

**AGREEMENT BETWEEN THE COUNTY OF SHERIDAN, WYOMING
AND TBD
RETAINING WALL PROJECT
SHERIDAN COUNTY COURTHOUSE**

1. PARTIES

The parties to this Contract are Sheridan County, a political subdivision of the State of Wyoming, 224 S. Main Street, Sheridan, Wyoming (“County”) and TBD, whose address is TBD, (hereinafter “Contractor”).

2. PURPOSE

This Contract defines the terms and conditions under which Contractor will provide labor, materials, and equipment for the installation of a new retaining wall, new concrete, and minor landscaping at the northwest corner (Brooks & Burkitt St.) of the Courthouse-New Addition.

3. EFFECTIVE DATE

This Agreement shall be effective October 1, 2019.

4. PAYMENT

County shall pay Contractor the sum of \$TBD upon completion of the work described in Section 5 of this Agreement per the Bid Document attached as Exhibit A.

5. RESPONSIBILITIES OF CONTRACTOR

a. Contractor shall perform the services as described in the plan drawings attached as Exhibit B in a manner consistent with professional skill and care. Contractor shall supervise, inspect, and direct the installation of the retaining wall, concrete work, and landscaping project competently and efficiently. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of the retaining wall project.

b. Contractor shall be fully responsible to County for all acts and omissions of the Sub-Contractors, Suppliers, and other individuals or entities performing or furnishing any of the work just as Contractor is responsible for Contractor’s own acts and omissions. Nothing in the Agreement shall create for the benefit of any such Sub-Contractor, Supplier, or other individual or entity any contractual relationship between County and any such Sub-Contractor, Supplier or other individual or entity, nor shall anything in the Agreement create any obligation on the part of County to pay or to see to the payment of any moneys due any such Sub-Contractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

c. Contractor shall complete all work under this Agreement by December 31, 2019.

d. Contractor shall purchase and maintain in a company or companies lawfully authorized to do business in the state of Wyoming with an A.M. Best Rating of A or better, such insurance as will protect it from the claims set forth below which may arise out of or result from Contractor's operations under this Agreement and for which Contractor may be legally liable, whether such operations be by itself or by any Sub-Contractor, supplier, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

i. claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the work;

ii. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

iii. claims for damages because of bodily injury, sickness or disease or death of any person other than Contractor's employees;

iv. claims for damages insured by usual personal injury liability coverage which are sustained: (1) by any person, because of an offense directly or indirectly related to the employment of such person by Contractor; or (2) by another person;

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

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

vii. claims involving contractual liability insurance applicable to Contractor's indemnification obligations as set forth elsewhere in this Agreement.

e. Contractor shall pay all premiums and other applicable payments in order that all workers shall be afforded coverage under Wyoming Worker's Compensation law. Contractor shall require all subcontractors to provide the same coverage under the Wyoming Statutes.

f. Contractor shall provide its own insurance for tools and equipment located at the job site.

g. Contractor's Commercial General Liability Insurance shall include premises – operations (including explosion, collapse, and underground coverage), elevators, independent contractors, completed operations, and blanket contractual liability on all written contracts, all including broad form property damage coverage.

- h. All general and automobile liability policies shall include County as an insured.
- i. Commercial general liability and automobile liability coverages shall be at a minimum amount of \$1,000,000 each. By requiring the minimum insurance coverages, County shall not be deemed in any way to limit any of the other obligations or liability of Contractor.
- j. All of Contractor's liability coverage shall be deemed primary insurance to any similar insurance Owner may obtain for its own benefit, which shall be excess or secondary but not contributing insurance.
- k. Such insurance shall not be written for amounts less than the following by Insurance Companies acceptable to County.

- i. Workmen's compensation as required by all applicable Federal, State, or other laws including Employer's Liability with a limit of at least: \$500,000

- ii. Comprehensive General Liability all on the occurrence basis including: Contractor's Liability, County's and Contractor's Protection, Completed Operations (kept in force for at least two years after date of completion), Products Liability, Broad Form Property Damage, Remove XCU exclusions (explosion, collapse, underground property, damage), Personal Injury Liability

Each Occurrence	\$1,000,000
Aggregate	\$1,000,000

Bodily Injury:	
Each Person	\$1,000,000
Each Occurrence	\$1,000,000

Property Damage:	
Each Accident	\$ 500,000
Aggregate	\$ 500,000

Or combined single limit of:	\$1,000,000
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- iii. Combination of underlying Comprehensive Liability for lesser limits with remaining limits provided by an Excess or Umbrella Liability

- iv. Comprehensive Automobile Liability including non-ownership and hired car coverage as well as owned vehicles:

Bodily Injury:	
Each Person	\$1,000,000
Each Occurrence	\$1,000,000

Property Damage:

Each Occurrence	\$ 500,000
Or combined single limit of:	\$1,000,000

6. GENERAL PROVISIONS

- a. AMENDMENTS. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
- b. AMERICANS WITH DISABILITIES ACT (ADA). The parties shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act P.L. 101-336, 42 U.S.C. 12101, et seq., and/or any properly promulgated rules and regulations related thereto.
- c. APPLICABLE LAW/VENUE. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the Fourth Judicial District, Sheridan County, Wyoming.
- d. ASSIGNMENT/AGREEMENT NOT USED AS COLLATERAL. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the prior written consent of the other party. Contractor shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of County.
- e. NONWAIVER. Any waiver by County of any breach of any covenant herein to be kept and performed by Contractor shall not be deemed as a continuing waiver and shall not operate to prevent County from declaring a forfeiture for any succeeding breach, either of the same or other covenant.
- f. ASSIGNMENT. This Agreement is not assignable without the prior written consent of the parties.
- g. EFFECT OF TERMINATION. All covenants of this Agreement that should, by their nature, survive the termination of this Agreement shall so survive.
- h. MONITOR ACTIVITIES. County shall have the right to monitor all Agreement-related activities of the Contractor. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe all Contractor personnel in every phase of performance of Agreement related work.
- i. NOTICES. All notices arising out of the provisions of this Agreement shall be in writing and given to the parties at the addresses provided in this Agreement, either by regular mail, or delivery in person.
- j. COMPLIANCE WITH LAWS. Contractor shall keep informed of and comply with all

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

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

l. INDEMNIFICATION. Contractor shall indemnify, defend, and hold harmless County and its officers, agents, employees, successors and assignees from all claims, lawsuits, losses and liability of any nature whatsoever arising from or in connection with the negligent performance of any duties or obligations by Contractor related in any way to this Agreement, including but not limited to any claims, lawsuits, losses or liability arising out of Contractor's malpractice.

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

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

o. INDEPENDENCE OF AGREEMENT. Contractor is an independent contractor, and nothing herein is intended, or should be construed as creating a relationship of partners, agency, representative, or employee/employer for any purpose.

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

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

r. FORCE MAJEURE. Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include but are not limited to acts of the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes all reasonable steps to minimize delays.

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

