AGENDA
CITY OF SHERIDAN
AUGUST 3, 2020
REGULAR COUNCIL MEETING START 7:00 P.M.

1. Call to Order

2. Pledge of Allegiance

3. Roll Call of Members

4. Consideration of Agenda

5. Comments from the Public

6. Community Update

   A. Sheridan Health Center/Community Connections Update - Executive Director Wendy Ongaro

7. Public Hearings

   A. Public Hearing for Ordinance #2225: David M. and Honye Miller are requesting to rezone 15,006 square feet at 600 East Fifth Street from an R-1 Residence District to B-1 Business District - Community Development Director Wade Sanner.

      i. Consideration of Ordinance #2225: David M. and Honye Miller are requesting to rezone 15,006 square feet at 600 East Fifth Street from an R-1 Residence District to B-1 Business District

8. Consent Agenda

   0. Appointment of One Cent Process and Budget Timeline Review Committee

   A. Consideration of Wetlands Drive Utilities Extension for Restoration Ranch - Public Works Director Lane Thompson

B. Consideration of Final Acceptance of Public Infrastructure for the Walolga Subdivision

C. Consideration of Award for the 2020 Chip Seal Project to Hard Drives Construction, Inc - Public Works Director Lane Thompson

D. Consideration of Final Acceptance for the Highland Ave Extension Project - City Engineer Hanns Mercer

E. Minutes of Regular Council Meeting July 20, 2020

F. Claims

OLD BUSINESS

9. Second Reading Ordinance #2223 Addressing Alcohol Delivery in Chapter 4 of City Code - City Attorney Brendon Kerns

10. Second Reading for Ordinance #2224 Amending Chapter 4 Alcohol Ordinance - Brendon Kerns City Attorney

NEW BUSINESS

11. Consideration of Resolution 19-20 in Support of Miss Indian America - Bev Leichtnam, Governmental Relations Specialist

12. Consideration of Resolution No. 30-20 for the Adoption of the Capital Facilities Tax Project List

13. Consideration of the HUB Upward Building Expansion Construction Manager at Risk Contract

14. Consideration of Agreement with Sheridan Athletic Association - City Attorney Brendon Kerns

15. Council Comments and Requests for Future Agenda Items

16. Adjournment

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:	Public Hearing for Ordinance #2225: David M. and Honye Miller are requesting to rezone 15,006 square feet at 600 East Fifth Street from an R-1 Residence District to B-1 Business District - Community Development Director Wade Sanner.
From:	Wade Sanner, Community Development Director
To:	Mayor and Council
CC:	
Date:	07/27/2020

Recommendation:

Staff recommends the City Council approve the 600 East 5th Street rezone, a request to rezone 15,006 square feet at 600 East 5th Street from R-1 Residence District to B-1 Business District.

Background:

The existing 1,040 square foot home was built in 1954. The adjacent properties to the west, south and east are zoned B-1 and are used as commercial uses along 5th Street. The properties across 5th Street are commercial uses zoned B-2. The applicant wishes to change the zoning in order to make it more compatible with adjacent properties, and for the future sale of the property.

As part of the request to rezone this property, staff sent notice to the 26 property owners within 300 feet, placed a legal and a sign is posted on the property. Staff received one inquiry regarding the reason for the rezoning, but was not opposed to the proposal.

Potential Findings of Fact:

Neither state statute nor city code contains required findings that must be made in changing a property's zoning designation. State stature does provide some requirements for zoning regulations in general, which the Planning Commission should be aware of:

WS §15-1-601(d)

d) All regulations shall be made:

In accordance with a comprehensive plan and designed to:

A. Lessen congestion in the streets;
B. Secure safety from fire, panic and other dangers;
C. Promote health and general welfare;
D. Provide adequate light and air;
E. Prevent the overcrowding of land;
F. Avoid undue concentration of population; and
G. Facilitate adequate provisions for transportation, water, sewerage, schools, parks and other public

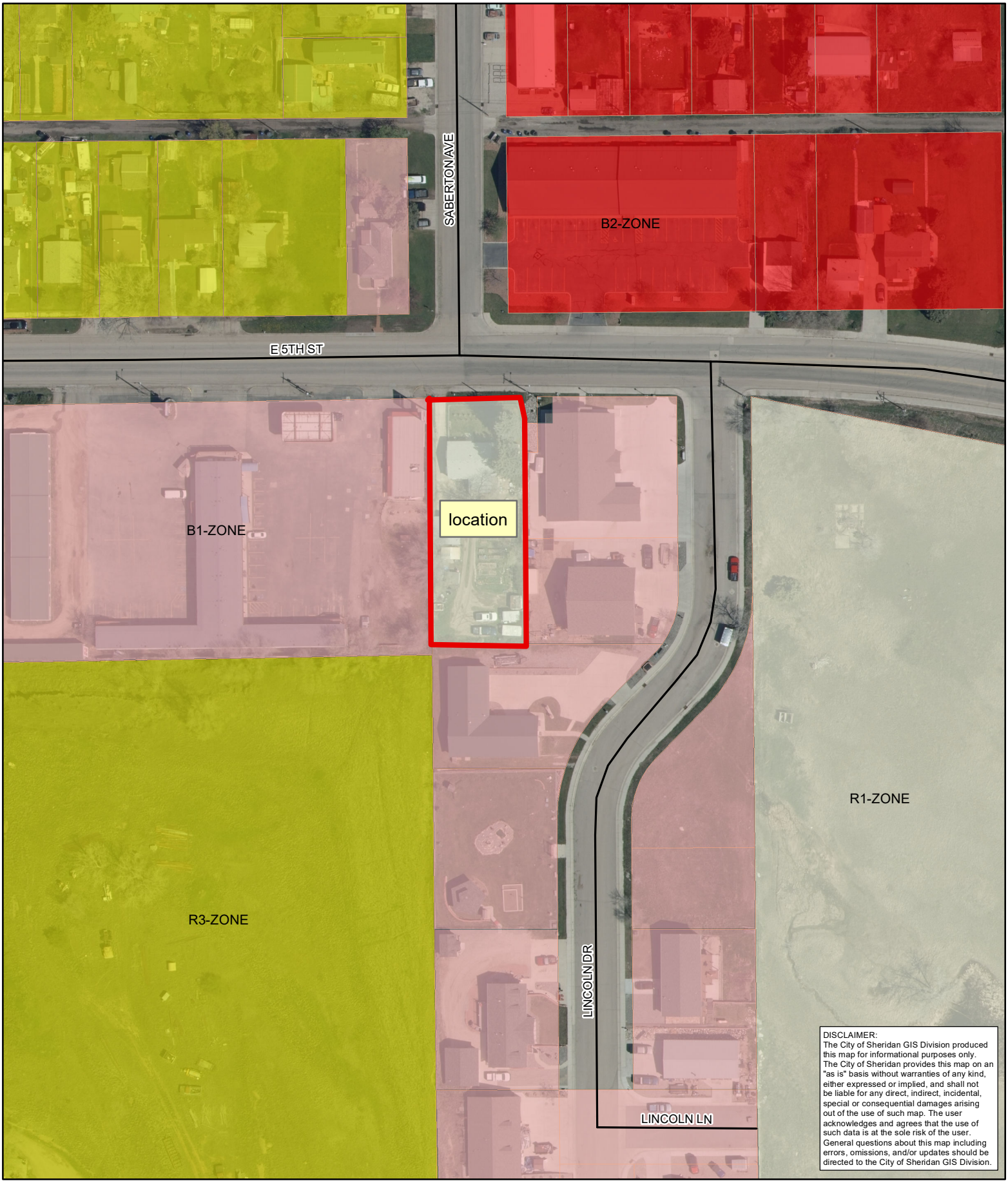
requirements.

ii. With reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses;
iii. With a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city or town; and
iv. With consideration given to the historic integrity of certain neighborhoods or districts and a view to preserving, rehabilitating and maintaining historic properties and encouraging compatible uses within the neighborhoods or districts, but no regulation made to carry out the purposes of this paragraph is valid to the extent it constitutes an unconstitutional taking without compensation.

The Preamble of the City's Zoning Ordinance (Appendix A) states that the purpose of the zoning ordinance is to, *"promoting the health, safety, morals and general welfare of the inhabitants of the City of Sheridan by lessening congestion in the streets; securing safety from fire, panic and other dangers providing adequate light and air; preventing the overcrowding of land; avoiding the undue concentration of population, facilitating the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements."*

Attachments

Aerial
Rezone Petition
Rezone Exhibit
Ordinance



CITY OF Sheridan WYOMING

600 E 5th Rezone

N

0 25 50 100 Feet

Name: sgoodman Date: 06/29/2020

PETITION FOR REZONING

TO THE CITY COUNCIL OF THE CITY OF SHERIDAN, WYOMING:

Pursuant to the provisions of W.S. 15-1-601, 15-1-602, 15-1-603 et. seq., and other applicable statutes, and Appendix A, Sec. 15 of the Sheridan City Code, the undersigned landowner(s) respectfully petition and show the City Council as follows:

1. This is a petition for the rezoning of parcels of land within the city limits of Sheridan, Wyoming, having a legal description as follows:

A tract of land situated in the SE¼SW¼ of Section 23 and in the NE¼NW¼ of Section 26, Township 56 North, Range 84 West of the Sixth Principal Meridian, Sheridan County, Wyoming; more particularly described as follows:

Beginning at a point which bears N 79°28'05" W a distance of 756.81 feet from the South ¼ Corner of said Section 23, also being the North ¼ Corner of said Section 26, Township 56 North, Range 84 West, this point of beginning being on the South Right of Way line of Fifth Street; thence leaving said South Right of Way on a bearing of S 0°26'32" E for a distance of 200.01 feet; thence S 89°57'40" W for a distance of 75.18 feet; thence N 0°20'40" W for a distance of 200.07 feet to a point on the South Right of Way of said Fifth Street; thence along said South Right of Way on a bearing of S 89°59'33" E for a distance of 74.84 feet to the point of beginning.

Said tract of land contains 15,006 Square Feet, more or less.

2. David M. and Honye R. Miller are the owners of said described land proposed to be rezoned.

3. A map of the area sought to be rezoned is attached hereto and made a part hereof.

4. Petitioners hereby request that said lands be zoned B-1.

Therefore, Petitioners pray said parcel(s) be rezoned B-1, pursuant to and in accordance with the applicable Wyoming Statutes and City Ordinances after proper notice and public hearing.

Dated this 26th day of June, 2020

Signed by the Petitioners:

David M. Miller

Honye R. Miller

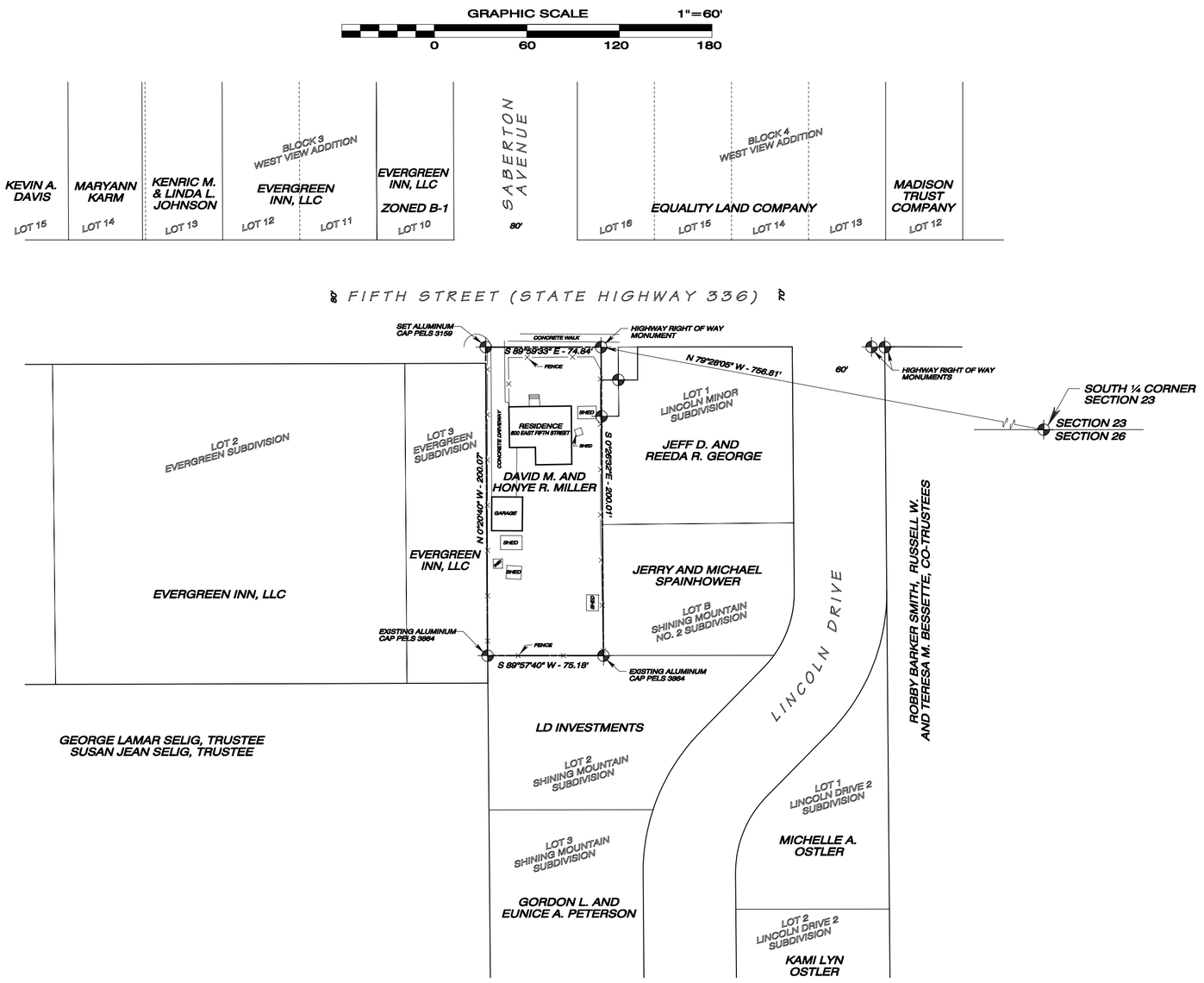
Subscribed and Sworn before me this 26th day of June, 2020

Notary Public

JAMES G. VOLK - NOTARY PUBLIC
COUNTY OF SHERIDAN
STATE OF WYOMING
MY COMMISSION EXPIRES APRIL 9, 2022

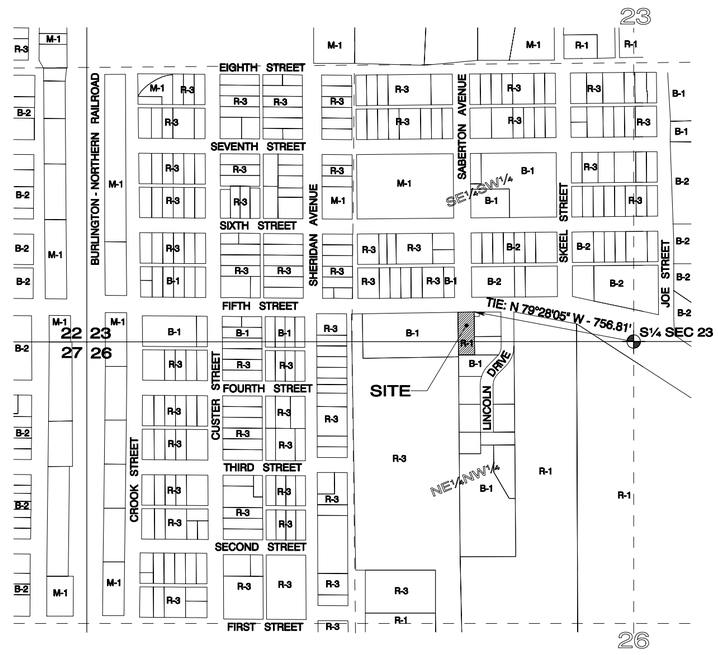
My commission expires: April 9, 2022

DETAIL



LOCATION

SCALE : 1" = 500'



TOWNSHIP 56 NORTH, RANGE 84 WEST



CERTIFICATE of SURVEYOR

State of Wyoming } ss
County of Sheridan }

I, David L. Randall, of Sheridan, Wyoming do hereby certify that I am a duly registered Professional Engineer and Land Surveyor, licensed under the laws of the State of Wyoming, that this map was made from field notes of a survey performed by me in April and June of 2020, and from records in the Sheridan County Clerk's Office, Sheridan County, Wyoming and from information and records in the City Engineering Office, Sheridan, Wyoming.
This map correctly represents all of the information shown hereon.

Registration No. 3159 PE & LS

CIVIL ENGINEER and LAND SURVEYOR

M A P

to accompany

PETITION to REZONE PROPERTY

being a

TRACT of LAND

SITUATED in the

SE¼SW¼ of SECTION 23
and NE¼NW¼ of SECTION 26,
TOWNSHIP 56 NORTH, RANGE 84 WEST

of the

SIXTH PRINCIPAL MERIDIAN
SHERIDAN COUNTY, WYOMING

addressed as

600 EAST FIFTH STREET

for

DAVID M. MILLER and HONYE R. MILLER

600 EAST FIFTH STREET
SHERIDAN, WYOMING 82801

DRAWN BY REX RANDALL - JUNE 26, 2020
RANDALL ENGINEERING SURVEYS - SHERIDAN, WYOMING

ORDINANCE NO 2225

AN ORDINANCE amending Ordinance No. 826, the Zoning Ordinance of the City of Sheridan, to zone the entirety of the land more particularly described in Appendix A Section 1., and shown on the attached Exhibit A, from an R-1 Residence District to a B-1 Business District; for the property located at 600 East 5th Street.

WHEREAS, the owner of the following described land has petitioned the City Council to rezone the same from an R-1 Residence District to B-1 Business District, and a public hearing having been held thereon by the City Council; THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF SHERIDAN, WYOMING:

Section 1.
The following described land is hereby rezoned from an R-1 Residence District to a B-1 Business District, to wit:

A tract of land situated in the SE1/4SW1/4 of Section 23 and in the NE1/4NW1/4 of Section 26, Township 56 North, Range 84 West of the Sixth Principal Meridian, Sheridan County, Wyoming. Thereto, City of Sheridan, Wyoming.

Section 2.
That Ordinance No. 826, The Zoning Ordinance of the City of Sheridan is hereby amended to conform herewith.

Section 3.
If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, than all remaining provisions and portions of this ordinance shall remain in full force and effect.

Section 4.
That this ordinance shall be in full force and effect immediately upon its passage and publication as provided by law.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2020

_____
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

_____, 2020 by _____.

_____
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

Executive

MEMORANDUM

Project Name: **Appointment of One Cent Process and Budget Timeline Review Committee**
From:
To: Mayor and Council
CC:
Date:

Attachments

P.O. Box 848
55 Grinnell Plaza
Sheridan, WY 82801

Ph. (307) 674-6843
Fax: (307) 674-2192
www.sheridanwy.net

Phone: 307.675.4202
Fax: 307.675.4270
www.Sheridanwy.net

DATE: July 28, 2020

FROM: Mayor Roger Miller

TO: City Council

RE: Appointment of One Cent Process and Budget Timeline Review Committee

Fellow Council Members:

I hereby recommend the appointment of Councilman Aaron Linden, Councilman Clint Beaver, Councilman Jacob Martin in addition to City Clerk Cecilia Good, Assistant City Clerk Candace Ainslie, City Treasurer Karen Burtis and Governmental Relations Specialist Bev Leichtnam to the aforementioned Committee.

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 Wetlands Drive Utilities Extension for Restoration Ranch - Public Works Director Lane Thompson
From:	Lane Thompson, Public Works Director
To:	Mayor and Council
CC:	
Date:	07/14/2020

Recommendation:

Staff recommends Mayor and Council give approval of final acceptance for the Wetlands Drive Utilities Extension for Restoration Ranch and authorize the Utilities Director to sign the necessary Permit Transfer Request Form for compliance with Wyoming DEQ Rules and Regulations.

By signing the Permit Transfer Request Form, the City accepts ownership and future operation/maintenance of the water and sewer mains within the project area.

Discussion:

The contractor for the Wetlands Drive Utilities Extension for Restoration Ranch Project (see attached map) will be requesting final acceptance. At the time of final acceptance, it authorizes the Utilities Director to sign the necessary Permit Transfer Request Form for compliance with Wyoming DEQ Rules and Regulations.

The water and sewer mains associated with this project was installed per City of Sheridan Standard Specifications and Details for Utility Construction. The City has received all required information from the developer's consulting engineer in necessary to accept ownership of this infrastructure.

Attachments

map

Site plan

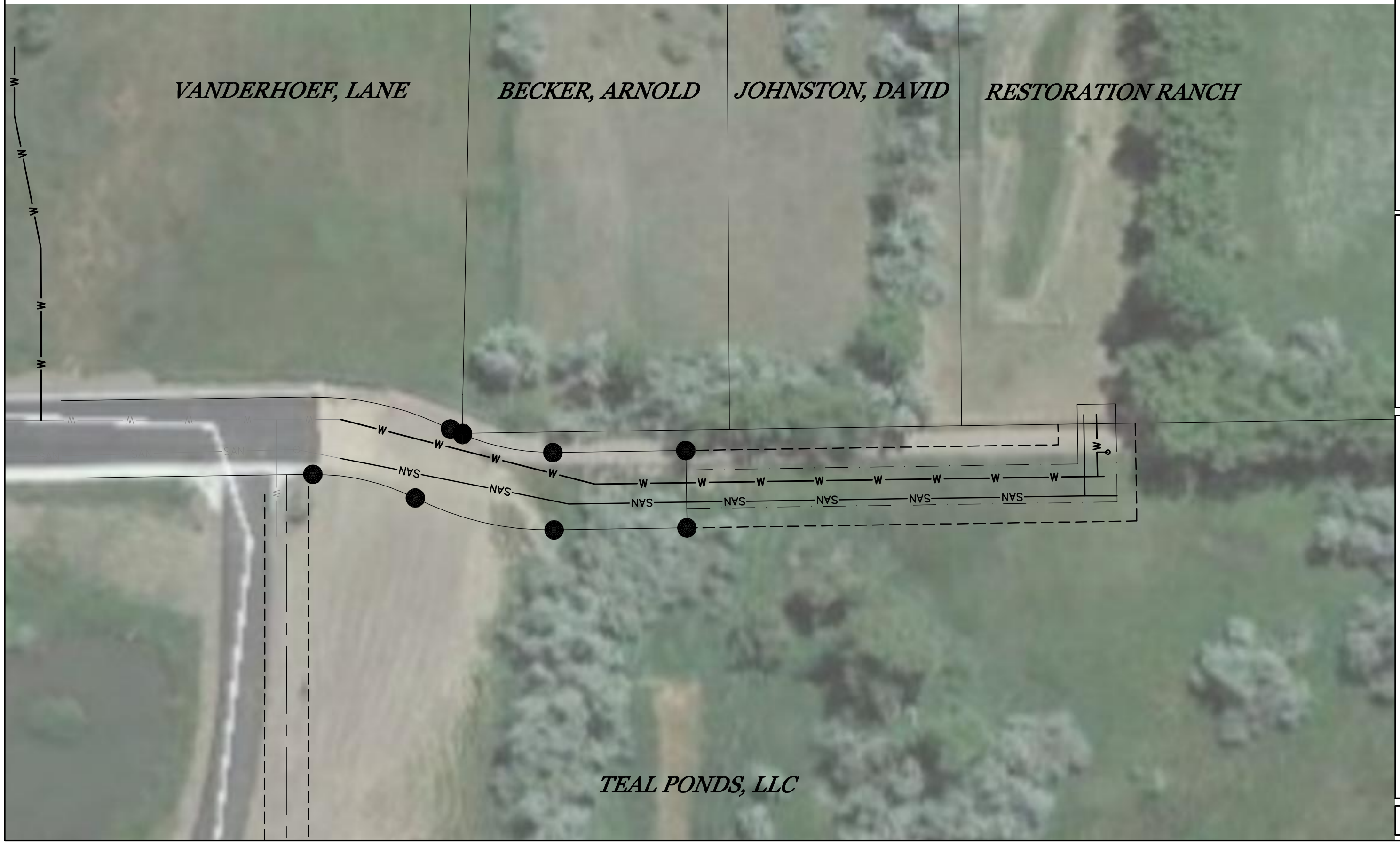


CITY OF Sheridan WYOMING

Wetlands Drive Extension for Restoration Ranch

N

SITE PLAN



NO.	AMENDMENT	DATE	INT.

DESIGN: TME
CHECK: MLC
DATE: TME

RESTORATION RANCH

UT-1 - OVERALL UTILITY PLAN

MC2 ENGINEERING, P.C.
811 North Main Street
Sheridan, WY 82801
Office: 307.673.7350
www.mc2engineering.com

SHEET UT-1

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 Final Acceptance of Public Infrastructure for the Walolga Subdivision**
From:	Hanns Mercer, City Engineer
To:	Mayor and Council
CC:	
Date:	07/27/2020

Recommendation:

Staff recommends that Mayor and Council approve final acceptance of infrastructure for the Walolga subdivision. Further, that the Utilities Director be authorized to sign the necessary Permit Transfer Request Form in compliance with Wyoming DEQ Rules and Regulations.

By signing the Permit Transfer Request Form, the City accepts ownership and future operation/maintenance of all utilities within the Walolga Subdivision.

Background:

The developer has, as of the date of this memo, received preliminary acceptance on all public infrastructure within the Walolga Subdivision. The developer is in the process of completing the final remaining infrastructure improvements. The attached map, provided for the Mayor and Council's reference, shows the location of the subdivision.

The infrastructure associated with this project was installed per City of Sheridan Standard Specifications and Details for Utility Constructions. As part of the request for final acceptance, the City will receive all required information from the developer's consulting engineer to prepare to accept ownership of the infrastructure, and to ensure that all work has been completed satisfactorily.

Attachments

Map



CITY OF Sheridan WYOMING

N
W E
S

0 625 1,250 2,500 ft

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 Award for the 2020 Chip Seal Project to Hard Drives Construction, Inc - Public Works Director Lane Thompson
From:	Lane Thompson, Public Works Director
To:	Mayor and Council
CC:	
Date:	07/27/2020

Recommendation:

Staff recommends that Mayor and Council award the 2020 Chip Seal Project (Highland Hill) to Hard Drives Construction, Inc, the lowest qualified bidder, in the amount of one hundred seventy-four thousand, one hundred ninety-eight dollars ($174,198.00).

Background:

The City of Sheridan Streets Department advertised for and received bids for the 2020 Chip Seal Project until 10:00 A.M. on July 6, 2020. A total of one (1) proposal was received:

- Hardrives Construction, Inc - $174,198.00

Attachments

Chip Seal Location Maps

Canfield St and Massey Ave – Kooi St
Map #4



Map #3

From South Thurmond to Big Horn Ave

West Montana – West Colorado – West Nebraska – West Burrows – West Heald St – West College



Map #2

NB Ave and Beckton Ave



Map # 1

From Hill Pond north- Holly Ponds Drive to North Heights Drive – North Heights Ave – North Heights Circle – North Heights Place – North Heights Lane – North Heights Road – North Heights Court – North Heights Way



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 Final Acceptance for the Highland Ave Extension Project - City Engineer Hanns Mercer
From:	Hanns Mercer, City Engineer
To:	Mayor and Council
CC:	
Date:	07/21/2020

Recommendation:

Staff recommends that Mayor and Council approve preliminary and final acceptance of infrastructure for the Highland Avenue Extension Project.

Background:

The developer is in the process of completing the final remaining infrastructure improvements. The attached map shows the location of the project area.

The infrastructure associated with this project was installed per City of Sheridan Standard Specifications and Details for Utility Construction. As part of the request for final acceptance, the City will receive all required information from the developer's consulting engineer to prepare to accept ownerships of the infrastructure, and to ensure that all work has been completed satisfactorily.

Attachments

Map



CITY OF Sheridan WYOMING

N W E S

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:	**Minutes of Regular Council Meeting July 20, 2020**
From:	
To:	Mayor and Council
CC:	
Date:	

Attachments

Regular Council Minutes 7.20

CITY OF SHERIDAN, WYOMING

MINUTES OF REGULAR COUNCIL MEETING

COUNCIL CHAMBERS **7:00 P.M.** **July 20, 2020**

1. Mayor Roger Miller called the meeting to order at 7:00 P.M.

2. The Pledge of Allegiance to the Flag was led by Mayor Roger Miller.

3. The invocation was given by Joe Niverson with the Volunteers of America.

4. The meeting was called to order with a quorum as follows: Mayor Roger Miller presiding with Council President Rich Bridger, Council Vice President Thayer Shafer, Councilor Jacob Martin, Councilor Aaron Linden, and Councilor Clint Beaver. Councilor Patrick Henderson was absent. Members of staff attending included City Administrator Stuart McRae, City Treasurer Karen Burtis, Public Works Director Lane Thompson, Utilities Director Dan Roberts, City Clerk Cecilia Good, Human Resources Director Heather Doke, and various other City staff.

5. Councilor Martin moved, seconded by Councilor Linden, to add Resolution #33-20 for consideration under New Business. Council approved the amended agenda: voice vote; unanimous.

6. Comments from the Public

A. There were no comments from the public.

7. Public Hearings

A. Mayor Miller opened the Public Hearing at 7:06 PM for Ordinance #2223, Addressing Alcohol Delivery. City Attorney Brendon Kerns updated the Council. College President Walter Tribley discussed his support for the Ordinance's restriction on delivering alcohol to schools. Chad Franklin, owner of Sheridan Liquors, stated that the Sheridan Hospitality and Beverage group is in support of permitting deliveries, especially due to COVID-19. Additionally, Mr. Franklin provided Council with the mission statement for the recently organized group. Tony Wendtland, the attorney representing the Sheridan Hospitality and Beverage group, thanked Council for consideration of the delivery Ordinance. Ann Perkins with Sheridan County Prevention presented data on compliance checks in relation to the delivery of alcohol. Chief Adriaens explained several points regarding issues with the inability to conduct decoy checks. Tye Bach, the owner of Pony Grill and Bar, discussed why delivery is beneficial to his business. The Public Hearing was closed at 7:45 P.M.

i. Councilman Linden moved, seconded by Councilman Martin to approve on first reading Ordinance #2223. Roll call vote, unanimous.

B. Mayor Miller opened the Public Hearing at 7:46 PM for Ordinance #2224, Addressing Chapter 4 of the City Code. City Attorney Brendon Kerns updated the Council. Ed Gnehm discussed parked licenses and the need to distinguish the primary purpose between different types of licenses. Language in the Ordinance states that the establishment must primarily be used for alcohol sales; this would not apply to restaurant licenses, for example. Chad Franklin requested that a definition be added to the Ordinance regarding what defines a grocery establishment. He is in favor of removing language that there cannot be doors between buildings in a strip mall type of building. The Public Hearing was closed at 8:15 PM.

i. Councilman Beaver moved, seconded by Councilman Bridger to approve on first reading Ordinance #2224. Councilor Martin moved, seconded by Councilor Beaver, to remove section 4-14(d)(6) from Ordinance #2224. Roll call vote to remove section 4-14(d)(6) from the proposed Ordinance; the amendment did not pass due to a tie. Councilors Shafer, Bridger, and Mayor Miller voted in opposition of this amendment. Councilor Martin moved, seconded by Councilor Beaver, to remove section 9 from the proposed Ordinance; the amendment passed with four ayes. Councilor Shafer and Bridger voted in opposition of this amendment. Roll call vote to approve Ordinance #2224 on first reading passed with a unanimous vote.

C. Mayor Miller opened the Public Hearing at 8:31 PM for Resolution #27-20, Brooks Street Right of Way Vacation. Community Development Director Wade Sanner updated the Council. Drew Davis stated that he is in favor of the vacation, especially considering that the road is closed approximately 9 months out of the year. Renee' Obermueller, on behalf of the County Commissioners, the public, and staff, appreciates the City reviewing this vacation. The County will possibly receive a TAP grant to rebuild the space. The Public Hearing was closed at 8:46 PM.

i. Councilman Linden moved, seconded by Councilman Martin to approve Resolution #27-20, Voice vote, unanimous.

D. Mayor Miller opened the Public Hearing at 8:49 PM for Resolution #28-20, 1921 S. Sheridan Easement Vacation. Community Development Director Wade Sanner updated the Council. John Sidel, representing the property owners, described the easement vacation in further detail. The Public Hearing was closed at 8:52.

i. Councilman Bridger moved, seconded by Councilman Shafer to approve Resolution #28-20. Voice vote, unanimous.

E. Mayor Miller opened the Public Hearing at 8:53 PM for Resolution #17-20, Trailside at Woodland Park. Community Development Director Wade Sanner updated the Council. Bill Pugh, with Woodgroup, gave further details regarding the development. The Public Hearing was closed at 9:03 PM.

i. Councilman Bridger moved, seconded by Councilman Martin, to approve Resolution #17-20. Voice vote, unanimous.

8. Mayor Roger Miller then read aloud the consent items:

A. Approval of Fiscal Year 2021 Contract between the City of Sheridan and IAFF Local #276.
B. Minutes of Regular Council Meeting July 6, 2020
C. Claims

Councilor Shafer moved, seconded by Councilor Martin to approve the Consent agenda. Council approved the agenda: voice vote; unanimous.

9. Staff Update

A. City Treasurer Karen Burtis presented an update on Sales and Use Tax.
B. City Treasurer Karen Burtis presented a Quarterly Financial report.

Old Business:

No Old Business

New Business:

10. Consideration of Resolution #31-20, Application from the HUB on Smith to the State Loan and Investment Board for grant funding from the Coronavirus Relive Fund. - Heather Doke, Human Resources Director & Carmen Rideout, The HUB on Smith provided an update to Council.

Councilor Martin moved, seconded by Councilor Bridger to approve Resolution #31-20. Council approved the Resolution, voice vote; unanimous.

11. Consideration of Downtown Sheridan Association Request for Waiver of Malt Beverage Permit Fees - Shyan Davison, Market Manager and Janet Hoxie, Market Committee Chair, Downtown Sheridan Association.

Councilor Bridger moved, seconded by Councilor Martin to approve Downtown Sheridan Request for Waiver of Malt Beverage Permit fees, voice vote; unanimous.

12. Consideration of Resolution # 29-20 Capital Facilities Tax - Public Works Director Lane Thompson.

Councilor Shafer moved, seconded by Councilor Martin to approve Resolution #29-20, Capital Facilities Tax; voice vote; one nay. Councilor Beaver opposed this motion.

13. Consideration of Operating Agreement with the Sheridan Recreation District - City Attorney Brendon Kerns. Councilor Bridger stepped out of Chambers for this discussion. Councilor Shafer moved, seconded by Councilor Martin to approve the agreement with Sheridan Recreation District; voice vote; unanimous. Councilor Bridger returned to Chambers after the vote.

14. Consideration of Agreement With State of Wyoming, DEQ, for Sheridan Landfill Remediation Project- Utilities Director Dan Roberts.

Councilor Beaver moved, seconded by Councilor Martin to approve the agreement with State of Wyoming DEQ; voice vote: unanimous.

14.5. Consideration of Resolution #33-20 Designating All Business within the City of Sheridan as Essential. Councilor Linden moved, seconded by Councilor Martin, to approve Resolution #33-20; voice vote: four ayes. Councilors Beaver and Bridger voted in opposition of this motion.

15. Council Comments and Requests for Future Agenda Items.

i. Councilman Rich Bridger provided a brief update on CAST.

16. Councilman Shafer moved, seconded by Councilman Martin to adjourn the meeting; voice vote; unanimous. Meeting adjourned at 10:14 PM.

APPROVED:

_____

Roger Miller, Mayor

ATTEST:

_____

City Clerk, Cecilia Good

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: **Claims**

From:

To: Mayor and Council

CC:

Date:

Attachments

Claims
Regular Payroll 7.31
Prepaids

City of Sheridan
Claims paid on 08/04/2020

Sum of Amount		
Vendor Name	Description	Total
Ace Hardware-Newkirk	pvc pieces and accessories, pliers, adaptors/paint supplies	334.18
Amazon Capital Services #A33MIR27FEZN42	Supplies/Monitor/head lamps	1,095.39
American Water Works Association	Annual Memebership dues (2)	428.00
American Welding & Gas, Inc.	letter stamp - shop tools	69.10
Andy McFaul	Balance Refund/870 Pinyon Pl.	32.85
Automation & Electronics, Inc.	Radio repair between Intake and SWTP	2,507.60
B&B Leasing Company	46, 47, 48 pmt on copier lease - csc	510.06
Bino's Grocery & Market	Lysolspray-tbags-mtowels-towels-bleach-ttissue etc	462.73
Black Bear Construction	sculpture base	1,000.00
Blue 360 Media, LLC	WY Criminal-Traffic Law Book-Ebook	154.70
Brian Edwards	Wellness Participation Reimbursement	200.00
Brian's Boot & Shoe	Boots	600.10
Buggy Bath Car Wash	Monthly Truck Washing for SWR - June 2020	156.86
Burns & Mc Donnell	PAYT - Questionnaire Evaluation	332.25
Carolina Software	5 Boxes of Laser Tickets for Scale House	633.45
Carquest Auto Parts	Parts and Supplies	930.95
CDG Engineers, Inc.	Hillslides Project-Engineering Review-5317	6,199.75
CED- Consolidated Electrical Distributers Inc.	light junction box- signs	593.32
CH Diagnostics and Consulting	Crypto, Giardia, Ecoli testing-Intake INV#20200273	575.00
Chemtrade Chemicals US LLC	Alum Sulfate	6,821.14
Chris & Erin Juergens	Deposit Refund/2036 Skyview West Dr.	26.52
CHS Inc., By-Products	22.06 tons 58/28 oil hot plant	10,154.53
Coca-Cola Bottling Company High Country	Case of Water for Solid Waste and Recycling	217.00
Country Bounty	Landfill Ad for 4th of July	52.50
County Trash, LLC	Biweekly Dumpter Pick-up	110.00
Dana Kepner Company	Meter flange, swivel nuts	265.00
David Kattau	Deposit Refund/507 N Sheridan Ave. #203.	37.18
Deb Coon	Balance Refund/626 N Custer St.	57.09
DEQ Solid & Hazardous Waste Division	Premium Payment State Guarantee Trust Account	2,429.75
Devan Hayen	Deposit Refund/870 W Loucks ST.	50.93
Dixon Land Management and Consulting Inc	Mowing	1,860.00
DXP Enterprises, Inc.	Jcrane	1,683.54
Emily, Julian	Deposit Refund/1120 Illinois St.	67.19
Employ, LLC	Temporary Labor	10,550.18
Employers Council	Annual Membership Dues/background checks	6,400.00
Energy Laboratories, Inc	TOC Testing- July	178.00
Fastenal Company	Supplies	513.73
Fire Catt, LLC	Fire Hose and Ground Ladder Testing JSyring	4,043.59
Flor Vasquez	Deposit Refund/1631 Yonkee Ave.	10.92
Fort Bend Services, Inc	polymer	3,275.04
Garett Dixon	Deposit Refund/1357 Holloway Ave.	44.01
Gina Dickerson	Deposit Refund/515 Val Vista St.	64.60
Grainger, Inc.	locator - st tools	1,499.84
Green Carpet Sod Co	kb sod for golf course and cemetery	370.00
Hando's Service Center	Intake boot, carb repair kit, spark plug	417.90
Hawkins Inc	Sodium Hex (42) 50lb bags/Process chemical	8,254.95
Hayward Gordon ULC	o-ring packing rings	378.30
Home Depot Credit Services	Tool chest work bench/supplies	903.47
Imperial Electric, LLC	Permit Refund TE-20-43/TE-20-42	170.00
Inland Truck Parts Company	flange yoke slip yoke unit 3.19 um collect	186.72
In-Yarak Construction Inc	BGWTP Retainage Release #4509	2,869.57
J S Machine and Welding	Machine work on 4 wear rings	50.00
Jason Etchechoury	Wellness Participation Reimbursement	200.00
Jennifer Rizer	First Floor Conference Room Wall Hanging/Wellness	179.99
John Deere Financial #1111308145	Supplies	968.50
Joseph Glover	Deposit Refund/1651 Taylor Ave.	31.80
Kayla Laramore	Balance Refund/1218 S Sheridan Ave.	130.78
Kilpatrick Creations Inc.	2 work shirts	81.90
Knecht Home Center	paying difference on invoice-finance charge	8.17
Kristopher Jordan	Deposit Refund/1035 Leopard St.	65.01
KXK Construction	curb repair- Scott Grinnell Alger - st	2,800.00
Kyle Knutson	Refund/117 W 4th St.	115.54
Kyler Maxey	Deposit Refund/448 Park St.	79.23
Larry & Vicki Tellez	Deposit Refund/6 Griffith Ave.	67.86
LEGOCKI BACKHOE SERVICE	refund for an unneeded Street Opening Permit	22.00
Lily Simon	Deposit Refund/57 W 1st St.	10.85
Lisa Williams	Deposit Refund/443 1/2 Gladstone St	52.30

Vendor Name	Description	Total
LN Curtis & Sons	Majestic Gore Particulate Hoods	1,635.00
Malea Mills	Deposit Refund/831 Gladstone St. #A	66.71
Mary Jane Field	Deposit Refund/308 W Burkitt St.	27.31
Master's Touch	exterior painting of front of building	2,800.00
Matt Burtis	Level III Water License and fuel	257.55
Motion Industries, Inc.	112 Pair of Puncture Proof Gloves for SWR	1,916.16
Mountain View Building, Inc	KROE Lane Project CA-#5727	50,633.10
Nancy Haefner	Balance Refund/800 E Loucks St.	5.00
Napa Auto Parts	Parts and Supplies	948.72
National Sealant & Concrete	Hydrant Meter Refund	72.94
New Environment, Inc.	Waste Worker Student Package - Emergency Guidebook	196.50
Norco, Inc	Supplies	1,161.36
Office Shop Inc	contract usage/copy charges	1,068.01
Office Shop Leasing	UM July copier lease	154.63
OpenGov, Inc.	ViewPermit Update Licensing & Coding	47,880.00
Pace Analytical Services, LLC	Coliform Testing - Twin Eagle	30.00
Peak Powersports, LLC	brake pad unit 4.6 swtp starter unit 4.6 swtp	139.98
Peggy Steir	Wellness Participation Reimbursement	100.00
Pert's Towing	Towing - 20P005275	262.50
Peter Hanson	Deposit Refund/2401 Juniper Ln.	72.75
Plains Tire & Battery	tires unit 2.11 weed and pest tire repair unit 5.2	920.03
Powder River Heating & Air Conditioning, Inc	Repaired Air Condition-City Hall	1,451.50
Powder River Power Co	belt splice hub sheave fastener - unit 4.43 st	254.57
Public Safety Center, Inc.	Evidence tape, biohazard decals, photo ID cards	391.80
Raftelis Financial Consultants, Inc.	Water PIF Analysis_Professional Svcs 6.1 to 6.30	2,625.00
Randall Engineering Surveys	Remarked Landfill Boundary and Corners/storm water GIS mapping	11,392.00
Respond First Aid Systems of Wyoming	Restocking of First Aid Kit - SWR	56.94
Rhonda Molzahn	Deposit Refund/601 N Sheridan Ave.	33.14
Ridgepoint Consulting, LLC	KROE Lane Project Design/R&O Pro Services/E Downtown Waterline	18,162.50
Robert & Beverly Bernard	Balance Refund/450 S Thurmond St.	15.00
Ryan Curry	Deposit Refund/368 E Mountain View Dr.	90.00
Secure Shred	Paper shredding - 7/7/20	141.12
Servall Uniform & Linen Supply	Rugs	535.53
Severson Supply Co. Inc.	belt for hot plant	269.63
Shaunessey Reeves	cleaning for July 6 thru July 17, 2020	775.00
Sheridan Commercial Co.	Parts and Supplies	6,774.95
Sheridan County Clerk	ESRI ELA City Contribution 2020-2021	17,500.00
Sheridan Econ-O-Wash	uniform laundry Bates Pierce shop	80.00
Sheridan Electric LLC	Grounding Upgrade for Pavement Project - SWR	330.00
Sheridan Express, LLC	Hauling Tires to Montana for Disposal	700.00
Sheridan Fire Equipment	Annual FIre extinguisher inspection and replacemen	8,440.00
Sheridan Motor Inc	oil change fluid change-reset radio warning lights/new motor & installation	8,298.39
Sheridan Newspapers Inc	Legal Ads for May 2020	1,674.67
Sheridan Transportation Taxi	Safe Rides - June 2020	2,029.00
Simon Contractors	2020 Pavement Management Proj-CA #4701	78,769.20
Source Office & Technology	computer screen dusting wipes/copy paper	1,416.90
Stephen & Penny Otter	Deposit Refund/534 W Burkitt St.	68.30
Steve's Truck Service Inc	pressure sensor unit 3.10 wc	860.85
Stryker Sales Corporation	LP15 AC Power Adapter Cord QN 10217772	1,535.10
Swagit Productions, LLC	AgendaQuick Annual License & Maint	6,000.00
Ted's Towing, LLC	Towing for arrest- 20P004971	125.00
Tire Rama	Tires and repairs	2,084.66
Tires for Reclamation, Inc.	500 Tires Sent for Recycling	1,163.75
Top Office Products Inc	Spiral notebooks-Hi-liters-Post-Its-Sharpies	305.15
UPS	Dog & Cat Shelter Shipment to state vet	18.47
USA Blue Book	buffer, respirator wipes and bags, vial,cartridge	360.19
Vernon Manor	Fuel To WLEA	45.79
VRM, Inc.	Labor and parts	6,740.54
Wasatch Railroad Contractors	Train Abatement-Service-5719	39,179.60
Winsupply of Sheridan Wy Co	Check valves, ball corps	3,068.77
Wood Group USA, Inc	Baseline GIS Services March thru May 2020	15,372.50
WWC Engineering, A Division of	Professional services	500.00
Wyoming Audiology & Hearing	Hearing Exam for GLegler Inv 14095	32.00
Wyoming Machinery Co	Filters and Lube for Loader 4-84	356.42
Grand Total		436,015.59

City of Sheridan
Regular Payroll paid on 07/31/20

Sum of Amount		
Vendor Name	Description	Total
Aflac	Regular Payroll 07.31.20	1,355.91
Blue Cross Blue Shield of Wyoming	Regular Payroll 07.31.20	(523.00)
CITCO FCU	Regular Payroll 07.31.20	1,445.13
Idaho Child Support Receipting	Regular Payroll 07.31.20	11.54
IRS 941	Regular Payroll 07.31.20	75,386.78
Minnesota Child Support Payment Cent	Regular Payroll 07.31.20	203.50
Office of Child Support Enforcement (SI	Regular Payroll 07.31.20	185.54
Orchard Trust	Regular Payroll 07.31.20	3,892.96
Vantagepoint Transfer Agents 300698	Regular Payroll 07.31.20	7,637.57
Workers' Safety &	Regular Payroll 07.31.20	4,190.42
Wyoming Retirement System	Regular Payroll 07.31.20	67,467.04
Wyoming State Disbursement Unit	Regular Payroll 07.31.20	482.24
Grand Total		161,735.63

City of Sheridan
Prepaids paid on 07/16/2020

Sum of Amount		
Vendor Name	**Description**	Total
Barbara Hawkins & Jeanne Guinn	Deposit Refund-redo lost check 14015	**76.42**
CenturyLink Communications, LLC	SCADA lines and extensions	**1,633.75**
Montana Dakota Utilities	Pump stations, cathodic protection/Numerous electric bills	**1,360.27**
PayneWest Insurance, Inc.	Property Insurance Premium	**104,707.00**
Grand Total		**107,777.44**

City of Sheridan
Prepaids paid on 07/23/2020

Sum of Amount		
Vendor Name	**Description**	Total
Brian James Golf Professional LLC	Golf Professional Fee July 2020	**13,400.00**
Downtown Sheridan Assoc	Third Quarter One Cent-FY20	**6,250.00**
Justin Bishop	Turf Management Services - July 2020	**5,583.33**
Sheridan County	Impact Sheridan support 2021	**40,000.00**
State of Wyoming	Loan DWSRF/CWSRF-payments	**551,774.90**
University of Wyoming Office of Sponsored Progra	WTBC Operations	**40,000.00**
Grand Total		**657,008.23**

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:	**Second Reading Ordinance #2223 Addressing Alcohol Delivery in Chapter 4 of City Code - City Attorney Brendon Kerns**
From:	
To:	Mayor and Council
CC:	
Date:	

Attachments

Memo
Ordinance 2223

KERNS & BUNTING, LLC
200 W. Loucks St.
P.O. Box 6669
Sheridan, WY 82801
Telephone: 307.655.8600
Facsimile: 307.674.5000

BRENDON E. KERNS
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Licensed in WY & MT

SHERYL S. BUNTING
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Licensed in WY

MEMORANDUM

Date: **July 16, 2020**
To: **City of Sheridan Mayor and Council**
RE: **Ordinance 2223**

Ordinance 2223 will amend City of Sheridan Ordinance Chapter 4 to allow the delivery of alcohol. The proposed ordinance follows the premise established by emergency delivery ordinances.

Wyoming Statute is extremely clear in determining that most alcohol licenses and permits are prohibited from selling alcohol for off-premise consumption. Statute provides exceptions for retail licenses, microbreweries and wineries. Each of these license holders is allowed to sell alcohol for off-premise consumption provided that the sale and service occurs on premise. Wyoming Statute does not define what constitutes service. Thus, the City may define service. The proposed ordinance will define service, allow for deliveries and provide the required procedures.

A retail license holder, microbrewery and/or winery that desires to provide a delivery service must update their operational plan. A delivery driver must meet the same requirements as any other alcohol server. Sales may occur by electronic means provided that the purchaser provides a valid government identification upon delivery. Deliveries cannot be made to any school, college, or public property, nor can they be made outside of the City limits. Should a licensee violate any of these restrictions, they would be subject to Ordinance 4-13 which addresses licensee violations.

License holders who provide delivery services will be required to keep a record of the name, address, date, time and quantity of the item sold. Those records will only be available pursuant to a warrant.

The delivery ordinance has a few additional provisions which you should be aware. First, any alcohol licensee may, as part of their curbside pickup, sell alcohol. Such sale and delivery are occurring on the premise of the property. Curbside pickup sales will require an amended operational plan beginning in 2021. Second, any person who orders alcohol for delivery but is prohibited from being in an alcohol establishment or consuming alcohol by Court order may be charged with a misdemeanor through municipal court.

Ordinance 9-1 is also required to be amended with these changes. This ordinance is the sentencing ordinance for code violations. Specifically, Ordinance 9-1 will be amended to allow a Court to sentence someone to six months in jail should they order alcohol when prohibited to do so by Court order.

KERNS & BUNTING, LLC

Brendon Kerns

Ordinance 2223

AN ORDINANCE AMENDING CHAPTER 4 OF THE CITY OF SHERIDAN MUNICIPAL ORDINANCES CONCERNING DELIVERY OF ALCOHOL, SPECIFICALLY;

WHEREAS, the City of Sheridan Governing Body is the liquor license local licensing authority pursuant to W.S. § 12-4-101 et.al.; and

WHEREAS, the City has identified the need to allow for alcohol delivery to be allowed within the boundaries of the City Limits of Sheridan; and

WHEREAS, Wyoming State Statute prohibits the sale of alcoholic beverages for off-premise consumption for all alcohol license holders except for retail liquor license holders, microbreweries, and wineries.

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

Ordinance 4-5(a)(6) shall be amended to read as follows:

Every liquor licensee and/or his or her employees shall conform to the following mandatory standards when selling and serving alcoholic beverages in the City. Each violation of a standard set out in this section shall constitute a misdemeanor punishable by a fine of not more than seven hundred fifty dollars ($750.00) or other penalty per Sheridan City Code, Ordinance 9-1.

(a) *Standards*. For this Chapter, the following standards of conduct shall apply:

(1) Refuse to serve any patron who is obviously intoxicated, or is obviously physically endangering people or property in the licensed premises or dispensing area or in an area approved for temporary service pursuant to a permit issued under Ordinance 4-8. For the purposes of this section, "obviously intoxicated" shall mean an individual who is inebriated to the extent that the person appears substantially impaired and the impairment is evident by actions such as slurred speech, uncoordinated physical actions or physical dysfunction which would be obvious to a reasonable person.

(2) Order any patron to leave and depart who is endangering people or property in the licensed establishment and notify the Sheridan police department of any criminal incident as soon as reasonably possible.

(3) Refuse to sell, give, or deliver alcoholic liquor or malt beverage to any person under the age of twenty-one years.

(4) Report other criminal activity in the licensed building, dispensing area or on the licensed premises as established by local, state or federal law, as soon as reasonably possible.

(5) Comply with the training and records maintenance requirements of Ordinance 4-4(e).

(6) Comply with all provisions of Ordinance 4-4.1

(7) Post in a prominent location, a conspicuous notice to the public required per Ordinance 4-11.

(8) Clearly post occupancy limits and limit access so as not to exceed the occupancy limit as established by the International Fire Code as adopted by the City.

(9) A licensee shall not be subject to multiple convictions arising out of the same set of facts, events, date and time for the purposes of this Section.

An additional Section of Code shall be added following Code Section 4-4 and be titled as "4-4.1 Alcohol Delivery and Curbside Pick-up". The Section shall read as follows:

(a) *Eligible Licenses*: Alcohol Delivery Services may be made available by retail licensees, microbreweries and wineries. No other alcohol license shall be permitted to provide an alcohol delivery service unless specifically allowed by Wyoming Statute or City Ordinance.

(b) *Definitions*: For purposes of this Ordinance the following definitions shall apply:

(1) **Serve**: The act of delivering alcohol to a purchaser or to a delivery employee on the licensed premise.

(2) **Delivery**: The act of providing alcohol to a purchaser.

(3) **Delivery Service**: A Liquor Licensee's process in which their employee provides alcohol to a purchaser.

(4) **Delivery Employee**: The Licensee's employee responsible for delivering alcohol to the purchaser.

(c) *Delivery Standards*: Retail Liquor Licensees, Microbreweries, and Wineries shall be permitted to provide delivery services for the delivery of malt beverage, wine or liquor. Delivery services shall be subject to the following:

(1) Delivery service employees shall have completed an alcohol server training program as approved by W.S. § 12-2-402; be at least twenty-one (21) years of age; maintain a valid driver's license; maintain valid vehicle

insurance coverage as required by Wyoming Statute; and be an employee of the Licensee.

(2) All sales must occur on the Licensee's premise by in-person purchase, online order, order by app, or order by phone. Payment must be received at the time of purchase. Payment may not occur upon delivery.

(3) Licensees shall keep a record of each delivery service transaction which shall be made available to the City by warrant. The record shall include, at minimum, the name and address of the purchaser, date and time of order, address of delivery, name of delivery employee, and the product and quantity purchased and delivered.

(4) No order shall be received from nor delivery made to a person under twenty-one (21) years of age. Each purchaser shall be required to provide a valid Driver's License or valid government issued identification when the delivery is made.

(5) Alcohol shall be delivered to customers only in the original, unopened package.

(6) Deliveries shall only be made to the purchaser and may not be left with any other person or at any other address

(7) No part of a publicly owned sidewalk, highway, street or alley shall be used for taking orders or conducting sales except as specifically allowed by ordinance or statute.

(8) Deliveries shall not be made to or on public property, unless specifically allowed by Ordinance, and shall not be delivered outside the City of Sheridan Municipal boundaries unless otherwise allowed by Wyoming Statute or resolution of the Sheridan County Commissioners.

(9) Deliveries shall not be made to any school or college.

(10) Delivery services shall not be conducted unless a service plan has been included within the licensee's approved plan of operation as required per Ordinance 4-12. A request to amend the plan of operation to provide delivery service shall not be deemed a material deviation per Ordinance 4-12(b).

(11) All licensees and their employees shall follow the standards set forth in Ordinance 4-5. Any violation of this Chapter shall be subject to Ordinance 4-13.

(d) *Curbside Pick*-up: All alcohol licensees may establish curbside pick-up services at the licensed premise without submitting an amended operational plan during the year of 2020. Beginning January 1, 2021, all licensees that provide curbside pick-up services shall include a description thereof within their operational plan per Ordinance 4-12. Curb side pick-up services shall be subject to the following:

(1) No order shall be received from nor service made to a person under twenty-one (21) years of age. Each purchaser shall be required to provide a valid Driver's License or valid government issued identification when the curbside pick-up occurs.

(2) Alcohol shall be delivered to customers only in the original, unopened package.

(3) No part of a publicly owned sidewalk, highway, street or alley shall be used for taking orders or conducting sales except as specifically allowed by ordinance or statute. Delivery of alcohol for curbside pick-up may be made to a person located on a sidewalk, street or alley.

(4) Curbside pick-up services offered by a Licensee shall not allow for product to be displayed outside of the licensed building.

(5) All licensees and their employees shall follow the standards set forth in Ordinance 4-5.

(6) Any violation of the aforementioned requirements, restrictions or procedures by any Licensee or Licensee's employee shall be a misdemeanor with a maximum punishment as defined by Ordinance 9-1. Any conviction of a Licensee or Licensee's employee shall be subject to Ordinance 4-13.

(e) *Purchaser Violation*: No person shall order or accept service of alcohol if they are prohibited by order of any Court to possess or consume alcohol or be in an establishment where the primary purpose is the sale of alcohol. Any person convicted of violating this Section shall be guilty of a misdemeanor subject to a fine of no more than Seven Hundred and Fifty Dollars ($750.00) and up to six months in jail.

(f) Should any portion of this Ordinance be in conflict with any other City of Sheridan Ordinance, this Ordinance is deemed to control and supersede.

Ordinance 4-12 shall be repealed and restated to read as follows:

(a) *Plan of Operation Description.* Any license authorized under this Chapter shall not be issued, renewed or transferred until the applicant has submitted a plan of operation that meets the requirements of this Chapter. A plan of operation shall contain and shall set forth in simple narrative form the following:

(1) An operational statement describing the location and layout of the licensed building, licensed premises and/or dispensing area;

(2) Schedule of all days and hours of operation;

(3) Description of the character and use of the facility (i.e., bar, restaurant, brewery, etc.);

(4) Description of specific alcohol inventory management practices that are relevant to the license at issue;

(5) Description of specific crowd control and security practices that are relevant to the license at issue; and

(6) Description of other information that is relevant and pertinent to the operation of the licensee's licensed premises and dispensing area that is reasonably available to the licensee and that is specifically requested by the City Governing body at the time of renewal, transfer or issuance of the license;

(7) Description of delivery and/or curbside services if offered by the licensee.

(b) *Amendments*. The licensee may propose amendment(s) to an existing approved plan of operation for an issued license during the term of its license. Such an amendment may be approved by the City Administrator if it is not a material deviation from the licensee's existing approved plan.

(c) Any material deviation from the approved plan of operation requires a special permit as authorized in Ordinance 4-8 or pursuant to the City Governing Body's approval of a modified plan of operation. (Ord. No. 2178, § 1, 6-19-17.)

Ordinance 9-1 shall be amended to read as follows:

(b) *Jailable offenses.* Upon the conviction of any of the following violations, in addition to the penalties set forth in section 9-1(a), the offender shall be punished by imprisonment for a term not exceeding six months:

Alcohol Consumption/Possession Prohibition	§ 4-4.1(e)
Contempt of Court	Wyo. Rule Crim. Proc. Rule 42(a)(2)(C)
Flee or Attempt to Elude	§ 16-6 adopting W.S. § 31-5-225(a)
Disorderly Conduct—Resist or Obstruct	§ 19-2(d)(7)
Endangering the Welfare	§ 4-7(a)

The following offenses upon third conviction:

Aiding and Abetting	§ 9-2
Alcohol Standards	§ 4-5(a-f)
Cruelty to Animals	§ 6-32
Curfew Violation	§ 19-23
Disorderly Conduct (except Resists or Obstructs above)	§ 19-2(d)(1)—(5), (8)—(12)
Driver's License Suspend/Revoke	§ 16-14.5
Hit and Run	§ 16-6 adopting W.S. § 31-5-1102, 1104
Indecent Exposure	§ 19-13
Public Intoxication	§ 4-2
Larceny by Bailee	§ 19-31
Littering	§ 12-16
Minor Consumption of Alcohol	§ 4-3
Possession of Drug Paraphernalia	§ 19-1.1
Reckless Driving	§ 16-6 adopting W.S. § 31-5-229
Vicious Dog	§ 6-7

WHEREUPON, a motion was passed and this Ordinance and was declared adopted this _____ day of_____, 2020.

CITY OF SHERIDAN, WYOMING

_____

Mayor Roger Miller

ATTEST:

_____

City Clerk

First Reading: _____
Second Reading: _____
Third Reading: _____

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

Attorney

MEMORANDUM

Project Name:	**Second Reading for Ordinance #2224 Amending Chapter 4 Alcohol Ordinance - Brendon Kerns City Attorney**
From:	Brendon Kerns, City Attorney
To:	Mayor and Council
CC:	City Administrator Stuart McRae
Date:	08/03/2020

Attachments

Ordinance #2224 Memo
Ordinance #2224
Amendment 1
Amendment 2
Amendment 3
Amendment 4
Amendment 5
Amendment 6
Amendment 7
Amendment 8

KERNS & BUNTING, LLC
200 W. Loucks St.
P.O. Box 6669
Sheridan, WY 82801
Telephone: 307.655.8600
Facsimile: 307.674.5000

BRENDON E. KERNS
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Licensed in WY & MT

SHERYL S. BUNTING
sbunting@kernsbunting.com
Licensed in WY

MEMORANDUM

Date: **July 29, 2020**
To: **City of Sheridan Mayor and Council**
RE: **Ordinance 2224**

Ordinance 2224 will amend City of Sheridan Chapter 4 concerning alcohol. Over the past two years, City Staff and Council have struggled with three items that were not addressed in the current code. Specifically; (1) Special Malt Beverage Permits; (2) Definition of "parked license"; and (3) renewal procedures.

Special Malt Beverage Permits

A Special Malt Beverage Permit allows for the sale of malt beverages at a civic center, auditorium, or event center. There are no definitions in statute as to what a civic center, auditorium or event center is. Further, there is nothing in Code that sets forth the application procedure and requirements with regard to such permits. The proposed ordinance provides the necessary definitions and the process of obtaining the permit.

Non-Operational "Parked" Licenses

Over the last two years, the City Governing Body has been confronted with multiple issues when determining whether a license is non-operational, when a license may be non-operational for more than one year, and what happens when a license is no longer eligible to be parked. Wyoming Statute is severely lacking in these areas.

The proposed ordinance will allow the Clerk to determine when a license has become parked. A second or third year may only be granted by the Governing Body after having found good cause or extraordinary circumstances, respectively. A license shall not be considered parked if the owner is closed as a result of an epidemic or act of nature. The licensee will, however, be required to make reasonable efforts to open in a timely manner.

Renewals

The City Clerk has had a continual problem with alcohol license holders failing to provide completed applications in a timely manner. The only filing deadlines apply to the State Liquor Division. Specifically, the State Liquor Division must review the application 10 days prior to the Governing Body approving the license, and the application must be approved by the Governing Body 30 days before the end of the year in order to provide the State with sufficient time for their formal approval. Thus, the Governing Body has routinely been required to hold special meetings

and the Clerk has been required to put in an exorbitant amount of effort because of the failure of certain license holders.

The proposed ordinance change would require all applications to be filed by November 1st of each year. The application will then be submitted to the State for review. Should an application be inadequate, the application can be amended until November 15th. If a licensee fails to provide a completed application by the 15th, the application will not be eligible for submission to the Governing Body. Should an application fail to be approved by the Governing Body by December 1st, the license will not be eligible for renewal. The proposed process follows the general requirement set forth by Wyoming Statute. See W.S. §12-4-104.

KERNS & BUNTING, LLC

Brendon Kerns

Ordinance 2224

AN ORDINANCE AMENDING AND UPDATING CHAPTER 4 OF THE CITY OF SHERIDAN MUNICIPAL ORDINANCES CONCERNING LIQUOR LICENSES, SPECIFICALLY;

WHEREAS, the City of Sheridan Governing Body is the liquor license local licensing authority pursuant to W.S. § 12-4-101 et.al.; and

WHEREAS, the City has identified ambiguities within the Wyoming State Statute and City Ordinance which require clarification;

WHEREAS, the City is authorized by W.S. § 12-4-504 et.al. regarding special malt beverage permits;

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

Ordinance 4-8 shall be repealed and restated to read and shall be retitled as follows:

4-8 Catering, Malt Beverage, Open Container

(a) *Applications*. Applications for catering permits, malt beverage permits and open container permits shall be made on a form approved and provided by the City Clerk as follows:

(1) Applications shall be submitted no less than three (3) weeks prior to the event;

(2) The applicant's name, address and phone number, along with the name, date, time and location of the event;

(3) An operation plan for the event including a short summary of the reason for the request and the activities proposed for the event;

(4) A description or drawing of the area(s) in which the possession and consumption of alcoholic beverages will occur and what safeguards will be in place at the desired location to ensure that minors will not possess or consume alcoholic or malt beverages;

(5) The names and ages of the qualified persons, who are known by the applicant at the time of application, who are planned to dispense malt beverages or liquor;

(6) In addition, if the applicant is not the owner of the location where the event is proposed, the applicant shall attach a written statement from the landowner permitting the proposed activity, consumption and possession of alcoholic or malt beverages.

(b) *Catering Permits*. Catering permits can only be issued to retail and resort licensees; the applicant(s) name for each catering permit shall be the licensee's name as set forth on the retail or resort license.

(c) *City Considerations.* Applications for catering permits, malt beverage permits and open container will be reviewed by and approved or denied by the City Administrator or designee in consultation with the Chief of Police or the Chief's designee.

(1) *Catering/Malt Beverage Permit Considerations*. For catering permits, or malt beverage permits, information supplied by the applicant will be reviewed by the City Administrator or designee, in consultation with the Chief of Police, within one (1) week of the application submission, to determine if the proposed event/activity will cause a material adverse impact beyond the area described in the application. If no material adverse impact is identified, then the permit will be issued by the City Clerk.

(A) A proposed event/activity material adverse impact beyond the area described in the application may include an inability of adjacent businesses to operate, overcrowding which will impact adjacent properties, unreasonable noise and/or traffic disruption (by way of illustration only, an outdoor dance, band(s) or amplified sound or music using loudspeakers or a P.A. system, parking or vehicle traffic beyond existing capacity, or the closure of a public street). Upon a determination of a material impact beyond the area proposed in the permit, the permit application will be promptly presented to the City Governing Body for review and approval or denial at the next scheduled regular City Council meeting.

(2) *Open Container Permit Considerations.* Applications for open container permits shall include the applicants name, address, phone number, date, time(s) and location of the event. The application shall include a short summary of the reason for the permit and the proposed activities. Open container permits may be issued to allow the possession and consumption of alcoholic or malt beverages on public property. An open container permit for certain public property may include additional permits like a park permit or street closure permit.

(A) Applications will be reviewed by the Chief of Police or designee and the City Clerk or designee. Upon approval, the applicant shall post an open container sign at the event.

(3) *Appeals*. The City Administrator may submit an application for a catering permit, malt beverage permit or open container permit to the City Governing Body for consideration or any application which is denied may be appealed to the City Governing Body by the applicant. Appeals shall be set for the next regularly scheduled City Council meeting.

(d) *Fees.* Catering, open container, and malt beverage permit fees shall be set by the City Governing Body.

(e) A catering, malt beverage, or open container permit shall authorize possession and consumption of alcoholic or malt beverages in open containers only for the specific time period and within the area described in the permit application and operational place.

(f) *Suspension/Revocation*. The Chief of Police or designee may suspend or revoke any catering, malt beverage or open container permit when the licensee, permittee, or person in charge is convicted of having violated Ordinance 4-5, or is shown by clear and convincing evidence to have knowingly failed to follow the operation plan as outlined in the permit application, or creates an emergency which constitutes an actual and immediate threat to the peace, bodily security and/or property of any member of the general public, or fails to follow orders of the Wyoming Department of Health.

An additional Section of Code shall be added following Code Section 4-8 and be titled as "4-8.1 Special Malt Beverage Permit". The Section shall read as follows:

(a) Special malt beverage permits shall follow the same application, renewal, transfer and new license issuance procedure and regulations as a retail liquor license and be subject to the following:

(1) Fees for a special malt beverage permit shall be set by the Governing Body.

(2) Special malt beverage permits shall only be authorized for public auditoriums, civic centers or event centers. For purposes of this section, the following definitions shall apply.

A. *Civic Center* – a building or facility owned by the State, municipality or division thereof, which is used for the purpose of conventions, exhibitions, sports, rodeos, concerts, public performances, carnivals or theatrical entertainment.

B. *Event Center* – a building or facility privately owned for the purpose of conventions, exhibitions, sports, rodeo, concerts, public performances, carnivals, theatrical entertainment or weddings and has a seating capacity of more than 50 people.

C. *Public Auditoriums* – a publicly owned building used for the musical performances or theatrical entertainment.

(3) A permit may be deemed operational for seasonal uses provided it has been approved as part of the plan of operation.

Ordinance 4-14 shall be repealed and restated to read and shall be retitled as follows:

LIQUOR LICENSE RENEWALS, TRANSFERS AND ORIGINAL ISSUANCE

(a) *Operational Requirements*. Retail Licenses, Bar and Grill Licenses, Resort Licenses, Club Licenses, Micro Brewery Permits, Restaurant Licenses and Winery Permits, shall be operational. In addition to requirements of Wyoming Statute, operational shall be determined by the following:

(1) A license or permit shall be deemed operational by offering for sale alcoholic liquor, malt beverages or wine at minimum 20 hours per week to the general public in a functional building whose primary purpose is the sale of alcoholic beverages.

(2) Any Licensee who fails to demonstrate an operational alcoholic or malt beverage license may be declared by the City Clerk to be non-operational, also known as "parked". A license may be parked by determination of the City Clerk or request of the licensee for a period of 1 year.

A. A license shall not be declared non-operational as a result of a closure of the licensee's building due to an epidemic or as the result of a fire, flood or acts of nature. Provided, a license may be declared non-operational should a licensee fail to make reasonable efforts to reopen in a timely manner.

(3) A Licensee shall be allowed to park the license for an additional (1) year period upon a finding of good cause by the Governing Body. A third one (1) year period may be granted by the Governing Body upon the finding of extraordinary circumstances.

A. Good Cause cannot be found as a result of a failure to sell a license unless the license is subject to a written contract to sell the license within thirty (30) after the end of the first year of being parked.

B. Extraordinary Circumstances shall only be determined to exist as a result of circumstances which were not identifiable prior to their occurrence. Examples include epidemics, acts of nature, fire, flood or death of a license holder.

(4) No license shall be allowed to be parked for a second or third year if the licensee is not eligible to have a nonoperational license per Wyoming Statute or Wyoming Liquor Division decision.

(5) A license's parked date shall be the date determined by the City Clerk as the date in which the license ceased to be operational.

(6) For any license which is not operational, unless an extension as defined herein has been granted, the City shall immediately begin a revocation proceeding pursuant to Wyoming Statute or, at the City's discretion, declare a license as not eligible for renewal.

(b) *Renewals*. All applications to renew licenses shall be submitted to the City Clerk's Office no later than November 1st. Any application which the City of Sheridan Clerk or the State of Wyoming designates as insufficient may be amended, corrected or updated provided such correction, amendment or update is submitted to the City Clerk no later than November 15th. Failure to provide a completed application by November 15th, shall cause the license application to be determined to be incomplete and not available for submission to the City Governing Body. No application for renewal may be submitted to the City Governing Body until certified as complete by the City Clerk. Any license which has not been approved by the Governing Body by December 1st of each year, shall not be eligible for renewal.

(c) *Required Forms*. All applications to renew, transfer or for a new license issuance shall be made on forms provided by the City Clerk and shall provide the information required by W.S.§12-4-102. In addition to other requirements, every renewal shall include an updated plan of operation.

(d) *Transfer Forms*. In addition to the statutorily required information, when the application for the issuance of a new license or for the transfer of an existing license changes the location of the licensed premises or dispensing area, or would change the persons owning the business, or would otherwise materially change the existing plan of operation for the license sought to be transferred, the City may require additional information, including:

(1) The applicant's business plan which confirms applicant's good faith projection of sales, number of employees and payroll and describes how its use of the license is likely to contribute to the best interest of the public.

(2) Whether the location of the establishment meets current zoning requirements, is compliant with the City Code (or will be made compliant with the City Code).

(3) Whether the location of the establishment would be beneficial for liquor or malt beverage sales.

(4) How the welfare of the citizens of the City of Sheridan, particularly those residing in the vicinity of the proposed location, would be impacted.

(5) The proximity of the licensed premises from a pari-mutuel betting establishment.

(6) Confirmation that the establishment is not part of a grocery type establishment. A strip mall type building configuration with no internal doorways between the establishments may be acceptable.

(7) Confirmation that the applicant will comply with the Alcohol Service Policies adopted by the Sheridan County Retail Liquor Dealer Association, as may be amended from time to time.

(8) Confirmation that the applicant will participate in the "Safe Rides" program or an equivalent City sponsored program.

(e) *Renewal, Transfer and Issuance Considerations:* The City Governing Body shall review and act upon all such applications made to it pursuant to W.S.§ 12-4-102 and be consistent with W.S.§ 12-4-104(b), which provides that a license or permit shall not consider to be issued, renewed or transferred if the licensing authority finds from evidence presented at the hearing of any of the following:

(1) The welfare of the people residing in the vicinity of the proposed license or permit premises shall be adversely and seriously affected; or

(2) The purpose of this Title shall not be carried out by the issuance, renewal or transfer of the license or permit; or

(3) The number, type and location of existing licenses or permits meet the needs of the vicinity under consideration; or

(4) The desires of the residents of the county, City will not be met or satisfied by the issuance, renewal or transfer of the license or permit; or

(5) Any unpaid administrative fee assessed per Ordinance 4-13; or

(6) Any other reasonable restrictions or standards which may be imposed by the licensing authority.

WHEREUPON, a motion was passed and this Ordinance and was declared adopted this _____ day of_____, 2020.

CITY OF SHERIDAN, WYOMING

_____

Mayor Roger Miller

ATTEST:

_____

City Clerk

First Reading: _____
Second Reading: _____
Third Reading: _____

Ordinance 2224 – Amendment 1

Ordinance 4-8 controls applications for Catering, Malt Beverage and Open Containers. This Ordinance requires applications to be filed three weeks in advance. The amendment allows for expeditated application filings but requires an additional fee. This amendment has been requested by licensees and City staff.

4-8 (a)(1) Applications shall be submitted no less than three (3) weeks prior to the event. Applications may be submitted up to one (1) week before the event provided that a service fee is paid by the applicant. Expeditated applications shall be reviewed, approved, denied or appealed per 4-8(c). The service fee shall be set by the Governing Body;

Ordinance 2224 – Amendment 2

The following proposed changes have been requested by the Mayor. The proposed change will remove the City Administrator from review and oversight of the permitting processing.

4-8(c) *City Considerations.* Applications for catering permits, malt beverage permits and open container will be reviewed by and approved or denied by the authorized City Official or designee.

(1) *Catering/Malt Beverage Permit Considerations*. For catering permits, or malt beverage permits, information supplied by the applicant will be reviewed by the City Clerk, in consultation with the Chief of Police, within one (1) week of the application submission, to determine if the proposed event/activity will cause a material adverse impact beyond the area described in the application. If no material adverse impact is identified, then the permit will be issued by the City Clerk.

(A) A proposed event/activity material adverse impact beyond the area described in the application may include an inability of adjacent businesses to operate, overcrowding which will impact adjacent properties, unreasonable noise and/or traffic disruption (by way of illustration only, an outdoor dance, band(s) or amplified sound or music using loudspeakers or a P.A. system, parking or vehicle traffic beyond existing capacity, or the closure of a public street). Upon a determination of a material impact beyond the area proposed in the permit, the permit application will be promptly presented to the City Governing Body for review and approval or denial at the next scheduled regular City Council meeting.

(2) *Open Container Permit Considerations.* Applications for open container permits shall include the applicants name, address, phone number, date, time(s) and location of the event. The application shall include a short summary of the reason for the permit and the proposed activities. Open container permits may be issued to allow the possession and consumption of alcoholic or malt beverages on public property. An open container permit for certain public property may include additional permits like a park permit or street closure permit.

(A) Applications will be reviewed by the Chief of Police or designee and the City Clerk or designee. Upon approval, the applicant shall post an open container sign at the event.

(3) *Appeals*. A denied catering permit, malt beverage permit or open container permit, which is not automatically appealed per Ordinance 4-4(c)(2), may be appealed to the City Governing Body by the applicant or City. Appeals shall be set for the next regularly scheduled City Council meeting

Ordinance 2224 – Amendment 3

The following proposed changes have been requested by the Mayor. The proposed change will require functional buildings to have a minimum size and the capability to sell Alcohol

4-14(a) *Operational Requirements*. Retail Licenses, Bar and Grill Licenses, Resort Licenses, Club Licenses, Micro Brewery Permits, Restaurant Licenses and Winery Permits, shall be operational. In addition to requirements of Wyoming Statute, operational shall be determined by the following:

(1) A license or permit shall be deemed operational by offering for sale alcoholic liquor, malt beverages or wine at minimum 20 hours per week to the general public in a functional building whose primary purpose is the sale of alcoholic beverages.

A. A functional building shall be at minimum 10ft by 20ft in size and include necessary appliances and fixtures to sell alcohol.

Ordinance 2224 – Amendment 4

The following proposed are requests of license holders and Council input during first reading. The first change clarifies that Golf Course Licenses, Special Malt Beverage Permits and Club License's operational plans determines what constitutes "operational". The second change clarifies that restaurants and bar and grills are included within the "primary purpose" provision.

4-14(a) *Operational Requirements*. Retail Licenses, Bar and Grill Licenses, Resort Licenses, Club Licenses, Golf Club License, Special Malt Beverage Permits, Microbrewery Permits, Restaurant Licenses and Winery Permits, shall be operational. In addition to requirements of Wyoming Statute, operational shall be determined by the following:

(1) A license or permit shall be deemed operational by offering for sale alcoholic liquor, malt beverages or wine at minimum 20 hours per week to the general public in a functional building whose primary purpose is the sale of alcoholic beverages in conjunction with other activities as approved by the operational plan or Statute.

A. A Golf Club License, Special Malt Beverage Permit or Club Licenses determination of operational requirements shall be set per the approved operational plan.

Ordinance 2224 – Amendment 5

The following proposed changes were requested by the Mayor. The first change will set the notice standard for the clerk. The second change will define "timely manner".

4-14(a)(2) Any Licensee who fails to demonstrate an operational alcoholic or malt beverage license may be declared by the City Clerk to be non-operational, also known as "parked". A license may be parked by determination of the City Clerk or request of the licensee for a period of 1 year. Upon determining a license is non-operational, the City Clerk shall provide written notice by mail, first class, prepaid, return receipt requested, to the last known address of the license holder. The notice will be deemed delivered upon being placed into the mail.

A. A license shall not be declared non-operational as a result of a closure of the licensee's building due to an epidemic, pandemic or as the result of a fire, flood or acts of nature. Provided, a license may be declared non-operational should licensee fails to make reasonable efforts to reopen in a timely manner. A "timely manner" shall not exceed one-year from the date of event occurrence.

Ordinance 2224 – Amendment 6

The following proposed change were discussed during first reading and requested by Council. The deadline for applications to be submitted will be October 15th.

4-14(b) *Renewals*. All applications to renew licenses shall be submitted to the City Clerk's Office no later than October 15th. Any application which the City of Sheridan Clerk or the State of Wyoming designates as insufficient may be amended, corrected or updated provided such correction, amendment or update is submitted to the City Clerk no later than November 15th. Failure to provide a completed application by November 15th, shall cause the license application to be determined to be incomplete and not available for submission to the City Governing Body. No application for renewal may be submitted to the City Governing Body until certified as complete by the City Clerk. Any license which has not been approved by the Governing Body by December 1st of each year, shall not be eligible for renewal.

Ordinance 2224 – Amendment 7

The following proposed change were requested by the Mayor. The inclusion of the word "substantially" will mean that applications do not need to be completed by November 15th provided that the Clerk believes that there are no material issues remaining.

14-4(b) *Renewals*. All applications to renew licenses shall be submitted to the City Clerk's Office no later than November 1st. Any application which the City of Sheridan Clerk or the State of Wyoming designates as insufficient may be amended, corrected or updated provided such correction, amendment or update is submitted to the City Clerk no later than November 15th. Failure to provide a substantially completed application by November 15th, shall cause the license application to be determined to be incomplete and not available for submission to the City Governing Body. No application for renewal may be submitted to the City Governing Body until certified as complete by the City Clerk. Any license which has not been approved by the Governing Body by December 1st of each year, shall not be eligible for renewal. See W.S. § 12-4-104(b).

Ordinance 2224 – Amendment 8

The following proposed change was discussed by license holders on first reading. The Sheridan County Retail Liquor Dealer Association has changed. This provision is no longer applicable and should be deleted.

4-14(a)(7)

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

Executive

MEMORANDUM

Project Name:	**Consideration of Resolution 19-20 in Support of Miss Indian America - Bev Leichtnam, Governmental Relations Specialist**
From:	Bev Leichtnam, Governmental Relations Admin. Specialist
To:	Mayor and Council
CC:	
Date:	

Attachments

Resolution No. 19-20

RESOLUTION OF SUPPORT

RESOLUTION NO. 19-20

WHEREAS, The Governing Body of the City of Sheridan is open and welcoming to all people who visit, vacation, do business and make Sheridan their home in the year 2020 and into the future; and

WHEREAS, The Governing Body of Sheridan recognizes that in the 1940's there were signs in stores all across America including here in Sheridan, Wyoming that posted hurtful messages such as "No Indians served here" and "No Indians or Dogs Allowed"; and

WHEREAS, Through this tumultuous time in our American history, great leaders in Sheridan, Wyoming started to make positive changes and committed themselves to actively participating in a more civil way of life; and

WHEREAS, in 1951 Lucy Yellowmule, a member of the Crow Tribe, was elected Queen of the Sheridan WYO Rodeo establishing new cultural acceptance standards by Sheridan residents, and

WHEREAS, In recognition of Dr. Joe Medicine Crow, Donald and Agnes Deernose and Tom and Susie Yellowtail who worked diligently to establish communication and understanding of cultural differences between Indians and non-Indians throughout Sheridan, Wyoming to promote and extend goodwill while instilling positive Indian culture through heritage, history, art and craftsmanship from all tribes across America, and

WHEREAS, These efforts led to the creation of All American Indian Days and the National Miss Indian America Pageant that began in 1953, and these accomplishments are considered to be the first inter-racial humanitarian projects for Indian Nations of modern times; and

WHEREAS, The Governing Body of Sheridan expresses never-ending appreciation to the women of the Miss Indian America Committee for their hard work and generous donation of an art sculpture that will stand as a symbol of inter-racial harmony for everyone in Sheridan, Wyoming and all those who visit from across the world; and

WHEREAS, The Governing Body of Sheridan supports and encourages the Miss Indian America Committee's endeavor to create inter-racial harmony through art; and

NOW, THEREFORE, BE IT RESOLVED THAT THE GOVERNING BODY OF THE CITY OF SHERIDAN wishes to accept an approved sculpture of inter-racial harmony designed, produced and provided by the Miss Indian America committee representatives; and.

BE IT FURTHER RESOLVED, that the sculpture will be placed on the City property known as Rotary Park in front of the CB&Q Locomotive #5631 facing The Historic Sheridan Inn as a place of meaning, reverence and meditation in the continued improvement of all race relations and the stamping out of hatred and inequality.

DATED this ____ day of August, 2020.

_____
Mayor Roger Miller

ATTEST:

_____
City Clerk Cecilia Good

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 Resolution No. 30-20 for the Adoption of the Capital Facilities Tax Project List
From:	Lane Thompson, Public Works Director
To:	Mayor and Council
CC:	
Date:	07/27/2020

Recommendation:

Staff recommends that Mayor and Council approve Resolution No. 30-20 for the adoption of the Capital Facilities Tax Project list.

Background:

The Sheridan County One Percent Specific Purpose Capital Facilities Tax (CAP Tax) was first approved in 1989 and has been continuously approved by the voters of Sheridan County. This is a specific purpose tax, meaning that the funds can only be spent on Capital Improvement Projects. The CAP Tax is also a specific amount tax, which means the CAP Tax expires when the amount of funds in the resolution are collected.
Staff has worked with Mayor and City Council to create a capital project list based on the 2019 Capital Improvement Program (CIP) and other community infrastructure needs.

Attachments

Project List
Resolution 30-20

City of Sheridan

Capital Facilities Tax Project List

	Project Name	Capital Facilities Tax Amount	Other Funds	Total Estimated Cost
	Joint Resolution No. 29-20 Capital Facilites Tax Amount	**22,947,200**		
1	North Sheridan Interchange	1,400,000	-	1,400,000
2	Street Maintenance & Preservation Project	700,000	13,300,000	14,000,000
3	Main Street Reconstruction	1,500,000	2,000,000	3,500,000
4	Bridge Repair	1,700,000	-	1,700,000
5	North Heights Waterline	1,000,000	5,205,000	6,205,000
6	East Downtown	1,500,000	2,500,000	4,000,000
7	Lewis Street Reconstruction	4,400,000	2,800,000	7,200,000
8	South Downtown Improvements	3,540,000	2,500,000	6,040,000
9	South Thurmond Street Reconstruction	1,270,000	2,000,000	3,270,000
10	Kendrick Outdoor Pool (3.3M to 5.4M)	3,055,000	2,345,000	5,400,000
11	The HUB	500,000	4,100,000	4,600,000
12	5th Street and Long Drive Roundabout	600,000	900,000	1,500,000
13	Coffeen Avenue Widening Pathway	400,000	1,300,000	1,700,000
14	Gould Street Parking & Public Restrooms	250,000	585,000	835,000
15	Little Goose Concrete Chutes	200,000		20,000,000
	Subtotal =	**$ 22,015,000**	**$ 39,535,000**	**$ 81,350,000**
	Contingency =	**$ 932,200**		
	Total Capital Facilites Tax =	**$ 22,947,200**		

DRAFT

RESOLUTION
30-20

RESOLUTION APPROVING THE PROPOSED CAPITAL FACILITIES TAX PROJECT LIST FOR THE CITY OF SHERIDAN, WY (CITY) FOR THE NOVEMBER 3, 2020 GENERAL ELECTION

WITNESSTH

WHEREAS, Wyo. Stat. § 39-15-204(a)(iii) authorizes a county to collect an excise tax not to exceed one percent upon retail sales of tangible personal property, admissions and services made within the county; the revenue from the tax shall be used in a specified amount for specific purposes authorized by the qualified electors (commonly known as the capital facilities tax); and

WHEREAS, the City Council approved Joint Resolution No. 29-20 to continue the Capital Facilities Tax for a specified amount and shall be submitted to the qualified electors of Sheridan County at the next General Election in November, 2020; and

WHEREAS, the City Council of the City of Sheridan has determined the most important needs and benefits to the City of Sheridan and its residents and have prioritized the use of the City's share of revenues collected from the Capital Facilities Tax; and

WHEREAS, the City Council of the City of Sheridan wishes that these priorities, and other necessary projects, be made a part of the adopted proceedings;

	Project Name	Capital Facilities Tax Amount	Other Funds	Total Estimated Cost
1	North Sheridan Interchange	1,400,000		
2	Street Maintenance & Preservation	700,00	13,300,000	14,000,000
3	Main Street Reconstruction	1,500,000	2,000,000	3,500,000
4	Bridge Repair	1,700,000		1,700,000
5	North Heights Waterline	1,000,000	5,205,000	6,205,000

6	East Downtown	1,500,000	2,500,000	4,000,000
7	Lewis Street Reconstruction	4,400,000	2,800,000	7,200,000
8	South Downtown Improvements	3,540,000	2,500,000	6,040,000
9	South Thurmond Street Reconstruction	1,270,000	2,000,000	3,270,000
10	Kendrick Outdoor Pool (3.3M to 5.4M)	3,055,000	2,345,000	5,400,000
11	The HUB	500,000	4,100,000	4,600,000
12	5th St and Long Dr Roundabout	600,000	900,000	1,500,000
13	Coffeen Ave Widening Pathway	400,000	1,300,000	1,700,000
14	Gould St Parking & Public Restrooms	250,000	585,000	835,000
15	Little Goose Creek Concrete Chutes	200,000		20,000,000
	Subtotal =	**$22,015,000**	**$39,535,000**	**$81,350,000**
	Contingency =	**$932,200**		
	Total Capital Facilities Tax =	**$22,947,200**		

City of Sheridan, WY (City) **Attest:**

Roger Miller, Mayor, City of Sheridan **Cecilia Good, Clerk, City of Sheridan**

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 the HUB Upward Building Expansion Construction Manager at Risk Contract
From:	Hanns Mercer, City Engineer
To:	Mayor and Council
CC:	
Date:	07/27/2020

Recommendation:

Staff recommends approval the Construction Manager at Risk Contract to AX BUILD for the Upward project at the HUB.

Discussion:

Building Addition

Increase space for the "Help at Home" program at the Hub on Smith.

- Minimize the costs associated with short term leases
- Increase efficiencies and collaboration organizationally to serve increased demand
- Provide excellence in customer service – providing needed services under one roof

Create additional space for Support Center Services

- Provide user friendly and quiet, private and comfortable space for people in need of care coordination, information and referral and crisis intervention
- Dementia Friendly and capable space

Expand Loan Closet Space and Storage

Expand and increase safety for Home Delivered Meals Volunteer Entrance

Site Improvements

Parking - Increase and reconfigure parking lot to:

- Increase safety and pedestrian access
- Provide green space to connect to Whitney Commons
- Provide more visible access from Brooks street
- Increase spaces for the Hub, Whitney Commons and downtown Sheridan, YMCA, Kendrick Park

Existing Building Upgrades

Add fire suppression system - Improve acoustics - Improve HVAC System in the lobby

Estimated Costs

The total budget estimate for all the identified work is: $4,578,869.
Building Addition = $2,529,653
Site work = $1,849,465
Existing Building Upgrades:$199,751
(Land gift of approximately $500,000 not included in the above figure)

See attached Master Plan for renditions

Background:

- City of Sheridan owns the building and site assets
- City must be a party to the contract
- CMR (Construction Manager at Risk) Contract has been drafted and reviewed
- Request for Qualification was advertised
- Received a total of 5 proposals with 3 shortlisted
- Interviews were held on July 8th
- Selection committee made a decision on July 15th
- HUB Board of Directors approved the selection on July 21
- Staff recommends approval of CMR Contract with Axe Build as the CMR

Attachments

HUB Master Plan

Hub Council Presentation

CMR Contract for HUB

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the hub...on Smith

Upward



CONCEPT DESIGN - VIEW OF ENTRY FROM SMITH STREET

(DRAFT)

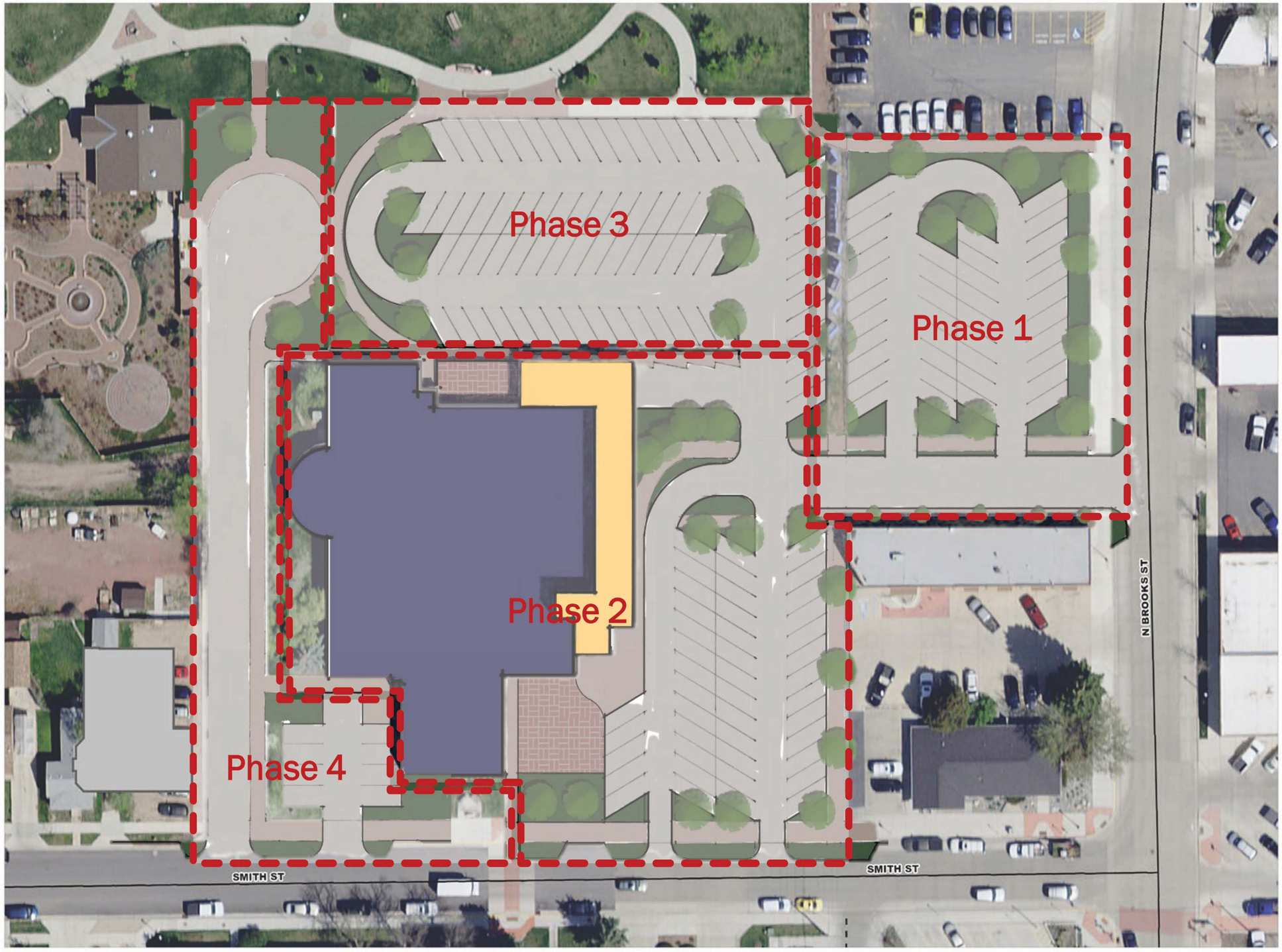
QC10 ARCHITECTS LLC

DECEMBER 12, 2019

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the hub ...on Smith

Upward



QC 10 ARCHITECTS LLC

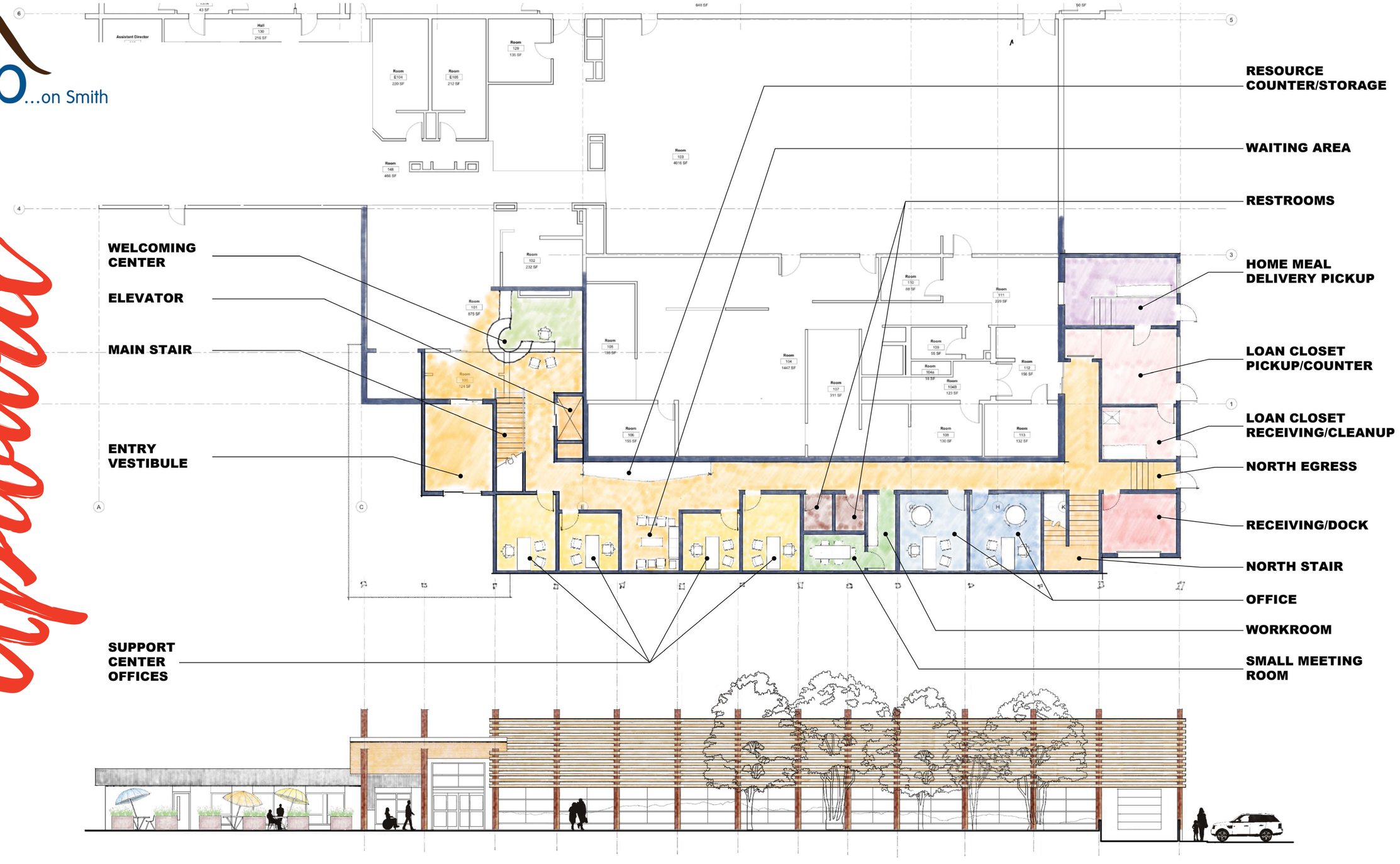
CONCEPT DESIGN - POTENTIAL PROJECT PHASES

(DRAFT)

DECEMBER 12, 2019

the hub ...on Smith

Upward



QC 10 ARCHITECTS LLC

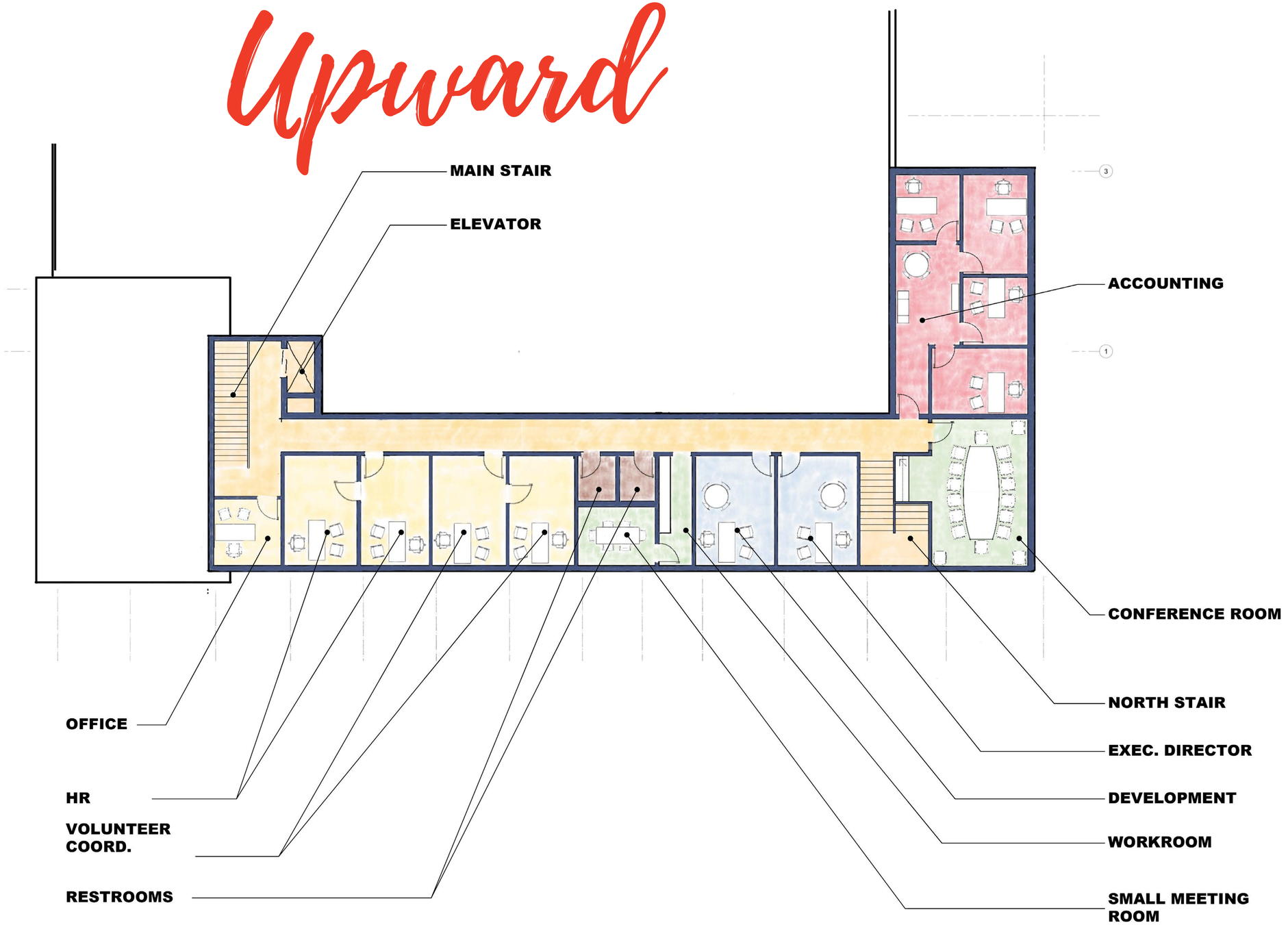
CONCEPT DESIGN - 1ST FLOOR PLAN & EAST ELEVATION

(DRAFT)

DECEMBER 12, 2019

the hub ...on Smith

Upward



QC 10 ARCHITECTS LLC

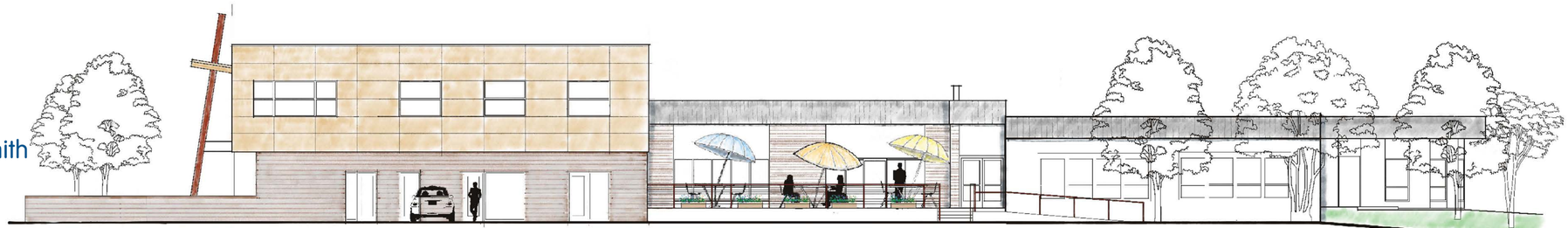
CONCEPT DESIGN - 2ND FLOOR PLAN

(DRAFT)

DECEMBER 12, 2019

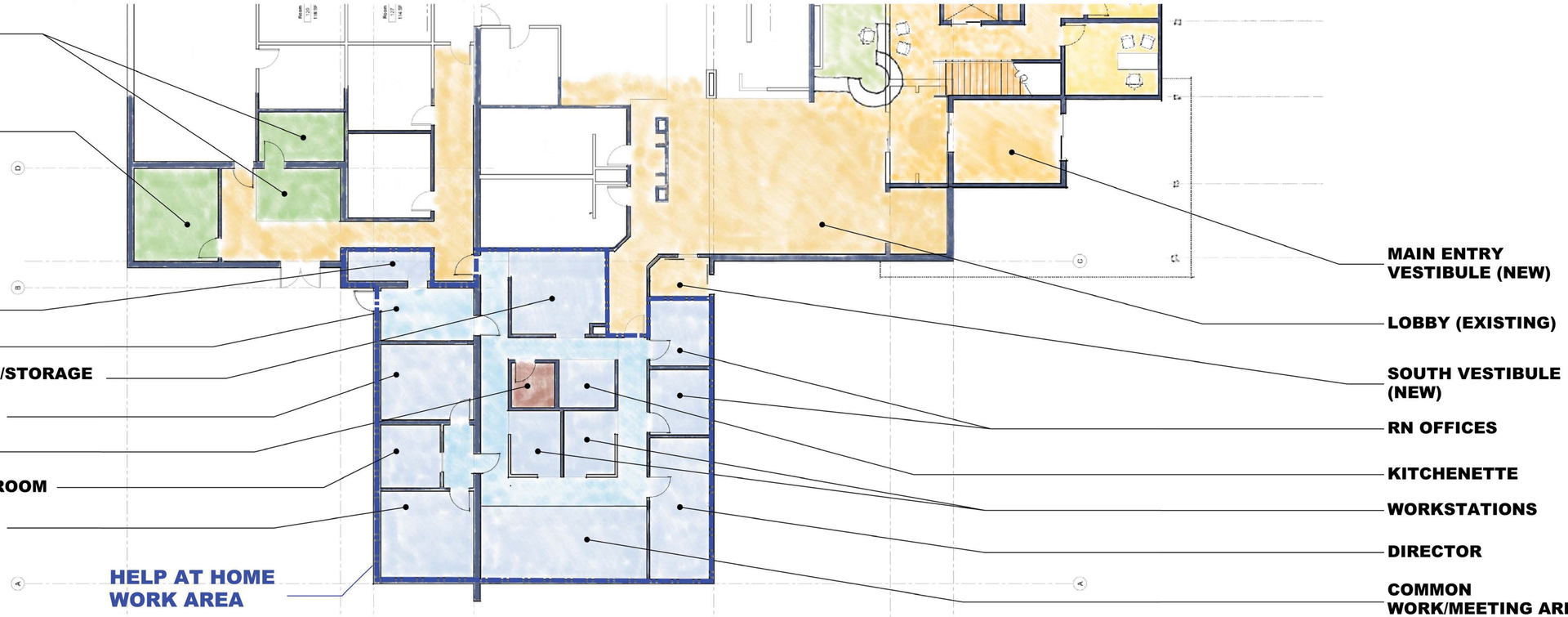
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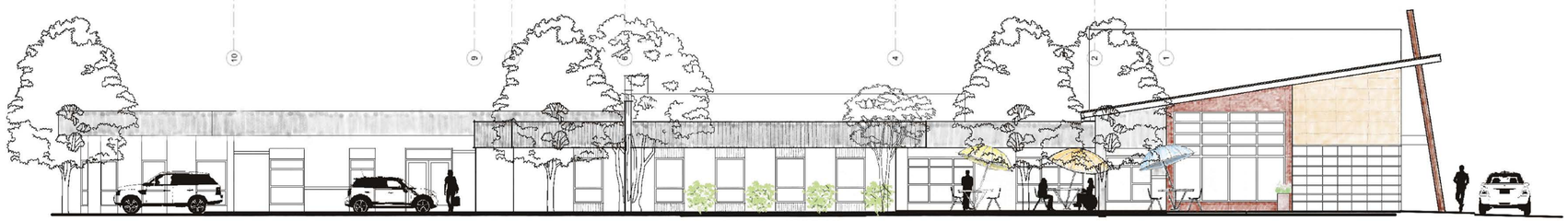
the hub ...on Smith



NORTH ELEVATION (VIEW FROM WHITNEY COMMONS)

Upward





SOUTH ELEVATION (VIEW FROM SMITH STREET)

QC 10 ARCHITECTS LLC

CONCEPT DESIGN - NORTH ELEVATION, 1ST FLOOR AT HELP AT HOME, SOUTH ELEVATION

(DRAFT)

DECEMBER 12, 2019

N

Upward

Why is a master plan needed?

- Demand for Help at Home continues to grow as our services allow seniors to live independently for longer
- Final phase of 2014 renovations called for Help at Home program to be relocated outside the existing Hub facility due to lack of space
- While considering options for the renovation and relocation, The Hub was gifted nearly 1/2 acre in additional land adjacent to the existing Hub facility
- Gift presented the opportunity to evaluate ways in which the gifted property and the existing Hub facilities could be reconfigured to better deliver integrated services to our growing senior population

What happens next?

1. During the month of March, we will host a series of listening sessions at the Hub and Heritage Towers to:
   - Share our ideas with the community
   - Test our assumptions
   - Listen to input from Hub customers and the broader community
2. After the listening sessions, we will incorporate input and finalize the master plan and projected costs
3. We will explore funding options for each of the master plan phases
4. We will finalize building plans and schedule for construction
5. We will carefully plan construction to minimize impacts to Hub users

Proposed Site Improvements

- Remove structures on Brooks Street to create main access to The Hub from Brooks
- Use gifted property to create additional parking for The Hub
- Add pedestrian paths to facilitate traffic to and from The Hub and parking, Whitney Commons, Main Street, and Smith Street
- Reconfigure north parking lot to diagonal parking and eliminate “race track” around building
- Install landscaping throughout the site to create cohesive look and feel and connect The Hub with Whitney Commons
- Develop patio on SE corner near entrance to The Hub to create a gathering space
- Create outdoor dining on north side of dining room facing Whitney Commons
- Make building facade attractive and visible to Brooks Street

What are we missing?

Proposed New Space

- Add approximately 5,000 square feet of space in a 2-story addition to the east side of the existing facility
- Locate new Support Center in the lower level of the addition
- Integrate Dementia Care into Support Center
- Move Administration from current location to upper story of addition
- Move Help at Home into south offices in the existing facility where Admin offices currently located
- Develop additional space at northeast corner of the Hub to incorporate food delivery, Home-Delivered Meals volunteer pickup, and a drop-off room for the Loan Closet

What are we missing?

Proposed Changes to Existing Space

- Address acoustic issues in dining room that make it difficult to hear
- Modify main reception counter to comply with ADA
- Address temperature control and heating in the lobby area
- Review use of “tech center” and consider ways to better use the space - consider moving public computers here
- Explore options for relocating items stored in the Community Room to minimize disturbance during scheduled activities in this room

What are we missing?

Upward - Building Expansion and Site Improvement Project

April 20, 2020

I. Background

History

Incorporated in 1973, offices in City Hall
Purpose – Help people live at home throughout their life time and prevent institutionalization
City purchased property at 211 Smith Street in 1980
Expansion projects have occurred about every 10 years due to growing needs

2015 Project - "Celebrating Generations and Building Community"

Raised just over $10M to add and renovate and expand space across the organization

Wyoming Business Council	$1,500,000
City of Sheridan	$125,000
Federal Grants -WYDOT	$600,000
Community Foundations	$5,220,000
Private Donors	$2,555,000

April of 2019 – Ready to begin last piece of the project – construction of Help at Home Building ceased when organization received gift of ½ acre on Brooks Street from Sheridan College

Current Status

Master Plan – June - November 2019
"Upward" Public Information Campaign – March 2020
Hired Design Team – April 2020

II. Objectives

Building Addition

Increase space for the "Help at Home" program at the Hub on Smith.
- Minimize the costs associated with short term leases
- Increase efficiencies and collaboration organizationally to serve increased demand
- Provide excellence in customer service – providing needed services under one roof

Create additional space for Support Center Services
- Provide user friendly and quiet, private and comfortable space for people in need of care coordination, information and referral and crisis intervention
- Dementia Friendly and capable space

Expand Loan Closet Space and Storage

Expand and increase safety for Home Delivered Meals Volunteer Entrance

Site Improvements

Parking - Increase and reconfigure parking lot to:

Increase safety and pedestrian access
Provide green space to connect to Whitney Commons
Provide more visible access from Brooks street
Increase spaces for the Hub, Whitney Commons and downtown Sheridan, YMCA, Kendrick Park

Existing Building Upgrades

Add fire suppression system - Improve acoustics - Improve HVAC System in the lobby

III. Value to the Community

- Hub provides essential services to the older people of our community and their families
- Saves millions of dollars in long term care costs to individuals, families and the State of Wyoming
- This investment will increase the organization's sustainability and efficiency for years to come
- Important amenity for community and the community's economic development
- Makes Sheridan a community people want to live in for the long term

IV. Estimated Costs

The total budget estimate for all the identified work is: $4,578,869.

Building Addition: $2,529,653
Sitework: $1,849,465
Existing Building Upgrades: $199,751
(Land gift of approximately $500,000 not included in the above figure)

V. Plan to Raise Funds

Funds for Help at Home Building "in hand"	$1,200,000	26%
Capital Facilities Tax	$1,000,000	22%
Wyoming Business Council	$ 500,000	11%
Community Foundations	$1,500,000	32%
Private Donors	$ 375,000	8%

VI. Questions and Answers

CONSTRUCTION MANAGER AT RISK

AGREEMENT

BETWEEN

SENIOR CITIZENS COUNCIL, D/B/A THE HUB ON SMITH,

AND

Construction Manager at Risk

WITH

THE CITY OF SHERIDAN, WYOMING,

AS A THIRD PARTY BENEFICIARY

FOR

THE PRE – CONSTRUCTION AND CONSTRUCTION PHASE SERVICES

FOR

THE HUB ON SMITH EXPANSION AND SITE IMPROVEMENT PROJECT

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This Agreement is made by and between the Senior Citizens Council, d/b/a The Hub on Smith, 211 Smith Street, Sheridan, Wyoming 82801, hereinafter referred to as “The HUB”, and **Enter Construction Manager at Risk Name**, hereinafter referred to as "CMAR", with the City of Sheridan, Wyoming, PO Box 848, Sheridan, 82801, hereinafter referred to as “CITY”, as a third party beneficiary of the Agreement.

The HUB, the CMAR, and the CITY as a third party beneficiary thereof, in consideration of the mutual covenants herein set forth, agree as follows:

INTRODUCTORY PROVISIONS

WITNESSETH, that the HUB, CMAR and CITY, for the consideration hereinafter stated agree as follows:

General Terms:

A. The “Owner”. The “Owner” as referred to in this Agreement is the HUB, as the primary contracting party, and the CITY, as the third party beneficiary thereof. Where approval of the CITY is required by Wyoming law for any responsibilities assigned to the “Owner” by the contract documents, the approval of the CITY shall be required and the decision of the CITY shall control. In addition, any increase to the GMP shall require approval of the City. All other responsibilities assigned to the “Owner” by the contract documents, shall only require approval of the HUB and the decision of the HUB shall control as to all of those matters. Except as otherwise provided in this paragraph, to facilitate the relationship between the HUB and the CITY, all references to “Owner” in this Agreement shall be read to include the HUB and the CITY in their respective capacities in the exercise of the powers and responsibilities granted to the HUB in cooperation with and upon the approval of the CITY. References to the HUB herein shall include its Board of Directors and Executive Director and references to the CITY herein shall include the Governing Body of the City of Sheridan as well as all City of Sheridan planning, design and construction staff and administration.

B. The “CMAR”. The “CMAR” referred to in this Agreement is **Enter CMAR Name, Enter CMAR Address.**

C. The “Project Architect”. The “Project Architect” referred to in this Agreement is Thane Magelky, AIA, Principal and the firm of QC10 Architects, LLC, whose address is 108 S. Thurmond Street, Sheridan, Wyoming 82801.

SECTION 1. LEGAL PROCESS: This Agreement is entered into pursuant to the provisions of Wyo. Stat. §16-6-701.

SECTION 2. SCOPE OF THE PROJECT: The CMAR shall furnish services in connection with the scope of the Project described generally as **The HUB on Smith Expansion and Site Improvement Project**, the final scope of the project(s) and budget therefor to be determined by the CITY in consultation with the HUB, Project Architect and CMAR. The scope of the Project is more particularly described as follows:

Pre-construction services and construction management at risk services for the HUB for **The HUB on Smith Expansion and Site Improvement Project** as more particularly described in **Exhibit A**, Project Budget and Summary (hereinafter collectively referred to as the “Projects” and individually as “individual Project” or “Project”). The total estimated construction budget for all of the Project(s) is:

HUB Funded GMP

Description	Amount
Exhibit B - CMAR Pre-Construction Service Fee	$ **Numeric Dollar Amount**
Exhibit C – CMAR Construction Service Fee	$ **Numeric Dollar Amount**
CMAR Maximum Allowable General Conditions	$ **Numeric Dollar Amount**
Subcontracts, Suppliers and self-performed work	$ **Numeric Dollar Amount**
Sub-Total Cost of the Project (per 1.4.3)	$ **Numeric Dollar Amount**
Construction contingency (per 1.4.7)	$ **Numeric Dollar Amount**
HUB Portion – Maximum Allowable GMP	**$ Numeric Dollar Amount**

State Funded GMP

Description	Amount
Exhibit B - CMAR Pre-construction service Fee	$ **Numeric Dollar Amount**
Exhibit C – CMAR Construction Service Fee	$ **Numeric Dollar Amount**
CMAR Maximum Allowable General Conditions	$ **Numeric Dollar Amount**
Subcontracts, Suppliers and self-performed work	$ **Numeric Dollar Amount**
Sub-Total Cost of the Project (per 1.4.3)	$ **Numeric Dollar Amount**
Construction contingency (per 1.4.7)	$ **Numeric Dollar Amount**
State Portion – Maximum Allowable GMP	**$ Numeric Dollar Amount**

SECTION 3. CONTRACT DOCUMENTS: The HUB, CITY, and the CMAR agree that the Contract Documents for the Project shall consist of this Agreement and the following documents incorporated into and made a part of this Agreement, and are as fully a part of the Agreement as if attached to this Agreement or repeated herein, to-wit:

(a) Exhibit A - Project Budget and Summary.

(b) Exhibit B - Pre-Construction Service Fee.

(c) Exhibit C - Construction Management Service Fee.

(d) Exhibit D – Schedule of Values.

(e) Exhibit E – Project Schedule

(f) Exhibit F – Approved General Conditions.

(g) Certificate of Insurance.

(h) Notice to Proceed.

(i) CMAR Guaranteed Maximum Price (GMP) Submission and Agreement, including the estimated general conditions costs (e.g. reimbursable expenses) (to be added by addendum to this Agreement upon acceptance and approval by the CMAR and Owner).

(j) GMP Guarantee Bond Agreement to be attached hereto as an Amendment at the time of the agreement on the GMP.

(k) CMAR Final Price Statement (to be added by addendum to this Agreement upon acceptance and approval by the CMAR and Owner).

(l) Any amendments or modifications of this Agreement made after execution of this Agreement.

(m) The Project Drawings and Specifications and related accounting and construction documents.

(n) The CMAR's proposal and interview presentation materials; provided, that in the event any provision of such proposal is in conflict with any provision of the other Contract Documents listed in this section, the provision in such other Contract Document shall control.

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

SECTION 4. BINDING EFFECT: This Agreement, including the Contract Documents incorporated herein, shall be binding upon and inure to the benefit of the Owner and the CMAR and their respective successors and assigns. The effective date of the Agreement is the date on which the Agreement is signed by the last party.

The Owner and CMAR agree as follows:

ARTICLE 1 - GENERAL PROVISIONS

1.1 Relationship Of Parties: The CMAR accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the CMAR's reasonable skill and judgment and to cooperate with the Project Architect in furthering the interests of the Owner in the management by the CMAR of the Project defined in the Contract Documents in accordance with the Owner's requirements and construction cost limitations as approved by the Owner and set forth in the Contract Documents.

1.1.1 The CMAR shall furnish pre-construction consultation services and construction administration and

management services and shall use the CMAR's reasonable skill and judgment to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner and CMAR shall endeavor to promote harmony and cooperation among the Owner, Project Architect, CMAR, CMAR's subcontractor and other persons or entities employed by the Owner for the Project.

1.1.2 The Owner, by and through identified authorized representatives, shall have the power to enter into or amend a contract, to approve changes in the scope of the Project or the Work of the Project, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price or to agree to an extension to the date of Substantial or Final Completion. The Owner shall designate in writing the person authorized to sign documents on behalf of the Owner at the time of the execution of this Agreement.

1.2 Term Of Agreement: The term of this contract shall be for a period beginning with the date of execution of the Agreement, and continuing through the occurrence of one of the following events, whichever occurs first in time (1) the approval by the CITY of the funding for the Project, and the completion of all services provided by the CMAR for the Project and the issuance of a Certificate of Final completion, subject to contractual services under this Agreement for warranty work; or, (2) the termination of this Agreement according to its terms. Any additional services to be provided by the CMAR shall be determined by a separate contract or addendum to this Agreement. This Agreement shall not create a continuing contract for construction management services for future building projects beyond the terms of this paragraph.

1.3 Subcontracts And General Conditions: The subcontracts and general conditions of contract for all subcontractors shall be prepared by the CMAR, subject to the right of review and approval by the Owner.

1.4 Definitions

1.4.1 The Project: For purposes of this Agreement, "the Project" shall mean the project described in the Project Budget and Summary, Exhibit A. The Project shall have a single construction budget, plans and specifications, schedule, and Guaranteed Maximum Price (GMP).

1.4.1.1 Construction Budget: The Construction Budget shall include the anticipated Cost of the Project of the Project established by the Owner as identified in Project Budget and Summary - Exhibit A, all Construction Management fees, and reimbursable expenses.

1.4.2 The Work And Divisions Of The Work: For purposes of this Agreement, "the Work" shall mean the Subcontracts or Multiple Subcontracts for the construction of the Project. The CMAR is responsible for the construction, administration and/or supervision of the Work under the Construction Documents. The Work shall be organized, designed, and bid on the basis of the Construction Specifications Institute (CSI) Codes.

1.4.3 Cost Of The Project: For purposes of this Agreement, "Cost of the Project" shall mean the total cost of all Subcontracts and Suppliers and self-performed work by the CMAR for the construction of the Project and site improvements described in the Contract Documents and Construction Documents, the CMAR Construction Services Fee (CS Fee) as described in Article 4, and general conditions costs as defined in Article 5 to this Agreement. "Cost of the Project" shall not include the cost of any insurance and surety contracts purchased or controlled by the Owner, or any other contracts or agreements that are not part of or described by the Construction Documents, or Architect/Engineering or other professional fees and expenses.

1.4.4 CMAR'S Compensation For Basic Services: For purposes of this Agreement, "CMAR's Compensation for Basic Services" shall mean the compensation for services rendered owed to the CMAR that is to be paid pursuant to the provisions of Article 4.

1.4.5 General Conditions Costs: For purposes of this Agreement, "General Conditions Costs" shall mean those expenses incurred by the CMAR that are to be reimbursed pursuant to the provisions of Article 5.

1.4.6 Fast Track Project: For purposes of the Agreement, the term "Fast Track Project" shall mean an Owner elected design and construction schedule that is accelerated to meet the Owner's facility needs which requires the bidding of the Work in multiple phases allowing the CMAR to begin construction prior to the completion of Construction Documents.

1.4.7 Construction Contingency: For purposes of this agreement, the term "Construction Contingency" as referred to and identified in the budget, cost estimates for the Project, including any form of guaranteed maximum price, shall mean a dollar amount not designated for any division of the Work which is available to be applied to the budget for a specified division or divisions of the Work to pay the cost of changes in the Work or an increase in the cost of labor and/or materials; provided that all funds identified as contingency funds are available for the project on an as needed basis and shall at all times be the sole property of the Owner. The Guaranteed Maximum Price (GMP) will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Project and is established for the CMAR's use as may be required for costs incurred in the Work from unforeseeable causes, or details which should have been anticipated by the CMAR at the time of the Owner's approval of the GMP and FP. Such unforeseeable causes or unanticipated details are limited to refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Construction Documents. The CMAR, with Owner's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Project without the necessity of a Change Order, without constituting a change in the Scope of the Work, and without resulting in any change in the GMP. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the CMAR at the CMAR's sole risk. All savings in the Construction Contingency will accrue and be available for use, only as detailed above, by the CMAR until the CMAR's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner.

1.4.8 Guaranteed Maximum Price: For purposes of this Agreement the term Guaranteed Maximum Price (GMP) shall mean the total of the sum of the Cost of the Project, General Conditions Costs and the CMAR's Compensation for Basic Services for the Project (or in the event of multiple projects under this Agreement, each separate project). For purposes of this Agreement, a GMP shall be provided in two stages, the Guaranteed Maximum Price (GMP) and the Final Price (FP); those terms are defined as follows:

1.4.8.1 Cost Estimate: The Cost Estimate shall include the total of the sum of the Cost of the Project, General Conditions Costs and the CMAR's Compensation for Basic Services for the Project. The Cost Estimate shall be provided by the CMAR to the Owner upon the completion by the Project Architect of the following levels of design for the Project:

(a) 10% - Schematic Design phase with up to a 10% construction contingency~~;~~

(b) 35% - Design Development phase with up to a 7.5% construction contingency~~;~~

(c) 60% - Construction documents phase to include completion of infrastructure construction documents, including landscaping, footings and foundations, masonry, metals, and mechanical/electrical divisions with up to a 5% construction contingency; and,

(d) 95% - Construction documents phase to include all divisions of the Work with up to a 2.5% contingency on new construction or up to a 5% contingency on remodel.

1.4.8.2 GMP: The GMP shall include the total of the sum of the Cost of the Project, General Conditions Costs and the CMAR's Compensation for Basic Services for the Project. The CMAR shall submit the GMP proposal for the Project within thirty (30) days of receipt of a request for a GMP by the Owner provided that such request shall not be made prior to the Cost Estimate submitted by the CMAR in paragraphs 1.4.8.1 (c).

1.4.8.2.1 The GMP shall include assumptions, allocations and clarifications with regard to those portions of the Work for which bids have not been let and awarded, which amount shall include a Construction Contingency of not more than that provided at paragraph 1.4.8.1 above of the Cost of the Project. The GMP shall be negotiated between the CMAR and Owner. Upon agreement as to the amount of the GMP, the agreed upon GMP proposal shall be set forth in the Owner and CMAR Guaranteed Maximum Price (GMP) Agreement and submitted to the Owner for approval. The GMP shall be subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such GMP maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price or GMP.

1.4.8.3 Final Price: For purposes of this Agreement, "Final Price" or "FP" shall mean the sum of the final Cost of the Project, General Conditions Costs, and the CMAR's Compensation for Basic Services as calculated by the Owner (hereinafter the "Final Price" or "FP"). The FP must be issued by the CMAR to the Owner within forty-five (45) days of the receipt of bids on the last bid package scheduled to be issued for the Project. The Final Price may include a construction contingency of up to TWO PERCENT (2%) on new construction and FOUR AND ONE HALF (4.5%) on remodel construction. The Final Price shall be determined by the Owner based upon the actual Cost of the Project bid. The Owner shall have the right to inspect the records of the CMAR and conduct an audit to confirm the CMAR's calculation of the Final Price.

1.4.9 Critical Path Method Schedule Exhibit E: For purposes of this Agreement, "Critical Path Method Schedule" or "CPMS" shall mean the schedule of the construction phase milestone dates for the bidding of all Subcontracts and the completion of all phases of the Work culminating in the date of the issuance of the Certificate of Substantial and Final Completion by the Project Architect for the Project which shall be attached to this Agreement as Exhibit D. The final CPMS shall be provided as part of the submission of the GMP and the GMP agreement. Such CPMS shall be subject to adjustment for delays in the receipt of construction documents from the Project Architect and by approved changes in the scope of the Work, and shall be referred to in the Contract Documents as the Critical Path Method Schedule or CPMS. The CMAR shall coordinate and integrate the CPMS for the Project with the services and activities of the Project Architect as set forth in the Project Architect's Efforts Schedule for design services. As design proceeds through Schematic Design, Design Development, Construction Documents, and construction

phases of the Project the CPMS shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, proposed date of Substantial Completion, and proposed date of Final Completion acceptable to the Owner.

1.4.10 Project Team: For purposes of this Agreement, "Project Team" shall mean the HUB, CITY representatives, the CMAR, and the Project Architect.

1.4.11 Efforts Schedules: For purposes of this Agreement, "Efforts Schedule" shall mean the chart prepared by the CMAR for the Project and approved by the Owner which identifies the positions and specific personnel to be assigned to the Pre-Construction Phase services and Construction Phase services to be provided by the CMAR for the Project, and setting forth the anticipated number of hours per month that the CMAR's project specific personnel assigned to the Project (e.g. the Project Executive, Project Manager and Site Superintendent) will be providing services for the Project. The Construction phase Efforts Schedules shall specifically provide for personnel hours dedicated to the Project Completion and Warranty Work services to be provided by the CMAR, which shall be separately identified and set off as a dedicated portion of the CMAR's Maximum Personnel Expense (MPE) which shall be available to compensate the CMAR for such services. The Efforts Schedules shall also provide for the hourly rates for each of the personnel identified and assigned to the Project by the CMAR. Prior to commencement of the Pre-Construction Phase services and Construction Phase services for the Project, the CMAR will meet with the Owner and review the Efforts Schedule for that phase, and negotiate and agree upon the positions and personnel to be assigned to that phase of the Project, and the hours and hourly rate for each such position to be included in the Efforts Schedule. The Owner and CMAR shall then sign the Efforts Schedule for Pre-Construction Phase services and Construction Phase services which shall be attached to this Agreement as Exhibit B and C respectively. The CMAR shall provide the identified personnel for a minimum of the hours set forth on the Efforts Schedule for the compensation provided in the CMAR'S Pre-Construction Service Fee (PCS Fee) and Construction Service Fee (CS Fee) provided at Article 4 of this Agreement.

1.5 Date Of Commencement And Substantial Completion

1.5.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated.

1.5.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Contract Documents.

1.5.3 The CMAR shall achieve Substantial Completion of the Work and Final Completion of the Work for each Project as follows:

1.5.3.1 **Substantial Completion – Enter date and,**

1.5.3.2 **Final Completion – Enter date.**

1.6 Agreement And Payment Contingent Upon Availability Of Appropriated Funds Under The Budget And Authority Of The CITY:

1.6.1 Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner under this Agreement, including the obligation of the HUB to pay the contract sum or any part thereof shall be contingent upon the availability of funds specifically approved by the CITY and its governing entities to fund the Project and any formal action of the HUB for the purpose of payment of the Contract Sum or any part thereof. In the event the funding for the Project becomes unavailable for any reason, the Owner may terminate this agreement without cause under the provisions of Article 9 hereof.

1.6.2 It is agreed that the obligations of the CMAR herein are expressly contingent upon reasonable proof to the CMAR that the Owner has funds specifically approved to fund the Project.

1.7 Compliance With Statutes: As a material term of this Agreement, the CMAR shall at all times comply with all applicable federal and state statutes and any rules established by the CITY, including, but not limited to:

1.7.1 Wyo. Stat. § 16-6-707(c), requiring the CMAR to comply with the residency and preference requirements imposed under Wyo. Stat. §§ 16-6-101 through 16-6-107 in the procurement of subcontractors and materials.

1.7.2 Wyo. Stat. §§ 16-6-201 through 16-6-206 requiring that Wyoming labor be used except other laborers may be used when Wyoming laborers are not available for the employment from within the state or are not qualified to perform the work involved. The CMAR specifically acknowledges the requirements of this section. A person required to employ Wyoming laborers may employ other than Wyoming laborers if: (i) That person informs the nearest state workforce center of his employment needs at least eleven (11) days before work is commenced; and (ii) The state workforce center certifies that the person's need for laborers cannot be filled from those Wyoming laborers listed with the Wyoming department of workforce services.

1.7.3 Wyo. Stat. § 16-6-110 Limitation on work hours; overtime; exceptions

1.7.4 Wyo. Stat. § 16-6-708 requiring the CMAR to comply with all reporting and administrative requirements including requirements relating to retainage, payment and performance bonding and default contracts.

1.7.5 Wyo. Stat. §§ 16-6-115 through 16-6-117 regarding final settlement and final payments to contractors and subcontractors.

1.8 Equal Employment Opportunity And Verification Of Immigration Status: The CMAR shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs; and specifically shall comply with all requirements of the federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Wyoming, if required by state or federal law or regulation.

ARTICLE 2 - CONSTRUCTION MANAGER AT RISK'S RESPONSIBILITIES

The CMAR shall perform the services described in this article. The services to be provided under this

Article 2 constitute the Construction Management Services to be provided by the CMAR, which are to be divided between Pre-Construction Phase services (paragraphs 2.1, 2.2, 2.3 and 2.4), and Construction Phase services (paragraphs 2.5, 2.6 and 2.7). **If the Owner and CMAR agree after consultation with the Project Architect, the Construction Phase may commence before the Pre-construction Phase is completed, in which case both phases shall proceed concurrently**.

2.1. General Services - Schematic Design, Design Development And Construction Documents Consultation And Evaluation: The CMAR shall participate throughout the design process and provide an evaluation of the Owner's program and Construction Budget requirements, each in terms of the other, as they relate to the development of the schematic design, design development and construction documents phases of the Project with the Project Architect and Owner.

2.1.1 Consultation: The CMAR shall jointly schedule and attend regular meetings with the Owner and Project Architect, and other Owner designated committees or groups to review and discuss the design at each phase of pre-construction services, and shall consult with the Owner and Project Architect regarding site use and improvements, and the selection of materials, building systems and equipment.

2.1.2 Constructability Recommendations: The CMAR shall participate in the program development, schematic design, design development and construction documents process review sessions with the Owner and Project Architect, and shall provide written recommendations regarding the constructability of proposed building design and systems throughout the Pre-Construction Phase of the Project including:

- Construction feasibility, including but not limited to, analysis of building systems identified in the Uniformat code and building materials with regard to durability and life cycle cost analysis, availability, cost and constructability;
- actions designed to minimize adverse effects of labor or material shortages;
- time requirements for procurement, installation and construction completion; and,
- factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies, along with assisting in and performing other Pre-Construction Phase duties and responsibilities as assigned by the Owner from time to time.

2.1.3 Cost Estimates: Based on the mutually agreed-upon program, schedule and construction budget requirements, the CMAR, in consultation with the Project Architect, shall prepare, for approval by the Owner cost estimates as phases identified at paragraph 1.4.8.1 of the projected cost of construction within the Construction Budget with the construction contingency limitations established by the CITY for such phase of the design process.

2.1.4 Testing And Inspections Procurement Assistance: Upon the completion of the construction documents, the Architect shall assist the Owner in preparation of the testing and inspection procurement documents provided by the Owner. This shall include but not be limited to identifying all inspections that are required per the contract documents, identifying each specification section relating to the test required and identifying the estimated number of tests. The CMAR shall provide to the owner a construction schedule illustrating durations anticipated to assist the construction materials testing and inspection service companies with bidding and assist the Owner as applicable.

2.1.5 Notice To Proceed: The initiation of all pre-construction services for the Project by the CMAR is subject to approval of the CITY. No portion of the schematic design, design development and construction documents phases of the CMAR's service set forth herein shall proceed until the CMAR receives a written Notice to Proceed from the Owner for each phase of the design process. Upon receipt of a written Notice to Proceed with each portion of the design phase services from the Owner, the CMAR shall proceed with the provision of the design services for such phase as described herein.

2.1.6 Phased "Fast Track" Construction: The CMAR shall make recommendations to the Owner and Project Architect regarding the phased issuance of the construction documents, including drawings and specifications, to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities, and identify and recommend the most cost effective work categories, and provide the methods and means to clearly identify and define cost effective work categories and responsibilities included in the specifications and drawings.

2.2 Construction Documents Phase:

2.2.1 Review Of Construction Documents: The CMAR shall complete a quality/coordination review of the completed construction documents, including all specification and plan drawings submitted by the Project Architect, and prepare detailed construction cost estimates and value engineering assessments preliminary to the GMP addressing constructability, materials and construction techniques, sequencing of construction, separation of contracts, etc., and recommend action, if required, to maintain the Construction Budget. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget as established by the Project Architect's or CMAR's estimate of the Cost of the Project, the CMAR shall make appropriate recommendations to the Owner and Project Architect.

2.2.2 Coordination Of Subcontractors: The CMAR shall review the Construction Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the CMAR shall promptly notify the Owner in writing.

2.2.2.1 The CMAR shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents phase by the CMAR through the exercise of reasonable diligence, and the Owner was not informed of such conflicts. This provision shall apply only with respect to conflict appearing in the Drawings and Specifications provided for the CMAR's review prior to proposal of the GMP. This provision is not intended to relieve the Architect of its responsibilities with regard to design or quality control, and relates only to the duty of the CMAR to use reasonable diligence to advise the Owner of conflicts in the Construction Documents during their development and prior to the submission of the GMP.

2.2.3 Long-Lead Time Items: The CMAR shall recommend to the Owner and Project Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the CPMS for the Project schedule. Long-lead items shall be procured through the competitive bid process. Approval of payment applications for such stored materials stored off-site shall be conditioned upon

submission by the CMAR of bills of sale and applicable insurance or such other procedures satisfactory to the Owner to establish the Owner's title to such materials, or otherwise to protect the Owner's interest, including transportation to the Worksite.

2.3 General Provisions Regarding Pre-Construction Services

2.3.1 Extent Of Responsibility: The recommendations and advice of the CMAR concerning design alternatives and potential cost savings shall be subject to the review and approval of the Project Architect, the Owner and any professional consultants retained by the Project Team. It is not the CMAR's responsibility to ascertain that the drawings and specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations; provided, however, if the CMAR recognizes or reasonably should recognize that portions of the drawings and specifications are at variance with applicable laws, statutes, ordinances, building codes or regulations or in violation thereof, the CMAR shall promptly notify the Project Architect and Owner in writing of same.

2.4 Submission Of Guaranteed Maximum Price (GMP) Proposal:

2.4.1 Time Of Submission Of GMP: The CMAR shall submit its GMP proposal for the Project as provided in the definition section of the Agreement.

2.4.2 Components Of Guaranteed Maximum Price: The CMAR shall include with the GMP proposal a written statement of its basis on the forms provided by the CITY which shall include:

2.4.2.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the GMP proposal.

2.4.2.2 A Construction Contingency for additional cost of **no more than** that provided at paragraph 1.4.8.1 above.

2.4.2.3 A list of allowances and a statement of their basis.

2.4.2.4 A list of the clarifications and assumptions made by the CMAR in the preparation of the GMP proposal to supplement the information contained in the Drawings and Specifications.

2.4.2.5 The proposed GMP, including a statement of the estimated cost organized by Uniformat work codes as defined by the CITY, allowances, Construction Contingency, and other items that comprise the GMP and the general conditions items to be reimbursed for the Project and the proposed General Conditions Costs Allocation dollar amount which shall be available to the CMAR for payment of all General Conditions Costs for the Project. The submitted GMP shall include all bids that were provided to the CMAR in order of lowest to highest bid per bid package. The GMP shall also include a list of subcontractors who will be awarded each component of the Work comprising the value of the GMP, identifying which subcontractors are a Wyoming resident contractor or subcontractor, or an non-resident contractor and further illustrating that no less than 70% of the Work comprising the value of the GMP will be awarded to Wyoming Resident Subcontractors, as defined in Wyoming Statute.

2.4.2.6 The Completion Time for Work including:

2.4.2.6.1 Date of Substantial Completion as set forth on the CPMS for the Project upon which the proposed GMP is based, said CPMS to include a schedule of the Construction Documents' issuance dates upon which the date of Substantial Completion is based; and,

2.4.2.6.2 The Date of Final Completion as set forth on the CPMS for the Project upon which the proposed GMP is based, which date will be acceptable to the Owner.

2.4.2.7 The GMP proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the CMAR on other than a maximum cost basis.

2.4.3 Review Of Proposed GMP: The CMAR shall meet with the Owner and Project Architect to review the GMP proposal and the written statement of its basis. In the event that the Owner or Project Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CMAR who shall make appropriate adjustments to the GMP proposal, its basis or both.

2.4.4 Owner Negotiation And Acceptance Or Rejection Of GMP: The Owner must accept or reject the GMP proposal for an individual Project by action of the Owner no more than thirty (30) days after the receipt of the GMP proposal by the Owner.

2.4.4.1 The GMP proposal for an individual Project shall not be effective without written acceptance by the Owner. If the Owner rejects the CMAR's GMP proposal for the Project, the Owner, Project Architect and CMAR shall again review the GMP and the written statement of its basis, and seek to negotiate a GMP the Owner will accept. As part of such negotiations, the CMAR shall make appropriate recommendations to the Owner and Project Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents to bring the Project within the Construction Budget that shall not delete necessary components of the Project or materially reduce the educational program requirements of the Owner.

2.4.4.2 If agreement is reached on the GMP between the Owner and the CMAR, the CMAR shall accept the GMP by executing the Owner and CMAR GMP Agreement form provided by CITY, and upon such execution the Owner and CMAR GMP Agreement shall be presented to the Owner for approval; such GMP shall not be effective until action approving the GMP has been taken by the Owner and spread on the record of such governmental bodies. If agreement on a GMP is not reached within thirty (30) days of the date of the Owner's written rejection of the GMP proposed by the CMAR, this Agreement shall be terminated pursuant to the provisions of paragraph 9.1.

2.4.5 Pre-GMP General Conditions Costs: Prior to the Owner's acceptance of the CMAR's GMP proposal for an individual Project and issuance of a Notice to Proceed, the CMAR shall not incur any cost to be reimbursed as part of the GMP, except as the Owner may specifically authorize in writing.

2.4.6 Amendment Of Project Scope Document To Reflect GMP: Upon action by the Owner of the GMP approving the GMP Agreement, the GMP and its basis shall be set forth as an amendment at the time of the agreement on the GMP, "Owner and CMAR Guaranteed Maximum Price (GMP) Agreement," incorporating therein the GMP Proposal submitted by the CMAR, with any amendments thereto during the negotiations process. The GMP shall be subject to additions and deductions only by a change in the Scope of the Work approved by the Owner as provided in the Contract Documents and the date of Substantial Completion set forth in the CPMS shall only be subject to adjustment as provided in the Contract Documents.

2.4.6.1 Projected Cost Of The Project: For purposes of calculating any adjustment of the CMAR's Post-GMP compensation for basic services, the "projected" Cost of the Project is that set forth on the "Project Budget and Summary" detailing project scope, project schedule, and project construction

budget for the Work, Exhibit A attached hereto.

2.4.6.2 Savings On GMP: Should the CMAR complete the Project for less than the GMP, the remaining funds shall be credited to the Owner as a deduction from the GMP; and the CMAR shall also return to the Owner all unused funds from any contingency account as a deduction from the GMP. The CMAR shall not participate in any savings to the Project; all savings shall be credited to the Owner, provided that savings within the CMAR fee described in Article 4 and General Conditions Costs Allocation described in Article 5 shall be the sole property of the CMAR.

2.4.6.3 GMP Exceeded: IF THE GMP IS EXCEEDED, THE CMAR SHALL BE RESPONSIBLE FOR PAYMENT FROM ITS OWN RESOURCES WITH NO CONTRIBUTION FROM THE OWNER OF THE DIFFERENCE BETWEEN THE FINAL PRICE AND THE GMP AS ADJUSTED BY CHANGE ORDERS, IF ANY.

2.4.7 Revision Of Construction Documents Per GMP: The Owner shall authorize and cause the Project Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon allowances, assumptions and clarifications contained in the Project Budget and Summary, Exhibit A, for the Project as amended upon acceptance of the GMP. Such revised Drawings and Specifications shall be furnished to the CMAR in accordance with the CPMS schedule agreed to by the Owner, Project Architect and CMAR. The CMAR shall promptly notify the Project Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon allowances, assumptions and clarifications.

2.4.8 Applicable Taxes: The GMP shall include in the Cost of the Project any applicable taxes.

2.4.9 The CMAR shall diligently prosecute and achieve Substantial Completion and Final Completion of the entire Work of the Project as provided in the Owner and CMAR Guaranteed Maximum Price (GMP) Agreement.

2.5 Construction Phase:

2.5.1 CMAR Assumption Of Primary Responsibility For The Work: The CMAR shall assume the primary responsibility for the overall administration of the construction contracts on behalf of the Owner, and shall provide a full field staff throughout construction for the purpose of managing, inspecting, scheduling, and coordinating the subcontractors; and shall monitor the progress, performance, quality and contract compliance of the subcontractors' activities.

2.5.2 Commencement Of The Work: The Construction Phase shall commence when the Owner accepts the CMAR's GMP and the CPMS proposal, and a Notice to Proceed is issued in writing by the Owner.

2.5.3 Administration:

2.5.3.1 Actual Performance Of The Work Through Multiple Subcontracts: All of the Work on the Project shall be performed under subcontracts (hereinafter referred to as "Subcontracts"), except those performed by the CMAR. The CMAR shall advertise for competitive bids for each Subcontract and award such Subcontracts according to applicable law. The Owner has established the regular manner for advertising for competitive bids for this Project which is a part of the Contract Documents for the Project. The regular manner established by the Owner for advertising for such competitive bids shall be followed by the CMAR. The CMAR shall obtain the competitive bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work. As part of the process of obtaining competitive bids for the Work, the CMAR shall perform the following responsibilities:

2.5.3.2 Prequalification Of Subcontractors: If, upon obtaining the Owner's consent, the CMAR elects to perform a prequalification process prior to the development of bid packages for any portions of the work, the CMAR shall notify the Owner of the results of any prequalification process. Prior to publically releasing the results, the CMAR shall allow the Owner an opportunity to review and comment.

2.5.3.3 CMAR Development Of Bid Packages: The CMAR shall develop bid packages and solicit Subcontractor interest in the Project with emphasis on the development of bid packages that will encourage participation by local contractors.

2.5.3.4 Advertisement For Competitive Bids: As the Owner's representative, advertise for competitive bids for all portions of the Work pursuant to the following bid process, to-wit:

2.5.3.4.1 All contracts for work related to building construction, remodeling or repair or site improvements will be bid in accordance with state statutes in the regular manner established by the Owner. All other contracts will be handled under current Owner policies and regulations.

2.5.3.4.1.1 Building construction, remodeling or repair or site improvement projects should be combined to the extent possible.

2.5.3.4.1.2 The regular manner established by the Owner for advertising for bids and Proposals for all contracts for the construction of all improvements and work listed for the Project shall be by: (a) preparing invitations for bids and proposals and proposed contract documents; (b) publishing public notice which includes the general nature of the proposed work, fixes the hour, date, time and location of the Owner offices where such bids and proposals shall close, or be received or opened, and provides the name and telephone number of a person to be contacted by anyone interested in submitting a bid and proposal to contract for such work in the Sheridan Press, a newspaper of general circulation in Sheridan County, Wyoming, and construction industry "plan rooms" including the Wyoming Plan Service, at least thirty (30) days prior to bid and proposal opening and providing other public notice; (c) establishing evaluation criteria, interview and selection procedures which may include consultations with one or more bidders according to the requirements of any federal, state, and local laws applicable; and (d) preparing, signing, executing and delivering all documents, and taking or causing to be taken all other necessary or appropriate action to complete the bidding and proposal process for each contract; and that the above shall and is hereby determined to be the regular manner established by the Owner for advertising for bids and proposals for all contracts for the Project.

2.5.3.4.1.3 The above regular manner established by the Owner relates to all forms of construction, remodeling, or repair and all contractors and subcontractors, including the various forms of "CMAR as Constructor" (CMAR) and any subcontracts thereunder.

2.5.3.4.2 In implementing the forgoing bid process, the CMAR shall be generally responsible for including, but not limited to:

2.5.3.4.2.1 Schedule For Letting Bids: Establish a schedule for letting bids for each portion of the Work pursuant to the Critical Path Method Schedule (CPMS) established for the Project.

2.5.3.4.2.2 Dates For Advertisement Of Bids: Establish dates for advertising for and opening of bids.

2.5.3.4.2.3 Location Of Bid Opening And Reading And Availability Of Bids: All bids will be opened at the Owner offices or other site designated by the Owner, and shall be read aloud in public to those present.

All submitted bids shall be available for public inspection thereafter during the normal business hours for the Owner's administrative offices.

2.5.3.4.2.4 Publication Of Bids: Arrange for publication of advertisement for bids, which publication shall fix the day and hour upon which the bids shall be returned or received, and the date, hour and location the bids will be opened, and that the bids shall be opened in the presence of the bidders, or representatives of the bidders, when the hour is reached for the bids to close.

2.5.3.4.2.5 Reproduction And Distribution Of Construction Documents: Reproduce and distribute the Plans and Specifications for the portion of the Work being let for bids to all prospective bidders.

2.5.3.4.2.5.1 The CMAR shall include the following specific notices in the information to proposers:

2.5.3.4.2.5.1.1 The successful bidder's responsibility to provide workers' compensation insurance in accordance with Wyo. Stat. § 27-14-206 and 27-14-207.

2.5.3.4.2.5.1.2 The notice to all bidders that the CMAR will comply with Wyo. Stat. § 16-6-106, the Wyoming materials preference in requests for bids and proposals which provides: "All requests for bids and proposals for materials, supplies, agricultural products, equipment, machinery and provisions for the construction, maintenance and upkeep of every state, county, municipal, community college district or school district institution shall contain the words '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."

2.5.3.4.2.5.1.3 The notice regarding trench and shoring safety required by applicable state and federal codes and regulations.

2.5.3.4.2.5.2 Nothing herein shall preclude the CMAR from including other notices in the Construction Documents required or allowed by law.

2.5.3.4.2.6 Pre-Bid Conferences: Be in attendance at and conduct pre-bid conferences as necessary with firms interested in submitting bids as Subcontractors following the CPMS for the Project.

2.5.3.4.2.7 Receipt Of Information From Bidders: Confirm with all prospective Subcontract bidders that they will provide all information requested of bidders on the Work required by the Owner in the bid documents.

2.5.3.4.2.8 Presence At Bid Openings: Be present at all bid openings.

2.5.3.4.2.9 Minimum Number Of Bids And Evaluation Of Bids: For a bid package to proceed to award there must be not less than three (3) bona fide bids submitted, unless such requirement is waived for good cause by the Owner; "good cause" shall be determined on a case-by-case basis in consideration of the receipt of competitive nature of the bids received and the progress of the Work. Should the CMAR receive less than three (3) bids for a particular bid package, the CMAR shall not open the bid packages until they have remarketed the bid package and received no less than three (3) bona fide bids. After the CMAR has received a minimum of three bids per bid package they shall in consultation with the Owner and Project Architect, evaluate each bid and bidder, and make written recommendations to the Owner regarding which bids will be accepted as the lowest responsible bid for portions of the Work being bid.

2.5.3.4.2.9.1 Low Responsible Bid: The contract shall be awarded to the low responsible bidder.

2.5.3.4.2.9.2 The CMAR shall provide to each submitting bidder upon request a summary of the bids and notice of the bid determined to be the low responsible bidder within ten (10) business days of the determination by the CMAR.

2.5.3.5 Bidding By CMAR: Should the CMAR or a construction contractor in any way affiliated with the CMAR submit a bid for a portion of the Work being let for bids, the same procedures and processes as required of all bidders shall be followed, except that any bid by the CMAR or a construction contractor in any way affiliated with the CMAR must be submitted twenty-four (24) hours before all other bids are due to be submitted, and the bid of the CMAR or a construction contractor affiliated in any way with the CMAR may only be accepted if such bid is the lowest responsible dollar amount bid.

2.5.3.6 Non-Acceptance Of Low Bid Recommended By CMAR To Owner: If the GMP has been established and a specific bidder among those whose bids are received through the competitive bidding process (1) is recommended to the Owner by the CMAR as the lowest responsible bid; (2) is qualified to perform that portion of the Work; (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the CMAR may require that a change in the Work be issued to adjust the Critical Path Method Schedule and the GMP by the difference between the bid of the person or entity recommended to the Owner by the CMAR and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the Owner.

2.5.3.7 Conformance By Material Suppliers: Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the bidding provisions herein.

2.5.3.8 Rebidding Of Work: In cooperation with the Project Architect and Owner, the CMAR shall re-bid any portion of the Work for which no satisfactory bid has been received.

2.5.3.9 Bonds: The CMAR may require bidders to submit bid bonds or other bid security, and confirmation of the bidder's ability to obtain payment and performance bonds and certificates of insurance acceptable to the CMAR and Owner as a prerequisite to bidding on portions of the Work to be performed by Subcontract.

2.6. Contracts Of Subcontractors And Payment To CMAR For Subcontracts: All Subcontractor contracts shall be between the Subcontractor as a party thereto and the CMAR; except in the event the CMAR is awarded the contract, such portion of the Work of the Project shall be treated as self-performed work by the CMAR; the CMAR compensation for such Work shall be treated only as a Cost of the Project and shall be added to this Agreement by addendum separate from the CMAR fee paid under Article 4 hereof, and based upon the amount of the bid submitted by the CMAR for such Work. Payment by the Owner of the CMAR for the cost of each subcontract shall be made pursuant to Article 6 hereof.

2.6.1 Establishment Of Project Schedule: The CMAR shall establish a Project schedule consistent with the CPMS schedule, and inform all subcontractors of the Project schedule and require all subcontractors to comply therewith.

2.6.2 Progress Meetings With Subcontractors: The CMAR shall schedule and conduct progress meetings, on a bi-weekly basis or more often as determined necessary by the Owner, CITY, Project Architect or

CMAR, at which the Owner, CITY, Project Architect, CMAR and appropriate CMAR Subcontractors can discuss the status of the Work. The CMAR shall prepare and promptly distribute meeting minutes. The CMAR shall provide periodic presentations updating the progress, quality and status of the Work of the Project to the Owner at the Owner's request at no additional cost to the Project.

2.6.2.1 Corrective Action Plans: Progress of the work shall be reported at said meetings with reference to the CPMS construction schedule. The CMAR shall submit to the Owner, CITY and Project Architect with each periodic application for payment for each subcontractor a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein.

2.6.2.2 Subcontractor Recovery Plan: In the event that a subcontractor shall fall behind schedule at any time, the CMAR shall develop with that subcontractor a recovery plan and deliver the recovery plan to the Owner, CITY and Project Architect with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps subcontractor shall take to meet the requirements of the subcontract. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner or CITY may suffer by reason of such resequencing or the failure of subcontractor to meet the Substantial Completion Date or the Final Completion Date.

2.6.3 Monthly Reports/Daily Log: The CMAR shall provide monthly written reports to the Owner, CITY and Project Architect on the progress of the entire Work. The CMAR shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner, CITY and Project Architect at any time during work hours, and shall be presented for discussion at the meetings referenced in subparagraph 2.6.2 above.

2.6.4 Cost Control System: The CMAR shall develop a system of cost control for the Work including regular monitoring of actual costs for activities in progress, including changes to the Work of the Project approved by the Owner, and estimates for uncompleted tasks and proposed changes; provided that such monitoring and differences between actual costs and estimates shall not be the basis for a Change Order. The CMAR shall identify variances between actual and estimated costs and report the variances to the Owner, CITY and Project Architect at regular intervals. Cost control reports shall be included as part of the monthly written report to be provided by the CMAR pursuant to subparagraph 2.6.3 of this Agreement.

2.6.5 Accounting And Accounting Records: The CMAR shall maintain a system of accounting consistent with generally accepted accounting principles. The CMAR shall preserve all accounting records for a period of four (4) years after final acceptance of the Work. The Owner shall have access to all such accounting records at any time during the performance of the Work and for a period of four (4) years after final acceptance of the Work.

2.6.6 Quality Control Procedures: The CMAR shall develop and maintain a program, acceptable to the Owner and the Project Architect, to assure quality control of the construction. The CMAR shall supervise the Work of all Subcontractors, providing instructions to each when its Work does not conform to the requirements of the drawings and specifications of the construction documents, and continue to manage each Subcontractor to ensure that corrections are made in a timely manner so as not to affect

the progress of the Work. Should disagreement occur between the CMAR and the Project Architect over acceptability of Work and conformance with the requirements of the Drawings and Specifications, the Project Architect shall be the final judge of performance and acceptability.

2.6.7 Confirmation Of Owner Provided Information: CMAR shall use reasonable care to confirm the accuracy of such information relating to the performance of the Work of the Project provided by the Owner, and shall advise the Owner in writing of any variance between the information provided and the actual conditions and shall be responsible for any cost to the Project resulting from a failure to exercise such reasonable care. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, CMAR shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property.

2.6.8 Lines Of Authority: The CMAR shall establish on-site organization and lines of authority in order to carry out the overall plans of construction. The CMAR shall identify an on-site staff member to represent the CMAR on a daily basis with authority to negotiate Change Orders and contract modifications on behalf of the CMAR. The CMAR shall make available such executive personnel as necessary to execute Change Orders or other contract modifications on behalf of the CMAR so as not to delay the progress of the Work.

2.6.9 Management Coordination:

2.6.9.1 Procedures For Coordination: The CMAR shall establish procedures for coordination among the Owner, CITY, Project Architect, Subcontractors and CMAR with respect to all aspects of the Work. The CMAR shall require of the various Subcontractors coordination drawings as may be necessary to properly coordinate the Work among the Subcontractors. In coordination with the Project Architect, the CMAR shall establish and implement procedures for tracking and expediting the processing of shop drawings and samples as required by the General Conditions of the Contract.

2.6.9.2 On-Site Staffing: The CMAR shall maintain exclusively for the Project a competent, duly licensed and certified full-time staff at the Project Site to coordinate and direct the Work and progress of the Subcontractors. All of the CMAR’s on-site management and supervisory personnel shall be consistent with the CMAR’s interview presentation and shall not be removed or replaced without the Owner’s consent, which consent will not be unreasonably withheld. The Owner shall have the right to direct the CMAR to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event the CMAR shall promptly replace such personnel without consideration of any additional compensation for the replacement. Such on-site staffing shall include an on-site Superintendent who shall perform the following duties:

2.6.9.2.1 Project Manager: CMAR's project manager, while not required to be present full-time at the site, shall remain assigned to this Work, and be available on an as-needed basis throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion have been completed or corrected in accordance with the Construction Documents.

2.6.9.2.2 On-Site Superintendent: The CMAR shall have a Superintendent on the site of the Work at all times the Work is being performed. CMAR's Superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion have been completed or corrected. From Substantial Completion until Final

Completion, the Superintendent shall be on the site as necessary to ensure that Final Completion occurs within the time specified. The CMAR's Superintendent's services shall include: (1) Review all stages of construction to become intimately familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents; (2) be responsible to assure that the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work performed by the subcontractor are in compliance with the Contract Documents and all local, state and federal regulations; (3) make continuous on-site inspections to check quality or quantity of the Work; and, (4) keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

2.6.9.2.3 Evaluation And Supervision Of Subcontractors: The CMAR shall determine the adequacy of Subcontractors' personnel and equipment, and the availability of materials and supplies to meet the CPMS. In consultation with the Owner and Project Architect, the CMAR shall take necessary corrective actions when requirements of a Subcontract or a Subcontractor's schedule are not being met at no cost to the Owner.

2.6.10 Change Orders: The CMAR shall develop and implement a system for the preparation, review and processing of Change Orders subject to Owner approval. Without assuming any of the Project Architect's responsibilities for design, the CMAR shall recommend necessary or desirable changes to the Owner and the Project Architect, and shall review requests for changes and submit recommendations to the Owner and Project Architect.

2.6.10.1 Cost Estimates Of Changes In The Work: Upon request by the Owner or Project Architect, the CMAR shall promptly prepare and submit estimates of probable cost for changes proposed in the Work, including similar estimates from the Subcontractors. If directed by the Owner, the CMAR shall promptly secure formal written Change Order Proposals from a Subcontractor.

2.6.11 Safety And Security Of Job Site and Use of Premises: The CMAR is solely responsible for the security and safety of the Project and the Project premises. The CMAR shall make provisions for Project security to protect the Project site and materials stored on and off site against theft, vandalism, fire and accidents as required by job and location conditions, and protect the staff, patrons and the public, including but not limited to, the job site security requirements and protocols. Mobile equipment and operable equipment at the site and hazardous parts of new construction subject to mischief shall be locked or otherwise made inoperable or protected when unattended.

2.6.11.1 The CMAR shall continuously maintain adequate protection for all its work and materials, from damage, destruction, or loss, and shall protect the Owner's property from damage occurring as the result of the work performed under this Agreement. CMAR shall indemnify the Owner against any such damage, destruction, loss, or injury resulting from inadequate protection. CMAR shall adequately and sufficiently protect adjacent property against damage caused by its operations.

2.6.11.2 The CMAR shall confine its apparatus, the storage of materials, and the operations of its workmen and any Contractor or Subcontractor to limits indicated by law, ordinances, permits, the Construction Documents, or directions of the CMAR or Owner and shall not unreasonably encumber the premises with its materials or equipment.

2.6.11.3 The CMAR will preserve and protect all existing vegetation such as trees, shrubs, and grass on

or adjacent to the site of work which are not to be removed and which do not unreasonably interfere with the construction work. Care will be taken in removing vegetation authorized for removal to avoid damage to vegetation that will remain in place. Any limbs, branches, trees, or shrubs 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.

2.6.11.4 The CMAR 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 Agreement or the failure to exercise reasonable care in the performance of the work. If the CMAR fails or refuses to repair any such damage promptly, the Owner, after 48-hours written notice to CMAR, may have the necessary work performed and charge the cost thereof to the CMAR.

2.6.11.5 The CMAR shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

2.6.11.6 The CMAR shall enforce the Owner's instructions, given through the CMAR, 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.

2.6.11.7 The CMAR 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 be responsible for such accidents, injuries, or damage if the same should occur as a result of the work performed by CMAR under this Agreement.

2.6.11.8 The CMAR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project work.

2.6.11.9 The CMAR 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 CMAR's superintendent unless otherwise designated by the CMAR in writing to the Owner.

2.6.11.10 In an emergency affecting the safety of persons or property, the CMAR shall take all necessary and proper steps to prevent any threatened damages or injury. If practical, the CMAR shall communicate with the Owner concerning the emergency. However, the inability of the CMAR to establish communication with the Owner will not relieve the CMAR of the responsibility for mitigating injury or damage to persons or property.

2.6.11.11 The CMAR shall at all times keep the premises free from accumulation of waste material or rubbish. At the completion of the work, CMAR shall remove all rubbish from and about the building and all tools, scaffolding, construction equipment, machinery, and surplus materials, whether CMAR's or its subcontractors', and shall leave the work "broom clean" or its equivalent, unless more exactly specified. In case of dispute between the CMAR and any other contractor employed on or about the structure or structures upon which the Project 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, after 48 hours written notice to CMAR, may remove the waste materials, rubbish, tools, scaffolding, and surplus materials and charge the cost to CMAR or one or more of the several contractors, at the sole discretion of the Owner.

2.6.12 Substantial And Final Completion:

2.6.12.1 Substantial Completion: Substantial Completion is the stage in the progress of the Work when the Project Architect has determined that the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents, including substantial completion of all punch list items to be performed by the Subcontractors so the Owner can occupy the Work for the purpose of performing its preparatory tasks to make the Work suitable for its intended uses, including, but, not limited to, office spaces, client accessible spaces, main entrance, and reception. Such preparatory tasks to be performed by the Owner include, but are not limited to, installation of temperature controls, installation of movable equipment, performance of custodial work and facility opening "start-up" testing. All Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial instruction of Owner's personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place. The only remaining Work shall be minor in nature so that the Owner can occupy the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the CMAR will not materially interfere with or hamper Owner's normal operations or other intended use. When Substantial Completion of the Work is achieved, the Project Architect shall prepare and deliver to the Owner and CMAR a Certificate of Substantial Completion that shall establish the date of Substantial Completion and the respective responsibilities of the Owner and CMAR as more particularly described at Article 6. As a further condition of a determination of Substantial Completion, the CMAR shall certify that all remaining Work shall be completed within thirty (30) days or the CMAR shall provide a schedule for Final Completion approved in writing by the Owner; the CMAR shall make such certification by signing the Project Architect's Substantial Completion Certificate on a form provided by the Owner.

2.6.12.2 Final Completion: The CMAR shall achieve Final Completion of the Work of the Project by not later than thirty (30) days following the issuance of the Certificate of Substantial Completion or the date provided in the CMAR's schedule for Final Completion approved in writing by the Owner. The date of Final Completion is the date certified by the Project Architect that the Project Architect finds that the Work of the Project, including the work of all of the CMAR's subcontractors, is acceptable under the Contract Documents and the CMAR's contractual obligations are fully performed. The Project Architect's certification of Final Completion shall occur upon receipt by the Project Architect and Owner of the CMAR's written notice that the Work is ready for final inspection and acceptance. The Project Architect's final Certificate for Payment will constitute a further representation that conditions set forth in Article 6 of this Agreement as precedent to the CMAR being entitled to final payment have been fulfilled.

2.7 Professional Services: The CMAR shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the CMAR has specifically agreed in writing to provide such services. In such event, the CMAR shall cause such services to be performed by appropriately licensed professionals.

2.8 Unsafe Materials: If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the CMAR, the CMAR shall, upon recognizing the condition, immediately stop Work in the affected area

and report the condition to the Owner and Project Architect immediately, either orally or in writing and if conveyed orally said report shall be confirmed in writing within one (1) working day. The CMAR shall act to prevent threatened damage, injury or loss. The Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the CMAR and, in the event such material or substance is found to be present, the Owner shall render the condition harmless.

ARTICLE 3 - OWNER'S RESPONSIBILITIES

3.1 Information And Services:

3.1.1 Project Information: The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. The Owner shall establish and update a Construction Budget for the Project, based on consultation with the CMAR and Project Architect, which shall include contingencies for changes in the Work of the Project and other costs which are the responsibility of the Owner.

3.1.2 Structural And Environmental Tests, Surveys And Reports: In the Pre-Construction Phase, the Owner shall furnish the reports, surveys, drawings and tests described in paragraphs 3.1.2.1 through 3.1.2.5 with reasonable promptness and at the Owner's expense. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately.

3.1.2.1 Reports, surveys, drawings and tests concerning the conditions of the Project site which are required by law. If the CMAR requests additional testing in excess of the budgeted amount for testing in the Owner's Program Statement prepared by the Project Architect, such testing must receive prior written approval from the Owner.

3.1.2.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavement and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

3.1.2.3 The services of geotechnical engineers when such services are requested by the CMAR and approved by the Owner, if not already provided prior to commencement of the Work by the Owner. Such services reasonably required by the scope of the Work of the Project may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, valuations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions with reports and appropriate professional recommendations.

3.1.2.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

3.1.2.5 The services of other consultants requested by the CMAR when such services are reasonably required by the scope of the Work of the Project and are agreed to by the Owner.

3.2 Owner's Designated Representatives: The HUB and CITY shall designate one authorized representative respectively to act on the behalf of each entity in the day-to-day administration of the Project. The respective representatives shall be identified in the Project Budget and Summary, Exhibit A attached hereto.

3.3 Project Architect: The CMAR's services shall be provided in conjunction with the services of a Project Architect. The terms of the agreement between the Owner and the Project Architect shall be available for inspection by the CMAR upon request.

3.4 Legal Requirements: The Owner shall determine and advise the Project Architect and CMAR of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the State of Wyoming.

3.5 Inspection And Testing: The Owner shall provide or contract for, independently of the CMAR, the inspection services, the testing of construction materials engineering, and verification testing services necessary for acceptance of the Work of the Project by the Owner.

ARTICLE 4 - COMPENSATION FOR CONSTRUCTION PHASE SERVICES

4.1 Compensation:

4.1.1 Compensation For Completion Of The Project: The Owner and CMAR agree that the Owner shall pay the CMAR pursuant to the provisions of Article 6 of the Agreement the following amounts under the following terms and conditions:

4.1.1.1 General Conditions Costs: The General Conditions Costs shall be paid pursuant to the provisions of Article 6 of the Agreement; and

4.1.1.2 CMAR'S Compensation For Pre-Construction And Construction Phase Services: The CMAR's Compensation for services shall be divided for purposes of this Agreement between Pre-Construction Phase services and Construction Phase services, with compensation for such services being determined as follows:

4.1.1.2.1 Pre-Construction Service Fee Compensation - Consultation Phase Personnel Expenses: The CMAR's personnel expenses for the Pre-Construction services pursuant to paragraphs 2.1, 2.2 and 2.3 of this Agreement shall be the sum of **Written Dollar Amount DOLLARS AND 00/100'S ($Numeric Dollar Amount).** CMAR's personnel to provide the construction management services under this Agreement and the maximum personnel expense for such services is set forth on the Efforts Schedule prepared for the Project by the CMAR; such Efforts Schedule having been attached hereto as Exhibit B. Any personnel expense in excess of that provided in the Efforts Schedule shall at the cost of the CMAR. Payment of the CMAR'S Pre-Construction Service Fee (PCS Fee) upon receipt of a Notice to Proceed from the Owner shall be allowed to bill up to 100% of the pre-construction services phase amount set forth in the Pre-

Construction Efforts Schedule Exhibit B.

4.1.1.2.2 Reimbursable Expenses: The CMAR's reimbursable expenses for the Pre-Construction services shall be the sum of **Written Dollar Amount DOLLARS AND 00/100'S ($Numeric Dollar Amount)**"Reimbursable expenses" as used in this Article 4 shall include: (1) Expenses of transportation in connection with the Project, approved in writing by Owner; (2) Fees paid for securing approval of authorities having jurisdiction over the Project, and (3) Expenses of postage, long distance communications, reproductions of drawings, specifications and other documents, advertising, expenses of renderings, models and mock-ups requested by the Owner, meals and lodging. Receipts for all meals must be provided in an itemized fashion showing, not only the food, but also alcoholic drinks. Alcoholic drinks will not be paid for as a reimbursable expense.

4.1.1.2.3 Payment For Reimbursable Expenses: Reimbursable Expenses as described in paragraph IV.2. as Reimbursable Expenses, the compensation to be paid to the CMAR for such Reimbursable Expenses shall be paid to the CMAR by the Owner at a multiple of ONE (1.0) times the actual expenses incurred up to the set forth amount as identified in the Pre-Construction Efforts Schedule, Exhibit B. Records of all reimbursable expenses and expenses pertaining to any change in services on the Project and for services performed on the basis of flat rates shall be kept on a generally recognized accounting basis and shall be available for review by the Owner or their authorized representatives during business hours at the CMAR'S office. Proof of payment of any reimbursable expense item shall be provided to the Owner with each claim for reimbursement by the CMAR.

4.1.1.3 Termination Of Agreement Upon Funding Disapproval By CITY: In the event the CITY cannot or does not approve the funding to finance the Project, this contract shall be terminated, and the CMAR shall receive as final payment the sums due under this sub-paragraph for Pre-Construction Phase services plus any General Conditions Costs as provided for herein.

4.1.1.4 Construction Phase Compensation

4.1.1.4.1 Construction Service Fee Compensation: The CMAR's stipulated maximum fee for personnel expenses for Construction Phase services pursuant to paragraphs 2.5, 2.6 and 2.7 of this Agreement and CMAR's corporate profit and risk for the construction of all Projects shall be the sum of **Written Dollar Amount DOLLARS AND 00/100'S ($Numeric Dollar Amount).** Payment of the CMAR's Construction Service Fee (CS Fee) shall be based upon percentage of the total Cost of the Project completed at the time of each submitted periodic invoice for services to be paid pursuant to the provisions of Article 6 of the Agreement. The CS Fee shall be subject to the retainage requirements of Wyo. Stat. § 16-6-702. CMAR's personnel to provide the construction management services under this Agreement and the maximum personnel expense for such services is set forth on the Efforts Schedule prepared for the Project by the CMAR; such Efforts Schedule having been attached hereto as Exhibit C. Any personnel expense in excess of that provided in the Efforts Schedule shall at the cost of the CMAR.

4.1.1.5 Adjustment Of Compensation For Basic Services For Changes In The Work And CPMS Schedule: Adjustments to the GMP and the Critical Path Method Schedule on account of changes in the Work for the Project and each of them subsequent to the execution of the Agreement may be the basis for an adjustment of the CMAR's Compensation for Basic Services.

4.1.1.6 Period Of Response: If the services covered by this Agreement have not been completed within thirty-six (36) months of the date hereof, through no fault of the CMAR, the amounts of compensation, rates and multiples set forth herein may be adjusted by mutual agreement.

ARTICLE 5 - GENERAL CONDITIONS COSTS FOR CONSTRUCTION PHASE

5.1 General Conditions Costs: "General Conditions Costs" by the Owner to the CMAR shall be determined at rates not higher than those customarily paid at the place of the Project, except with prior consent of the Owner. The general conditions costs shall include the items set forth in Exhibit E. The Owner and the CMAR shall negotiate at the time of the submission and approval of the GMP the general conditions items to be reimbursed for the Project and establish the General Conditions Costs Allocation dollar amount which shall be available to the CMAR for payment of all General Conditions Costs for the Project. The General Conditions Costs Allocation shall constitute the maximum amount to be paid by the Owner for General Conditions Costs; any over-run of the General Conditions Costs shall be the sole responsibility of the CMAR. Any under-run of the General Conditions Costs shall be retained by the CMAR.

5.2 Discounts, Rebates And Refunds: CMAR shall take advantage of all available discounts, rebates and refunds for supplies, materials and equipment connected with the Work and which conform to the Contract Documents. Cash discounts obtained on payments made by the CMAR shall accrue to the Owner. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the CMAR shall make provisions so that they can be secured.

5.3 Accounting Records: The CMAR shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. The accounting and control systems shall be satisfactory to the Owner. The Owner, the Owner's accountants and CITY, or other representatives, shall be afforded access to the CMAR's records, books, correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the CMAR shall preserve these for a period of four (4) years after final payment or for such longer period as may be required by law.

5.4 GMP General Conditions Budget: As part of the GMP negotiations, the CMAR shall prepare a budget identifying anticipated general conditions items and estimated costs thereof denominated "General Conditions Costs Budget." At the time of the negotiation of the GMP, the CMAR will meet with the Owner and review the General Conditions Costs Budget, and negotiate and agree upon the items to be included in the General Conditions and those items to be made a part of the Work through allowances, and then establish a maximum dollar amount for the General Conditions Costs Budget for the Project, which amount shall be stated in the GMP.

ARTICLE 6 - PAYMENT OF CONSTRUCTION COSTS

6.1 Progress Payments:

6.1.1 Applications: The CMAR shall submit to the Owner and, if directed, Project Architect, a periodic application for payment. The application for payment shall consist of the Cost of the Project performed up to the last day of the invoiced period, and shall include: (1) the cost of all subcontracted work performed or materials provided to date including materials suitably stored on the Worksite or at other locations approved by the Owner; (2) general conditions costs incurred to date; and, (3) the cost of PCS fee or CS fee earned to date, as applicable, and paid per the terms of Article 4. Approval of payment

applications for such stored materials stored off-site shall be conditioned upon submission by the CMAR of bills of sale and applicable insurance or such other procedures satisfactory to the Owner to establish the Owner's title to such materials, or otherwise to protect the Owner's interest, including transportation to the Worksite. Prior to submission of the next application for payment, the CMAR shall furnish to the Owner a statement accounting for the disbursement of funds received under the previous application. The extent of such statement shall be as agreed upon between the Owner and the CMAR. Payment shall be subject to the retainage requirements of Wyo. Stat. § 16-6-702.

6.1.2 Promptly after receipt of each periodic application for payment, the Owner shall give written notice to the CMAR of the Owner's acceptance or rejection, in whole or in part, of such application for payment and forward that application to the CITY for funding. Upon receipt of funding from the CITY for the payment application, the Owner shall pay directly to the CMAR the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the CMAR cannot agree on a revised amount then, within fifteen (15) business days after its initial rejection in part of such application, the Owner shall pay directly to the CMAR the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed.

6.1.3 Lien Waivers And Liens:

6.1.3.1 Partial Lien Waivers And Affidavits: If requested by the Owner, as a prerequisite for payment, the CMAR shall provide partial lien and claim waivers in the amount of the application for payment and affidavits from its Subcontractors and Material Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall the CMAR be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

6.1.3.2 Responsibility For Liens: If Owner has made payments in the time required by this Article 6, the CMAR shall, within thirty (30) days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If the CMAR fails to take such action on a lien, the Owner may cause the lien to be removed at the CMAR's expense, including bond costs and reasonable attorneys' fees. This paragraph shall not apply if there is a dispute pursuant to Article 9 relating to the subject matter of the lien.

6.2 Adjustment Of CMAR's Payment Application: The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the CMAR is responsible under the Agreement:

6.2.1 The CMAR's repeated failure to perform the Work as required by the Contract Documents;

6.2.2 Loss or damage arising out of or relating to this Agreement and caused by CMAR to the Owner or others to whom the Owner may be liable;

6.2.3 The CMAR's failure to properly pay subcontractors and material suppliers following receipt of such

payment from the Owner;

6.2.4 Third-party claims involving the CMAR or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the CMAR furnishes the Owner with adequate security in the form of a surety bond, irrevocable letter of credit or other collateral or commitment satisfactory to the Owner and sufficient to discharge such claims if established.

No later than seven (7) days after receipt of an application for payment, the Owner shall give written notice to the CMAR, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the CMAR in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

6.3 Acceptance Of Work: Neither the Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

6.4 Substantial Completion:

6.4.1 The CMAR shall notify the Owner and, if directed, the Project Architect when it considers that Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of the Project Architect, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended use by the Owner without excessive interference in completing any remaining unfinished Work by the CMAR. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner, with the assistance of the Project Architect shall promptly compile a list of items to be completed or corrected so the Owner may occupy or utilize the Work or designated portion for its intended use. The CMAR shall promptly complete all items on the list.

6.4.2 When Substantial Completion of the Work or a designated portion is achieved, the Project Architect shall prepare and deliver to the Owner and CMAR a Certificate of Substantial Completion that shall establish the date of Substantial Completion and the respective responsibilities of the Owner and CMAR for interim items such as security, maintenance, utilities, insurance and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. In the absence of a clear delineation of responsibilities, the Owner shall assume all responsibilities for items such as security, maintenance, utilities, insurance and damages to the Work. The Certificate of Substantial Completion shall be submitted by the Project Architect to the Owner, for the Owner's written acceptance of responsibilities assigned in the Certificate.

6.4.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

6.5 Partial Occupancy Or Use:

6.5.1 The Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. Such partial

occupancy or use shall constitute Substantial Completion of that portion of the Work. Owner shall not unreasonably refuse to accept partial occupancy.

6.6 Final Completion And Final Payment:

6.6.1 Upon notification from the CMAR that the Work is complete and ready for final inspection and acceptance, the Owner, with the assistance of its Architect/Engineer, shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

6.6.2 When the Work is complete, the CMAR shall prepare for the Owner's acceptance a final application for payment stating that to the best of the CMAR's knowledge, and based on the Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

6.6.3 Final payment shall be made to the CMAR after the CMAR has submitted an application for final payment, including submissions required under Subparagraph 6.6.4 and a Certificate of Final Completion has been executed by the Owner and CMAR. Such final payment shall be subject to the requirement of Wyo. Stat. § 16-6-116 providing for the publication in a newspaper of general circulation published nearest the point at which the Work is being carried on, once a week for three (3) consecutive weeks, and also post in three (3) conspicuous places on the Work, a notice setting forth in substance, that the Owner has accepted the Work as completed according to the plans and specifications and rules set forth in this Agreement between the Owner and CMAR, and that the CMAR is entitled to final payment. The notice shall also set forth that upon the 41st day, with the notice specifying the exact date) after the first publication of the notice the Owner will pay to the CMAR the full amount due under the contract.

6.6.4 Final payment shall be due on the CMAR's submission of the following to the Owner:

6.6.4.1 An affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;

6.6.4.2 As-built drawings, manuals, copies of warranties and all other close-out documents required by the Contract Documents;

6.6.4.3 Release of any liens, conditioned on final payment being received;

6.6.4.4 Consent of any surety; and

6.6.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the CMAR, the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the estimated Cost of the Project for Work not fully completed and accepted is less than the retained amount prior to payment, the CMAR shall submit to the Owner, and if directed, to the Architect/Engineer, the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by Paragraph 6.6.

6.6.6 Claims not reserved in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties and Defective Work.

6.6.7 Acceptance Of Final Payment: Unless the CMAR provides written identification of unsettled claims

known to the CMAR at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

6.7 Liquidated Damages:

6.7.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and CMAR that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of CMAR's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and CMAR that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of CMAR to complete the Work within the allotted or agreed extended dates of Substantial and Final Completion, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due CMAR if such delay occurs. It is expressly understood that the sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys' fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion shall be construed as a breach of this Agreement.

6.7.2 Liquidated Damages – Failure To Meet Substantial Completion Date: It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the CMAR a dollar amount per day as set forth in the matrix within this paragraph for each and every additional calendar day beyond the agreed date of Substantial Completion.

Contract Range	**Daily Liquidated Damages Charge**
$0.00 - $500,000	$ 250.00
$501,000 - $1,000,000	$ 500.00
$1,000,001 - $2,000,000	$ 750.00
$2,000,001 - $3,000,000	$ 1,000.00
$3,000,001 - $5,000,000	$ 1,250.00
$5,000,001 - $7,500,000	$ 1,500.00
$7,500,001 - $10,000,000	$ 1,750.00

$10,000,001- $15,000,000	$ 2,000.00
$15,000,001 - $20,000,000	$ 2,250.00
$20,000,001 and Greater	$ 2,500.00

6.7.3 Liquidated Damages – Failure To Meet Final Completion Date: Timely Final Completion is an essential condition of this Agreement. CMAR agrees to achieve Final Completion of the Agreement within thirty (30) days of the designated or extended date of Substantial Completion or by the date provided in the CMAR's schedule for Final Completion approved in writing the Owner. Owner and CMAR agree that should CMAR fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. CMAR and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be per the matrix in paragraph 6.7.2. Owner may deduct from the Final Payment made to CMAR, or, if sufficient funds are not available, then CMAR shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

6.7.4 Liquidated Damages – In Addition To Other Remedies: Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against CMAR for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion may run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

ARTICLE 7 - INSURANCE AND BONDS

7.1 CMAR'S Liability Insurance:

7.1.1 Generally: The CMAR shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the CMAR from claims set forth below which may arise out of or result from the CMAR's operations under the Contract and for which the CMAR may be legally liable, whether such operations be by the CMAR or its subcontractors or suppliers, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including:

1 claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

2 claims for damages because of bodily injury, occupational sickness or disease, or death of the CMAR's employees;

3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the CMAR's employees;

4 claims for damages insured by usual personal injury liability coverage which are sustained

(1) by a person as a result of an offense directly or indirectly related to employment of such person by the CMAR, or (2) by another person;

5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

7 claims involving contractual liability insurance applicable to the CMAR's obligations under Section 3.18.

7.1.2 Insurance Not Less Than Limits Of Liability Specified: The insurance required by Section 7.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

7.1.3 Certificates Of Insurance: Certificates of insurance acceptable to the Owner shall be submitted to the CMAR for transmittal to the Owner with a copy to the Project Architect prior to commencement of the Work. These certificates and the insurance policies required by this Section 7.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the CMAR with reasonable promptness in accordance with the CMAR's information and belief.

7.1.4 Level Of Insurance: The CMAR shall maintain the following levels of insurance coverage, to-wit:

7.1.4.1 Workers' Compensation And Employer's Liability:

Workers' Compensation ..... Wyoming Statutory Limit

Employer's Liability	Annual Limits Per Insured (minimum)
Bodily Injury by Accident	$500,000
Bodily Injury by Disease - policy limit	$500,000
Bodily Injury by Disease - each employee	$500,000

<u>The CMAR shall provide a blanket waiver of subrogation.</u>

7.1.4.2 Automobile Liability:

<u>Combined single limit of $1,000,000 per occurrence.</u>

7.1.4.3 Commercial General Liability:

Annual Limits of Liability (minimum)

General Aggregate $2,000,000
Products/Completed Operations Aggregate $2,000,000
Personal/Advertising Injury Aggregate $1,000,000

Each Occurrence Limit $1,000,000

1. Occurrence form
2. Deductible to CMAR for property damage claims not to exceed $5,000 per occurrence
3. Coverage extensions to include:
   Contractual liability to include construction contracts
   General aggregate per project
   CMAR to carry complete operations coverage for three (3) years following substantial completion (need certificate of insurance for each of three (3) years)
   Blanket waiver of subrogation
   Additional insured endorsement to cover vicarious liability including completed operation
   Remove fellow employee exclusion
   Modified Notice of Occurrence, supervisors and up
   60 Day notice of cancellation basis
4. Excludes: Asbestos, Nuclear Energy, Engineers/Project Architect's E&O

7.1.4.4 Excess Liability:

Each Occurrence ..... $5,000,000 (minimum)
Annual Aggregate ..... $5,000,000 (minimum)

<u>The CMAR shall provide a blanket waiver of subrogation.</u>

7.1.4.5 Builder's Risk Insurance: Builder's risk insurance to be provided by the CMAR and shall be on an all risk policy form basis and insure against the perils of fire and extended coverage, and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse of false work, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and testing of all electrical and mechanical apparatuses and associated equipment. The builder's risk policy shall insure the Owner, the CMAR, and all tiers of contractors. Such builder's risk insurance shall also include transit coverages for materials to be incorporated into the Project, as well as temporary off-site storage locations. Sub limits may apply with respect to transit and off-site coverages.

7.2 Owner's Liability Insurance: The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The CMAR shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

7.3 Insurance Upon Partial Occupancy: Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the CMAR shall take reasonable steps to obtain consent

of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

7.4 Performance And Payment Bonds: The CMAR shall as required by Wyo. Stat. § 16-6-112 prior to the performance of any work on the Project furnish to the Owner a payment bond and a bond covering faithful performance of this CMAR Agreement and payment of obligations arising thereunder in the amount of ONE HUNDRED PERCENT (100%) of the total cost of the project including the Cost of the Project, General Conditions Costs and the CMAR's Compensation for Basic Services for the Project expressed as the GMP, with such bonds having a minimum Best Rating "A" which shall be approved in writing by an officer of the Owner and the CITY. The payment and performance bonds provided herein shall be for the benefit of the Owner as the named beneficiary of such bonds. The Owner shall reimburse the CMAR for the actual cost of the payment and performance bonds required herein without mark-up by the CMAR.

ARTICLE 8 - MISCELLANEOUS PROVISIONS

8.1 Dispute Resolution For The Pre-Construction Phase:

8.1.1 No Mandatory Arbitration: Notwithstanding anything to the contrary in this Agreement, or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

8.1.2 Dispute Resolution: The parties may by mutual agreement endeavor to settle disputes by mediation. Any mediation arising under this paragraph shall be conducted in accordance with the provisions of subparagraph 8.1.3.

8.1.3 Mediation: Any mediation conducted pursuant to this paragraph 8.1 shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. A request for mediation shall be filed in writing with the other party to this Agreement. Any demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

8.2 Warranty Of Examination Of Construction Documents: By signing this Agreement, the CMAR does hereby agree, certify, warrant and represent on behalf of itself, and agrees to see that each Contractor performing the Work shall also agree, certify, warrant and represent to the Owner that their bids have been based on a full and complete examination of the Construction Documents, including as determined necessary site examination; and that all statements, facts and representations made in all submittal documents and materials are true, correct, accurate, and complete, and may be relied upon by the Owner in considering the firm's bid. The CMAR understands it is its responsibility to immediately provide updated and correct information if any of the information changes at any time. Any omission, falsification or misrepresentation made by the CMAR or a Contractor in such documents and materials or any supplement thereto, will be sufficient grounds for failure to employ the Contractor or terminate any contract with the Owner. The CMAR and any Contractor by entering into an Agreement with the Owner consents and agrees to comply at all times with all Owner policies, regulations, directives, and

practices.

8.3 Equal Opportunity Employer: By signing this Agreement, the CMAR does hereby agree, certify, warrant and represent on behalf of itself, and agrees to see that each Contractor shall certify, that it is an equal opportunity employer and actively recruits a well-qualified and diverse staff including minority applicants, and does not discriminate against any employee or applicant for employment by reason of race, color, national origin, religion, marital status, sex, age, disability or sexual orientation. By submitting a proposal and signing an Agreement with the Owner, the CMAR and any Contractor agrees to actively continue and implement this policy throughout any awarded project.

8.4 CMAR'S Responsibility And Supervision Of Construction Site And On-Site Personnel:

8.4.1 Acts Or Omissions Of CMAR'S Employees: The CMAR shall be responsible to the Owner for acts and omissions of the CMAR's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the CMAR or any of its Subcontractors. As part of that responsibility, CMAR shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by CMAR's employees, subcontractors, and all other persons carrying out the Contract.

8.4.2 Vehicle Parking: CMAR shall require all construction workers, whether CMAR's own forces or the forces of CMAR's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

8.4.3 Compliance With Applicable Ordinances: CMAR shall follow, and shall require all employees, agents or subcontractors to follow, applicable ordinances of the municipality in which the Project is located. In addition, if not covered by the municipality's tree ordinance, CMAR shall barricade and protect all trees on the Project.

8.4.4 Theft Deterrence Program: CMAR shall consult and coordinate with Owner with analysis of cost of the institution of a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of CMAR's and CMAR's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from CMAR's forces or CMAR's subcontractor's forces' actions, omissions, or failure to secure the Work or adjoining property.

8.5 Commencement Of Work And Claims For Additional Time:

8.5.1 Increase In Contract Time: If the CMAR wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The CMAR's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one (1) Claim is necessary. No extension of time shall be granted because of hindrances or delays from any cause which is the fault of CMAR or CMAR's Subcontractors or under CMAR's control. Claims for extension of time may only be considered because of Owner caused delays or adverse weather conditions, but only to the extent of the adjustment of the dates for substantial and final completion of the Project beyond the original dates for substantial and final completion set forth in the CPM schedule and the attendant adjustment of the CMAR's Efforts Schedule and the resulting adjustment of the CMAR's CS Fee.

8.5.2 Adverse Weather Conditions: Contractor shall be responsible to consider and include within the Contract Price the climatic conditions of the location of the Project that may delay the Work, and Contractor shall not be granted an extension of Contract Times (or Milestones) or amendment of the contract or contract price for the additional cost of the Project due to a delay in the Work resulting in whole or in part from adverse weather conditions.

8.5.3 Injury Or Damage To Person Or Property: If either party to this Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding five (5) working days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Sections 8.1 or 8.6.

8.5.4 Date Of Commencement And Time Of Completion: CMAR agrees that it will begin work immediately upon receipt of notice to proceed from the Owner, and that it will diligently proceed with said Work such that the same shall be completed within the time frame stated in the proposal documents.

8.5.5 Reasonable Skill And Judgment: The CMAR acknowledges that the services to be performed are essential to the effective operation of the Owner and that, therefore, the CMAR will exercise its reasonable skill and judgment to complete the services called for under this Agreement in the minimum time possible and within the time specified in such Work orders as may be issued by the Owner to the CMAR. In the event that the CMAR for good cause shown cannot complete the services for a particular task or phase within the time agreed to, the CMAR shall make a written request to the Owner in accordance with paragraph 8.5.7 below.

8.5.6 Notice Of Conditions Causing Delay:

8.5.6.1 Notice Of Condition Causing Delay: Within five (5) working days after the commencement of any condition which is causing or may cause delay in completion, the CMAR must notify the Owner in writing of the effect, if any, of such condition upon the time progress schedule and must state why and in what respects, if any, the condition is causing or may cause such delay.

8.5.6.2 Failure To Comply: Failure to strictly comply with this requirement may, in the discretion of the Owner, be deemed sufficient cause to deny any extension of time on account of delay in completion arising out of or resulting from any change, extra work, suspension, or other condition.

8.5.7 Extension Of Time:

8.5.7.1 Application To Owner: Any extension or extension of time for the completion of the Work may be granted by the Owner subject to the provisions of this section, but only upon written application therefor by the CMAR to the Owner.

8.5.7.2 Detail Of Source And Nature Of Cause: An application for an extension of time must set forth in detail the source and nature of each alleged cause of delay in the completion of the Work, the date upon which each such cause of delay began, ended, or will end, and the number of days attributable to each of such causes. It must be submitted prior to completion of the Work.

8.5.7.3 Basis Of Extension Of Time: If such an application is made, the CMAR shall be entitled to an extension of time for delay and completion of the Work caused solely: (a) by the acts or omissions of the Owner, its officers, agents, or employees; or (b) by unforeseeable supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, acts of God or the public enemy, war or other national emergencies making performance temporarily impossible or illegal, or strikes or labor disputes).

8.5.7.4 Limited To Number Of Calendar Days: The CMAR shall, however, be entitled to an extension of time for such causes only for the number of calendar days of delay which the Owner may determine to result solely from such causes, and then only if the CMAR shall have strictly complied with all the requirements of this section. The Owner shall make such determination within thirty (30) calendar days after receipt of the CMAR's application for an extension of time; provided, however, said application complies with the requirements of this paragraph.

8.5.7.5 Actual Period Of Delay: The CMAR shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently but, if at all, only for the actual period of delay in completion of the Work as determined by the Owner, regardless of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault, or omission of the CMAR, and would of itself (regardless of the concurrent causes) have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault, or omission.

8.5.7.6 Discretion Of Owner: The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the Owner. Permitting the CMAR to continue and finish the Work or any part of it after the time fixed for its completion or after the date to which the time for completion may have been extended shall in no way operate as a waiver on the part of the Owner or any of its rights under the Contract Documents. Additionally, the CMAR shall not recover any additional compensation for any additional expense caused by such delay or delays.

8.5.8 Delay Claims. CMAR represents and warrants that the provisions herein contained for extension of time are fair and adequate and that CMAR has had an opportunity to make provision for any and all delays within the contemplation of the parties. Accordingly, it is understood and agreed that CMAR shall not have or assert any claim for damages or prosecute any suit, action, cause of action, arbitration claim, or other proceeding against the Owner or CMAR for such damages arising from any delay or hindrance in the completion of the Work called for in this Agreement caused by an act or omission on the part of the Owner or CMAR, their agents, servants, employees or otherwise.

8.6 Other Provisions:

8.6.1 Extent Of Contract: This Contract which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated Agreement between the Owner and CMAR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the Owner and CMAR. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

8.6.2 Ownership And Use Of Documents: The Drawings, Specifications and other documents prepared by the Project Architect and copies thereof furnished to the CMAR are for use solely with respect to this

Project. They are not to be used by the CMAR, Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and Project Architect. The CMAR, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Project Architect appropriate to and for use in the execution of their Work under the Contract Documents.

8.6.3 Governing Law: The Contract shall be governed by the laws of the State of Wyoming and any litigation shall be conducted in a Wyoming State court. Mandatory and exclusive venue for any dispute shall be Sheridan County, Wyoming.

8.6.4 Assignment: Once this Agreement is accepted and signed by the Owner, the Owner and CMAR respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. No party to the Contract shall assign the Contract as a whole without the written consent of the others. If any party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

8.6.5 Force Majeure: None of the parties hereto shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

8.6.6 Independent Contractor: The CMAR shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the Owner for any purpose. The CMAR shall assume sole responsibility for any debts or liabilities that may be incurred by CMAR in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing CMAR or its agents and/or employees to act as an agent or representative of or on behalf of the Owner, or to incur any obligation of any kind on behalf of the Owner. CMAR agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to Owner's employees will extend to the benefit of CMAR or the CMAR's agents and/or employees as a result of this Contract.

8.6.7 Kickbacks: The CMAR certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the CMAR breaches or violates this warranty, the Owner may, at its discretion, terminate this Contract without liability to the Owner, or deduct from the Contract price or consideration, or otherwise recover the full amount of any commission, percentage, brokerage, or contingency fee.

8.6.8 Notice: All notices or invoices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person. All notices sent via the U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

8.6.9 Severability: This Agreement is subject to all applicable federal and state laws, rules, and regulations. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect, and either party may attempt to renegotiate the terms affected by the severance.

8.6.10 No Waiver Of Rights: The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

8.6.11 Warranty: CMAR warrants that it has the ability to perform the agreed upon services; it shall provide suitable resources to perform work in accordance with this Agreement; it will provide the agreed upon services on a timely basis; it shall perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently providing construction management services under similar circumstances; and it is responsible for the construction of the Work of the Project in accordance with all designs, drawings, specifications, and other services furnished by Owner through the Project Architect for the Project.

8.6.12 Binding Nature of Contract: This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

8.6.13 Acceptance of Contract Documents: Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

8.6.14 Governmental Immunity: Contractor stipulates that CITY is a political subdivision of the State of Wyoming, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Wyoming. By entering into this Agreement, CITY does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

8.6.15 Federal Grants: In the event a federal grant or other federal financing participates in the funding of this Project, the CMAR 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 9 - TERMINATION OR SUSPENSION

9.1 Suspension Of The Work: After commencement of the Construction Phase, the Owner may, without cause, order the CMAR in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine; in such event, the Contract Sum and Contract Time may be adjusted, by mutual agreement for increases in the cost and time caused by suspension, delay or interruption. No adjustment shall be made to the extent that (1) performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or (2) that an equitable adjustment is made or denied under another provision of this Agreement.

9.2 Termination Of Agreement:

9.2.1 The Owner may terminate this Contract at any time without cause.

9.2.2 The CMAR may terminate this Contract if the Work is stopped for a period of thirty (30) days through no act or fault of the CMAR or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the CMAR for any of the following reasons:

1 issuance of an order of a court or other public authority having jurisdiction;

2 an act of government, such as a declaration of national emergency, making material unavailable;

3 because the Architect has not issued a Certificate for Payment and has not notified the CMAR of the reason for withholding certification, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;

4 if repeated suspensions, delays or interruptions by the Owner constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less; or

5 the Owner has failed to furnish to the CMAR promptly, upon the CMAR's request, reasonable evidence.

9.2.3 If the Owner or CMAR terminates this Contract, the CMAR shall be paid an amount calculated as follows:

9.2.3.1 The General Conditions Costs incurred to the date of termination by the CMAR.

9.2.3.2 Plus the portion of the CMAR'S Construction Service Fee (CS Fee) earned to the date of termination, which amount shall be calculated by dividing the Cost of the Project completed to the date of termination by the estimated total Cost of the Project provided in the GMP.

9.2.3.3 Minus the aggregate of previous payments made by the Owner.

9.2.3.4 Plus the value determined either by market purchase price or rental rate, at the election of the Owner, for any equipment owned by the CMAR which the Owner elects to retain and which is not otherwise included in the General Conditions Costs under paragraph 9.2.1.

9.2.4 Assignment Of Contracts And Purchase Orders: The Owner, in its sole discretion, may elect to be

assigned the subcontracts and purchase orders with suppliers held by the CMAR at the time of the termination of this Agreement. To the extent that the Owner elects to direct legal assignment of Subcontracts and purchase orders (including rental agreements) to another CMAR, the CMAR shall as a condition of receiving the payments referred to in this Article 9 execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts and other contractual rights of the CMAR, if any, as the Owner may require for the purpose of fully vesting in the successor CMAR with the rights and benefits of the current CMAR under such Subcontractors or purchase orders. Subcontracts, purchase orders and rental agreements entered into by the CMAR with the Owner's written approval prior to the execution of Project Budget and Summary, Exhibit A for the Project shall contain provisions permitting assignment to a successor CMAR as described above. The terms and conditions of the termination of the CMAR's interest in the Subcontracts and the assignment thereof, if any, shall be negotiated by all parties having an interest therein, or in absence of agreement shall be resolved by the dispute resolution means available to such parties.

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CONCLUSION

This Agreement, including the Contract Documents incorporated herein, shall be binding upon and inure to the benefit of the Owner and the CMAR and their respective successors and assigns.

CMAR:

Name & Title (Print)	*Signature*	*Date*

SENIOR CITIZENS COUNCIL, D/B/A THE HUB ON SMITH:

Name & Title (Print)	*Signature*	*Date*

CITY OF SHERIDAN, WYOMING:

Name & Title (Print)	*Signature*	*Date*

Exhibit A - Project Budget and Summary

Exhibit B - Pre-Construction Service Fee

Exhibit C - Construction Management Service Fee

Exhibit D – Schedule of Values

Exhibit E – Project Schedule

Exhibit F – Approved General Conditions

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:	**Consideration of Agreement with Sheridan Athletic Association - City Attorney Brendon Kerns**
From:	
To:	Mayor and Council
CC:	
Date:	

Attachments

Sheridan Athletic Association Agreement

SHERIDAN ATHLETIC ASSOCIATION AND CITY OF SHERIDAN OPERATING AGREEMENT

THIS OPERATING AGREEMENT is made between the **CITY OF SHERIDAN, Sheridan, Wyoming** ("City"), **a Wyoming Municipal Corporation**, and **SHERIDAN ATHLETIC ASSOCIATION, INC., a Wyoming nonprofit Corporation** ("Sheridan Athletic").

RECITALS

The City of Sheridan and the Sheridan Athletic Association, Inc., first entered into a lease agreement on September 12, 1949, which has been amended and modified several times between 1971 and 2004.It is the desire of the parties to update and consolidate the various lease agreements of the parties. All prior lease agreements, modifications, amendments and extensions are terminated and cancelled. This OperatingAgreement supersedes and replaces all former lease agreements, modifications,amendments and extensions related to the Premises between the parties.

The parties agree as follows:

1. **Description of Premises.**Except as expressly provided otherwise hereunder, City leases to Sheridan Athletica portion of the following described properties ("Premises") as provided specifically under this Operating Agreement, situate in the City of Sheridan, Sheridan County, Wyoming:

SEE EXHIBIT A, ATTACHED HERETO AND BY REFERENCE INCORPORATED HEREIN.

2. **Purpose.**Sheridan Athletic may use the Premisesto promote the area for baseball, and associated activities.

3. **Sheridan Athletic.**Sheridan Athletic represents and warrants to City that Sheridan Athletic is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and is not a private foundation.

4. **Term and Effective Date.**

a. This OperatingAgreement shall be for a period of five(5) years from the 1st day of August, 2020, and ifSheridan Athletic is not otherwise in default, it may be extended at the option of either party, with the consent of the other party, for one (1) additional consecutive five (5) year period on the same terms and conditions contained herein, including the same basic rent.

b. The initial term shall commence on the 1st day of August 1,2020 and unless otherwise extended shall terminate on the 31st day of July, 2025; provided, however, City may terminate this Agreement during its term as provided

under Paragraph 16 of this Agreement. Provided further, however, this Agreement may at any time be terminated by the City should the City determine that the Sheridan Athletic is no longer providing the definable benefit described in paragraph 5 or 7 of this Agreement. Further, this Agreement may be terminated should City not be financially able to provide the services outlined in paragraph 8 of this Agreement. The determination of financially able shall be solely determined by the City. Said termination shall occur after a one-hundred eighty (180) daynotice of termination has been given to the Sheridan Athletic.

c. This Operating Agreement supersedes all former lease agreements, modifications and extension of leases between the parties.

5. **Benefit:**This OperatingAgreement provides a definable benefit to the City, City of Sheridan and its citizens. Because of the definable benefits to the City, and because of the necessity for a sufficient term length to induce the investment of capital into the property, the City enters into this Agreement for a term greater than the term of the existing City Council's term so that the full benefit of the Agreement might be fully realized by the City of Sheridan, its City Council and its citizens.

6. **Rent.**Sheridan Athletic, asconsideration to theCity, does covenant and promise to pay City rent in the amount of One Dollar ($1.00) per year. Rent for the entire initial lease term of five (5) years is to be paid on or before the 1st day of the initial term of this Agreement. City hereby acknowledges receipt of the payment by Sheridan Athletic of the rent due for the years 2020-2025.

7. **Sheridan Athletic Consideration.**As part of the consideration for this Agreement, Sheridan Athleticagrees as follows:

a. Except as expressly provided otherwise herein,the baseball parks, pickleball courts, tennis courts, playground areas,public garden, horseback riding facility, and other recreational facilities which are now located on the lands embraced in this Agreement will be operated and maintained by the following party to this Lease Agreementfor the benefit of the citizens of the City of Sheridan, Wyoming:

Sheridan Athletic:

- Thorne-Rider Stadium ("Ernie Rotellini Field") and the Indoor Baseball Facility associated therewith. Provided, however, City shall provide lawn-moving services for the outfield and out of play areas of Thorne-Rider Stadium ("Ernie Rotellini Field") at its sole expense.

City:

- Public Garden
- Redle Field (Baseball) and improvements thereon.
- Sheridan Recreation Offices.
- Dan Madia Field (Football/Soccer/Skate Park) and improvements thereon.
- Pickleball Courts.
- Tennis Courts.
- Playground Areas.
- Blue Sky Saddle Club Horseback Riding Facility.

b. That said operation will be on a non-profit basis and that the Sheridan Athletic, shall not be entitled to distribute among its membersany of the proceeds from the operation of the Premises. All revenues received by Sheridan Athletic shall be used for the payment of the proper expenses of administration and maintenance expenses, and to further the facilities on the Premisesas long as it is considered reasonable and necessary to do so by the Board of Directors of Sheridan Athletic. Thereafter, any funds that may be considered as additional funds by Sheridan Athleticshall be used by Sheridan Athletic, subject to the approval of the the Governing body of the City of Sheridan, Sheridan County, Wyoming, for the recreational enjoyment and physical development of the citizensof the City of Sheridan.

c. Sheridan Athletic shall cooperate with Citythat whenever matching funds are available through the Sheridan Recreation District or from any similar entity or commission for the improvement and operation of the Premises, the parties shall make reasonable efforts to take advantage of the matching funds.

8. **City Consideration**: As part of the consideration for Sheridan Athletic entering into this Lease Agreement with City, City of Sheridan, City shall assist Sheridan Athletic in the maintenance and operation of the recreational facilities as follows:

a. Furnish all water required in the maintenance and operations of the recreational facilities located on the Premises, said water to be furnished at the site free of charge;

b. Furnish all permanent sewer service to serve the facilities to be located upon the Premises, said serviceto be free of charge;

c. Furnish all electricity used in lighting and maintaining the recreational activities located on thePremises, said electricity to be metered to the City of Sheridan and to be paid for by City;

d. To continue to assist Sheridan Athleticwherever it is possible and reasonable to do so in the maintenance of the grounds of the Premises; and

e. Furnish engineering services, free of charge, wherever necessary in connection with the improvement of the parking lots located on the Premises; provided:

i. City has the financial ability to provide such service which shall be determined at the discretion of the City; and

ii. City may in its discretion furnish engineering services, free of charge, in connection with the development of any of the other recreational facilities on the Premises; and

iii. City shall have the right to decline performing engineering services or paying for engineering services for any reason in connection with the development of such other recreational facilities on the Premises.

9. **Development.**The parties understand for purposes of development and use of the Premises, funds may become available through the Sheridan Recreation District or any similar governmental entity. The parties agree to cooperate and work together so that projects are properly planned and are handled in a manner to qualify for matching funds or other governmental aid and assistance. It is understood that no program will be undertaken by either party that does not meet with the approval of the other party. It is also understood that Sheridan Athletic, has been receiving funds by way of grant and donation from the Thorne-Rider Foundation under the terms expressed in the Last Will and Testament of Frederic Thorne-Rider, deceased, and that from time to time, it may be necessary to submit plans for the improvement or extension of the facilities or for the development of additional facilities, to the Board of Trustees of the Thorne-Rider Foundation as a condition precedent to further grants from that foundation. The parties agree to cooperate and work together to the end that the requirements of the Thorne-Rider Foundation may be reasonable.

10. **Use and Improvements.**Sheridan Athletic shall use and occupy the Premises for the operation of recreational activities and facilities. Any improvements that may be placed upon the Premises shall become the property of City, City of Sheridan. Any improvements shall remain under the supervision and control of Sheridan Athletic and its Board of Directors so long as this OperatingAgreement remains in effect.

11. **Insurance.**

a. During the term of this OperatingAgreement and any subsequent extensions, Sheridan Athletic shall obtain and keep in force at its sole expensea policy of comprehensive public liability insurance for the Premises. Such insurance shall insure against loss due to bodily injury or death or property damage with limits of $1,000,000.00 for each occurrence and $1,000,000.00 general

aggregate.City shall also obtain and keep in force during the term of this OperatingAgreement and any subsequent extensions, a policy of comprehensive public liability insurance insuring City against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto and naming Sheridan Athletic as an additionally named insured. The insurance policies called for in this Lease Agreement shall be with companies reasonably acceptable to City and Sheridan Athletic.

b. On or before the first day of this OperatingAgreement, the parties shall exchange, a copy of the policy of such insurance or certificates evidencing the existence of the insurance required by this OperatingAgreement. No such policy shall be cancellable or subject to reduction of coverage or other modification except after thirty (30) days' prior written notice to the other party.Sheridan Athletic shall, within ten (10) days prior to the expiration of such policies, furnish the other party with renewals or "binders" thereof.

c. Sheridan Athletic waives any and all rights of recovery against City, or against the officers, employees, agents and representatives of City, for loss of or damage to Sheridan Athletic or its property or the property of others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Sheridan Athletic shall, upon obtaining the policies of insurance, give notice to the insurance carriers that the foregoing waiver of subrogation is contained in this Lease Agreement.

12. **Ordinances and Statutes.**At its expense, Sheridan Athletic shall comply with all statutes, ordinances, resolutions, and requirements of the City of Sheridan and all state and federal authorities now in force or which may hereafter be in force pertaining to the use or occupancy of the Premises. In addition, Sheridan Athletic shall comply with all grant, loan or other funding restrictions and requirements in connection with any funds which are made available for the construction, maintenance and/or operation of the facilities on the Premises.

13. **Release of City.**To the maximum extent permitted by law, Sheridan Athletic releases, waives and discharges City, its employees, agents, representatives ("Released Parties") from all liability for any and all loss or damage arising out of or related to Sheridan Athletic's occupation or use of the Premises, including without limitation, loss or damage arising from the condition of the Premises or City's activities on the Premises, and Sheridan Athletic agrees that the Released Parties shall have no liability for such loss or damage.

14. **Release of Sheridan Athletic**. To the maximum extent permitted by law, City releases, waives and discharges Sheridan Athletic, its employees, agents, representatives, officers

and directors ("Released Parties") from all liability for any and all loss or damage arising out of or related to City's ownership or use of the Premises, including without limitation, loss or damage arising from the condition of the Premises or City's activities on the Premises, and City agrees that the Released Parties shall have no liability for such loss or damage.

15. **Assignment.**Neither partyshall assign this Agreement without the prior express written permission of the other party.

16. **Default by Sheridan Athletic; Remedies of City.**Any default or breach by Sheridan Athletic shall be considered a material breach of this Agreement.In such an instance, City shall have the right to terminate this Agreement and to declare it void, provided that City shall first give Sheridan Athletic written notice by certified mail, return receipt requested, to the address of Sheridan Athletic stated herein of the default or breach. Sheridan Athletic shall have one hundred eighty (180) days from the receipt of said written notice to cure the breach or default.

a. If the OperatingAgreement is terminated, Sheridan Athletic shall surrender the Premises peaceably to City. City shall be entitled to recover from Sheridan Athletic all damages incurred by reason of Sheridan Athletic's default including the cost of recovering possession of the Premises, and reasonable attorneys' fees.

b. Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the state of Wyoming.

c. No remedy or election hereunder shall be deemed exclusive, but shall wherever possible be cumulative with all other remedies at law or in equity.

17. **Default by City; Remedies of Sheridan Athletic.**Any default or breach by City shall be considered a material breach of this Agreement. In such an instance, Sheridan Athletic shall give City written notice by certified mail, return receipt requested, to the address of City stated herein of the default or breach. City shall have ninety (90) days from the receipt of said written notice to cure the breach or default. In the event City fails to cure the default or breach within such period of time, Sheridan Athletic shall have the following remedies:

a. Require specific performance by City of the Agreement terms, in a court of competent jurisdiction.

b. Pursue any other remedy now or hereafter available to Sheridan Athletic under the laws or judicial decisions of the state of Wyoming

c. No remedy or election hereunder shall be deemed exclusive, but shall wherever possible be cumulative with all other remedies at law or in equity.

18. **Force Majeure.**Should Sheridan Athletic be prevented from complying with any express or implied covenant of this Agreement, by reason of operation of force majeure, or any federal or state law or any order, rule or regulation of governmental authority, then while so prevented, Sheridan Athletic's obligation to comply with such covenant shall be suspended, and Sheridan Athletic shall not be liable in damages for failure to comply therewith; and this Agreement shall be extended while and so long as Sheridan Athletic is prevented by any such cause from conducting its obligations under this Agreement; and the time while Sheridan Athletic is so prevented shall not be counted against Sheridan Athletic. The term "force majeure" shall include any and all delays caused by reason of fire, storm, flood, explosion, strikes and walkouts, acts of war or terrorism. No later than thirty (30)days after Sheridan Athletic becomes reasonably aware of the same, City shall be notified by Sheridan Athleticby certified mail of each instance Sheridan Athletic asserts that this clause has prevented its performance of the terms of this Agreement. The said notice will recite all facts and circumstances upon which Sheridan Athletic makes the assertion and unless otherwise disputed by City, Sheridan Athletic shall be excused from its performance until such time as the force majeure has been removed. If any damages are incurred by City they shall be limited to amounts covered by Sheridan Athletic's insurance.

19. **Dangerous Materials.**Except fuel and engine oil for lawn care and other maintenance equipment, Sheridan Athletic will not store, dispose of or discharge any flammable, explosive, toxic or hazardous materials, substances, or wastes or any hydrocarbon or petroleum substances on the portion of the Premises which it is required to operate and maintain under this Agreement.

20. **Waivers.**No failure of either party to enforce any term of this Agreement shall be deemed a waiver by such party.

21. **Enforcement Costs.**If either party defaults under this Agreement, the non-defaulting party shall be entitled to recover from the defaulting party all costs and expenses, including reasonable attorneys' fees, incurred by the non-defaulting party in enforcing this Agreement or any remedy of the non-defaulting party under this Lease Agreement.

22. **Notice.** All notices required to be given hereunder shall be given by certified mail, return receipt requested to the other party, or by personal service upon the party. Service of notice by mail is complete upon placing the writing in the U.S. Mail, with postage prepaid thereon. Provided, the notice time shall commence on the date of the receiving party's receipt of the envelope containing such notice, or upon the date of personal service.

The addresses of the parties to this Lease Agreement are as follows:

City: City of Sheridan
Attn: Mayor's Office
P.O. Box 3019
56 Grinnell Plaza

Sheridan, WY 82801

Sheridan Athletic: Sheridan Athletic Association, Inc.
456 Sumner
Sheridan, WY 82801

23. **No Warranties/Limitation on Remedies.** City makes no warranties to title or otherwise, and there are no implied warranties or covenants of fitness or condition of the Premises or of quiet enjoyment or otherwise which shall be binding upon City.

24. **Time of Essence.** Time is of the essence under this Agreement.

25. **Binding Effect.** The terms of this Agreement shall be binding upon and shall inure to the benefit of the successors in interest and assigns of the parties hereto.

26. **Modification.** This Agreement may be amended or modified only by a document in writing, executed by both parties.

DATED this _____ day of August, 2020.

CITY OF SHERIDAN

By: _____
ROGER MILLER, Mayor

STATE OF WYOMING)
) ss.
County of Sheridan)

I, _____, a notary public do hereby certify that on this _____ day of August, 2020, by ROGER MILLER, who personally appeared before me and being first duly sworn declared that he is the Mayor of the City of Sheridan and the foregoing instrument was signed, sworn to and acknowledged before me, a Notarial Officer, this ___ day of August and sealed on behalf of the City of Sheridan by authority of its Governing Body and that he acknowledged said instrument to be the free act and deed of said Governing Body.

WITNESS my hand and official seal.

_____
Notarial Officer
Rank and Title: Notary Public

My Commission expires: _____

SHERIDAN ATHLETIC ASSOCIATION, INC.

By: _____

_____, President

STATE OF WYOMING)
) ss.
County of Sheridan)

I, _____, a notary public do hereby certify that on this ___ day of _____, 2020, by _____, who personally appeared before me and being first duly sworn declared that he is the Presidentof SHERIDAN ATHLETIC ASSOCIATION, INC., and that he signed the foregoing document as President of the corporation by authority of the board of directors thereof and did so as a free act of said corporation.

WITNESS my hand and official seal.

_____
Notarial Officer
Rank and Title: Notary Public

My Commission expires: _____