C. 12101, et seq., and/or any properly promulgated rules and regulations related thereto.

c. 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 Fourth Judicial District, Sheridan County, Wyoming.

d. ASSIGNMENT/AGREEMENT 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 Agreement without the prior written consent of the other party. Neither party shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the other party.

e. NONWAIVER. Any waiver by either party of any breach of any covenant herein to be kept and performed by the other party shall not be deemed as a continuing waiver and shall not operate to prevent the non-breaching party from declaring a forfeiture for any succeeding breach, either of the same or other covenant.

f. ASSIGNMENT. This Agreement is not assignable without the prior written consent of the parties.

g. EFFECT OF TERMINATION. All covenants of this Agreement that should, by their nature, survive the termination of this Agreement shall so survive.

h. MONITOR ACTIVITIES. County shall have the right to monitor all Agreement-related activities of the City. 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 City personnel in every phase of performance of Agreement related work.

i. NOTICES. All notices arising out of the provisions of this Agreement shall be in writing and given to the parties at the addresses provided in this Agreement, either by regular mail, or delivery in person.

j. COMPLIANCE WITH LAWS. City shall keep informed of and comply with all applicable municipal, state, and federal ordinances, laws, rules, and regulations as they are now or as they are enacted and shall not engage in any practice which may have the effect of discriminating against any entity based on disability, age, sex, race, creed, color, national origin, ancestry, or religion.

k. ETHICS. City shall keep informed and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement and all ethical standards governing City inspector's profession.

l. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall in any way be deemed a waiver by County or City of any of the requirements or immunities provided by the Wyoming Governmental Claims Act.

m. NO THIRD-PARTY BENEFICIARY INTENDED. This Agreement is for the benefit of the parties hereto and is not intended for the benefit of any third party.

n. INDEPENDENCE OF AGREEMENT. City inspectors are employees of the City of Sheridan, and nothing herein is intended or should be construed as creating a an employment relationship between the County and City inspectors.

o. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

p. AVAILABILITY OF FUNDS. The obligations of the parties are conditioned upon the availability of funds appropriated or allocated for use under this Agreement from any governmental source. If funds are not allocated and available as needed for the parties to perform this Agreement, the Agreement may be terminated at the end of the period for which funds, if any, are available. Each party shall notify the other party at the earliest possible time if the Agreement will or may be affected by a shortage of funds. No penalty shall accrue to either party in the event this provision is exercised, and neither party shall be obligated or liable for any future payments due or damages because of termination under this section. This provision shall not be construed to permit either party to terminate this Agreement to engage in a similar agreement with another party.

q. 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 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.

r. AGREEMENT CONSTRUCTION. This Agreement has been negotiated between the parties and no preference shall be given to any party should the construction of any term of this Agreement be required by a Court.

s. ATTORNEY'S FEES. In the event this Agreement is placed in the hands of an attorney for collection or enforcement of this Agreement, the successful party shall be entitled to the recovery of all reasonable attorney's fees and costs.

t. SEVERABILITY. If any provision of this Agreement is determined by a Court of competent jurisdiction to be unenforceable, that portion shall not affect the enforceability of the remaining provisions of this Agreement and the parties may renegotiate the terms affected by the severance.

u. TAXES. City 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, and unemployment insurance which its employees may be subject to.

v. ENTIRE AGREEMENT. This five-page document constitutes the entire agreement of the parties, superseding all previous agreement between the parties.

7. **SIGNATURES**. By signing below, the parties agree to the above-terms. Additionally, any person signing certifies he or she has the authority to bind his or her respective party to this Agreement.

IN WITNESS WEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date and year written above.

CITY OF SHERIDAN

_____
Roger Miller, Mayor

ATTEST:

_____
Cecilia Good, Clerk

SHERIDAN COUNTY
BOARD OF COUNTY COMMISSIONERS

_____
Mike Nickel, Chairman

ATTEST:

_____
Eda Schunk Thompson, Clerk

_____
Approved as to Form
City Attorney

_____
Approved as to Form
Deputy County Attorney