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Sandra Beeman
Executive Director of Administration

BOARD OF COMMISSIONERS

Del Shelstad, Chairman
Jim Ford
Kelley McCreery
Bob Jordan
Scott Clem

**NOTICE OF SPECIAL MEETING
OF THE
BOARD OF CAMPBELL COUNTY COMMISSIONERS**

PLEASE TAKE NOTICE that the Chairman of the Campbell County Board of Commissioners has called for a special meeting to be held on **Monday, October 28, 2024, at 3:00 PM at the Campbell County Courthouse, Commissioners Chambers, 500 S. Gillette Ave, Gillette, Wyoming 82716**, to consider approval of the Children's Developmental Services Playground Upgrades Agreement and convene into an Executive Session to discuss personnel matters.

Dated this 26th day of October 2024.



Sandra Beeman
Executive Director of Administration



BOARD OF COMMISSIONERS - SPECIAL MEETING AGENDA

DEL SHELSTAD • JIM FORD • KELLEY MCCREERY • BOB JORDAN • SCOTT CLEM

October 28, 2024 | 3:00 PM

Commissioners Chambers | 500 S. Gillette Avenue

CALL TO ORDER

REGULAR BUSINESS

1. Children's Developmental Services Playground Upgrade Agreement – *Bill Beastrom/Nathan Grotrian*

EXECUTIVE SESSION - Wyoming Statute 16-4-405: Statutory Reasons

2. Personnel Matters

ADJOURN

AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement made this 28th day of October, 2024 by and between Campbell County Board of Commissioners, hereinafter referenced as “Owner”; whose address is 500 S. Gillette Avenue Suite 1100, Gillette, Wyoming 82716, and Norton Construction, Inc. hereinafter referenced as “Contractor” whose address is 150 Rock Rd., Gillette, WY 82718. Owner and Contractor, in consideration of mutual covenants set forth herein agree as follows:

1. Description.

A. Project. The Project is generally described as:

Campbell County Children’s Developmental Services Center Playground Upgrades

B. Work. The Contractor shall furnish all of the labor, tools, materials, equipment, and services necessary for the construction and completion of the Project as described in the Contract Documents.

C. Contract Documents. The Contract Documents consist of the following items:

1.C.1. Drawings titled **Campbell County Children’s Developmental Services Center Playground Upgrades**

Dated the 24th day of September 2024.

1.C.2. Addenda numbered as One (1) & Two (2).

1.C.3. Project Manual **Campbell County Children’s Developmental Services Center Playground Upgrades**

Dated the 24th day of September 2024.

1.C.4. List all other required documents here: N/A

D. Contract Time. Time is of the essence in this agreement. The construction of each Phase of the Project shall begin on the day that the Owner indicates in each Notice-to-Proceed. Each phase shall exhibit Substantial Completion, as defined in Section 2N of this Agreement within the given number of days after each Notice-to-Proceed is issued: Sixty (60) days.

E. Contract Price. For full and complete performance of the Work, the Owner agrees to pay the Contractor a sum of four hundred and forty thousand dollars (\$440,000.00); payable in accordance with the terms of this Agreement.

2. Definitions. The following terms shall have these definitions:

A. Agreement – This written instrument which is evidence of the contractual agreement between Owner and Contractor pertaining to the Work.

- B. Contract Documents – Those items pertaining to this Agreement, which are enumerated in Section 1C of this document.
- C. Contract Price – The moneys payable by Owner to Contractor for completion of the Work according the Contract Documents, which is enumerated in Section 1E.
- D. Contract Time – The number of days or the date to reach Substantial Completion for the Project, which is enumerated in Section 1D of this document.
- E. Contractor – The individual or entity the Owner has hired to construct the Project, which is enumerated in the heading of this Agreement.
- F. Change Order - A written modification to this Agreement adjusting the scope of the Work, the Contract Price, or the Contract Time.
- G. Final Completion – After Substantial Completion, when any items identified on punch lists are complete, the Project is in all ways complete, the Owner has made final inspection and is ready to accept the Project.
- H. Owner – The Campbell County Board of Commissioners.
- I. Owner’s Consultant – A third party professional engineering or architectural firm hired by the Owner to assist the Owner’s Representative during the Project.
- J. Owner’s Representative – A County staff member assigned to the Project to carry out roles and responsibilities of the Owner.
- K. Project – The finished product of an organized process of constructing or installing the Work per the Contract Documents; which is enumerated in Section 1A of this document.
- L. Project Manual – A collection of project forms and technical specifications to be used for the Project. The Project Manual is a part of the Contract Documents. Underlined names in this Agreement refer to the specific titles of documents that are included in the Project Manual.
- M. Punch List – A document prepared near the end of a construction project listing work not conforming to contract specifications that the general contractor must complete prior to final payment.
- N. Substantial Completion – When a Project has progressed to a point where it can be used for its intended purpose as determined by the Owner. For example, if the Project is a building, Substantial Completion is determined by Owners’ Consultant.
- O. Work – The entire construction required to be provided under the Contract documents, including, but not limited to, furnishing all necessary labor, tools, materials, equipment, and services.
- P. Work Directive – A written statement by the Owner to the Contractor ordering an addition, deletion or revision to the Work. The parties will expect that changes to the Work will be incorporated by a

subsequent Change Order executed in writing after an appropriate change in Contract Price or Contract Time has been negotiated.

3. Contractor's Representations. To induce the Owner to enter into this Agreement, Contractor represents and warrants to the Owner the following:

- A. Contractor is professionally and fully qualified to perform the Work in a professional manner and complete the Project;
- B. Contractor is authorized to engage in business in the State of Wyoming and will maintain all necessary licenses, permits, or other authorizations as required by law or agreement with the Owner;
- C. Contractor has the expertise, experience, knowledge, and necessary plant, personnel, and financial capability to successfully complete the Project;
- D. The person signing this Agreement has the authority to bind the Contractor;
- E. Contractor is familiar with the work site in its present condition; and
- F. Contractor is aware of the terms of this Agreement, the nature and extent of the Contract Documents, and any local conditions, laws, or regulations which could affect the cost or progress of the Project.

4. Insurance. Without limiting any obligations or liabilities of Contractor, the Contractor shall secure and maintain policies of insurance as set forth below from an insurance company or companies authorized by the State of Wyoming with a minimum "A. M. Best" rating of at least A-. Such insurance will protect Contractor, its subcontractors, or anyone directly or indirectly employed by the Contractor or its subcontractors or for whose acts the Contractor or subcontractors may be liable. The insurance will also protect Owner and its representatives, agents and employees, and Owner's Consultant from claims for bodily injury, death, or property damage which may arise out of, or result from, the Contractor's or its subcontractors' operations during the Project.

Insurance policies shall contain a provision that coverage will not be cancelled or materially changed thirty (30) days written notice has been received by the Owner.

Owner and Owner's Consultant shall be named as an additional insured with a waiver of subrogation.

Contractor shall not commence any work until all required insurance has been obtained and certificates of insurance have been delivered to the Owner.

A. Commercial General Liability. Must include broad form property damage (i.e. underground, explosion and collapse coverage) and blanket contractual liability coverage.

Each occurrence	\$1,000,000
Personal and advertising injury	\$1,000,000
General aggregate	\$2,000,000
Products and completed operations	\$2,000,000
(to be enforced for two (2) years after final payment)	

- B. Automobile Liability. Must include owned, not owned, and hired vehicles and must cover bodily injury and property damage.

Combined single limit (each accident)	\$1,000,000
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- C. Umbrella or excess liability.

Each occurrence	\$2,000,000
Aggregate	\$2,000,000

- D. Provide Certificate of Good Standing with State Statute.

- E. Builders Risk Insurance: Will be provided by the Owner.

5. Payment and Performance Bonds.

Contractor shall furnish bonds as security for the faithful performance of the Work and payment of all Contractor’s obligations arising thereunder; in accordance with Wyoming Statute §16-6-112. Each bond shall be in the amount of the Contract Price and shall remain in effect one (1) year from the date of final payment.

Language in the bond documents shall match the language of the AIA Document A312-2010 and may be issued using the surety company’s own forms.

Surety Companies executing bonds must be authorized to transact business in Wyoming and must appear on the Department Circular 570 from the Bureau of Fiscal Service of the United States Department of the Treasury.

The Contractor shall provide notification to subcontractors and materialmen of their rights of protection under the bonds per Wyoming Statute §16-6-121. Contractor shall deliver the required bonds to Owner prior to the commencement of construction.

6. Owner’s Responsibilities.

- A. The Owner shall assign a County staff member as the Owner’s Representative for the Project; to carry out roles and responsibilities of the Owner and provide contact information to the Owner.

- B. The Owner may, at their discretion, hire third party Owner’s Consultant(s) to assist Owner during the Project. The Owner will notify the Contractor in writing of the person or company who will be fulfilling this role and their contact information.

- C. With respect to matters of importance to the progress of the Work, the Owner shall respond to questions, and provide information regarding the Project in a timely manner.

- D. The Owner shall fulfill construction administration actions identified in Section 10.

- E. The Owner shall provide up to three (3) copies of the Contract Documents to the Contractor.

- F. The Owner shall make payments to the Contractor for the Work in accordance with Section 14 and Section 17.

7. Contractor's Responsibilities.

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently using the Contractor's best skill and attention to fulfill the expectations associated with and completion of the Project.
- B. Contractor shall perform the Work necessary to construct the Project in accordance with the Contract Documents; providing sufficiently skilled workers and suitable materials and equipment. Contractor shall see that the finished work complies with Contract Documents.
- C. Contractor shall provide competent, suitably qualified personnel to perform the Work. Contractor shall be responsible to the Owner for acts and omissions of the employees and agents of the Contractor, the Contractor's subcontractors, and other entities performing the Work through the Contractor.
- D. Contractor shall be solely responsible for, and have control over, the means, methods, techniques, sequences, and procedures of construction.
- E. Contractor shall be responsible for coordinating all portions of Work under this Agreement and for the schedule and timeline of the Work on the Project.
- F. Contractor shall maintain order and good discipline at the construction site at all times. Contractor shall keep the premises clean and free of accumulations of waste materials and debris resulting from the Work.
- G. Contractor shall comply with laws, ordinances, rules, and regulations applicable to the Work.
- H. Contractor shall conduct its operations in a safe manner and comply with all applicable laws and regulations relating to safety and work site conditions.

Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with construction of the Project to prevent and avoid injury, and loss or damage to persons or property.

- I. Contractor shall assign a competent Superintendent as an authorized representative on the project site to fulfill the Contractor's responsibilities and obligations under this contract. The Superintendent must be in attendance on the site during construction.

Qualifications of the proposed superintendent shall be submitted to the Owner for review prior to beginning work on the Project. The Contractor shall not assign a superintendent to the Project if the Owner has made a reasonable objection to that person.

- J. A pre-construction meeting will take place prior to beginning work on the Project. Items to be covered at the meeting will include names and contact information for all involved parties, schedules and timelines, Project protocols, coordination, responsibilities of the parties, traffic and site control plan, and other similar actions. The Contractor is to assist with the content of this meeting.
- K. Contractor shall keep one (1) record copy of Contract Documents, specifications, drawings, addenda, modifications and shop drawings at the Project site. Such documents will be kept in good order and annotated to show any and all changes made during the construction process. These documents shall be submitted to the Owner as record drawings at the end of the Project.
- L. Contractor must provide the order the Contractor proposes to complete key components to the Project. The Contractor shall also update the Owner on the status of the Project; through progress meetings and by providing updated schedules with each Pay Application that show the critical path of key components to the Project.
- M. Materials testing for quality control during construction will be administered and paid for by the Owner. Contractor shall assist the Owner in coordinating these tests with the testing company. Any retests for failures will be charged to the Contractor. Contractor shall be responsible for and shall pay all costs for inspections or testing required of the Contractor in the Contract Documents.
- N. Contractor shall secure and pay for building permits and other permits, licenses, and fees required by government agencies or by the Contract Documents. Contractor shall comply with any requirements of the permits and bear all costs related to the permits including any tests, inspections, or approvals.
- O. Contractor shall pay all license fees and royalties, and assume all costs incident to the use, in the performance of the Work, of any invention, process, or device which is the subject of patent rights or copyrights held by others. Contractor shall pay all sales, consumer, use, and other taxes required by law. Contractor is responsible for all State and Federal taxes on payments earned under this Agreement, and for the earnings paid to any workers hired by Contractor.
- P. Contractor shall contact utility companies to locate the utilities on and around the Project per One Call of Wyoming policy. Notifications to utilities and related civil penalties will be governed by Wyoming Statutes §37-12-301 through §37-12-307.

Contractor shall work with the Owner to locate service lines and utilities that are within the site and not marked by utility companies. Contractor shall strive diligently to avoid damaging any utilities during construction.

- Q. If any hazardous environmental conditions are encountered during construction, the Contractor shall isolate and secure the location, stop all work in and around the hazardous condition, and notify the Owner immediately. Contractor shall not be responsible for any hazardous environmental conditions encountered at the site that were not identified in the Contract Documents.
- R. Contractor to provide Owner, Owner's Consultant(s) and/or Owner's identified Representative(s) access to the Project site.

- S. Contractor shall provide any shop drawings and submittals required by the Contract Documents to the Owner for review. When the Contractor provides shop drawings and any required submittals, the Contractor is representing that the Contractor has reviewed and approved such documents and verifies the materials, field measurements, and field construction criteria are correct.
- T. Contractor warrants and guarantees that all materials and equipment are new and that the Work is of good quality, free from faults or defects, and conforms to the Contract Documents. All materials and equipment exclude defects or damage caused by modifications or improper use by the Owner, or normal wear and tear.
- U. Contractor will provide a one (1) year warranty for Project improvements including materials, equipment, and workmanship; beginning on the date of Substantial Completion. If any work is found to be defective during the warranty period, Contractor shall immediately repair or replace the defective portion(s) without cost to the Owner and in accordance with the Owner's instructions. If Contractor fails to do so, the Owner may have the defective work repaired; with all costs associated with the repair to be paid by the Contractor.
- V. Contractor shall promptly correct or repair any work determined by the Owner to be defective, or that fails to conform to the Contract Documents.
- W. Contractor shall at all times be an independent Contractor in performing the work under this Agreement.
- X. Contractor shall follow all local, state, and federal laws and regulations related to the Contractor's employees, the Contractor's equipment, and/or any other item related to completion of the Work.

8. Assignment and Subcontracts. The Contractor shall not assign Contractor's interest in this Agreement nor subcontract more than fifty percent (50%) of the value of the Work. Subcontractors working on the Project are subject to the approval of the Owner. Contractor is responsible for the acts and omissions of the subcontractors as well as the quality and the timeliness of the work performed by them. Contractor agrees to bind every subcontractor to the terms and conditions of this Agreement.

9. Construction by Others. Owner reserves the right to award separate contracts or to use Owner's own forces to complete portions of the Project or other construction or operations on the site. If this occurs, Contractor shall cooperate with Owner in coordinating schedules and any work phasing required. In doing this, Owner shall not substantially interrupt the Contractor's critical path schedule nor significantly encumber Contractor's ability to complete Work at the site.

10. Construction Administration. The Owner will fulfill the construction administration actions through Owner's Representative and/or Owner's Consultant(s). During construction administration, the Owner's Representative and/or Owner's Consultant(s) shall have the Owner's authority to:

- A. Determine if the Work is proceeding in accordance with the Contract Documents and ascertain whether the acceptability of all Work and whether it is progressing satisfactorily.

- B. Provide onsite observation(s) and inspection(s) to the extent desired by the Owner. This may include extensive observation and inspection on the Project site.
- C. Notify Contractor of repairs or alterations that are needed on the Project site and will provide the Contractor copies of observation and inspection reports.
- D. Have authority to reject any work which does not conform to the design.
- E. Review and approve shop drawings, product data, and samples for conformance to the Contract Documents.
- F. Review and approve submittals of proposed materials and equipment for the Project (including substitution requests) for quality, compatibility with the Project, and adherence to the Contract Documents.
- G. Review proposed Change Orders to determine if costs are appropriate.
- H. Review and approve pay requests. Owner's Representative and/or Consultant(s) may make a recommendation to Owner regarding payment based on a review of the progression of the Work, the point indicated on the pay request, and observation that quality of the Work is in accordance with Contract Documents.
- I. Make determinations on unit price work items.
- J. Order minor changes to the Work that are consistent with the Contract Documents.
- K. Interpret the intent of the Contract Documents and make decisions concerning performance under, and requirements of, the Contract Documents.
- L. Answer the Contractor's questions regarding the Contract Documents and respond to requests for information, issue supplemental drawings and/or specifications (if necessary) and make necessary amendments to the Contract Documents. If any such clarifications constitute a change in the scope of work and require more time or resources to be used than was planned for in the bid, the Contractor may pursue a contract adjustment per Section 12B of this document.
- M. Participate in progress meetings and Project walkthroughs.
- N. Process Change Orders and/or Work Directives. Prepare such documents with backup information from the Contractor.
- O. Make determinations on weather days.
- P. Verify that tests performed by Owner's third-party testing company meet the intent of the Contract Documents.
- Q. Determine the date of Substantial Completion.

- R. Complete Substantial Completion and Final Completion walkthroughs of the Project, create punch lists for required actions, and verifying when such punch lists are complete.

11. Owner Initiated Changes. Without invalidating this Agreement, Owner may, at any time and from time to time, order additions, deletions, or revisions to the Work. Such changes may be completed through a Change Order or by a Work Directive. The value of the work covered by the Change Order shall be determined by unit price (when applicable) or by a mutually agreed upon lump sum price.

12. Contractor Initiated Changes (Claims)

- A. Weather Days. If Contractor is not able to work on a critical path or controlling item on the Project for at least half of a regular scheduled work day because of inclement weather, then the Contractor shall be entitled to adjustments in the Contract Time. Adjustments to the Contract Time are calculated for each weather day that is greater than the anticipated number of weather days for the given month as shown below:

January	8
February	8
March	7
April	6
May	4
June	3
July	2
August	2
September	2
October	4
November	5
December	7

- B. Contract Adjustment. If Contractor claims that it is entitled to damages, an extension of the Contract Time, or an adjustment of the Contract Price, for any reason, then Contractor must deliver a written claim to Owner. Such claims may include, but are not limited to, any act or neglect of Owner or Owner's Representative or employee, unknown physical conditions encountered at the site, hazardous environmental conditions encountered at the site, conditions which differ materially from those indicated in the Contract Documents, or any inaccurate or improper material representations by the Contract Documents.
- C. Failure of Contractor to file a claim as provided herein shall constitute a waiver of the claim by Contractor. Pending resolution of a claim, Contractor shall proceed diligently with the performance of the Work.
- D. Delays. The Contractor shall be entitled to an equitable adjustment in Contract Time so long as the Contractor has been diligent in working on the Project and someone for whom the Owner is responsible for delays, disrupts, or interferes with the progression of the work; or the Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, acts of God, or failures to act of utility owners; or there are other delays beyond the control of the Contractor. In such or comparable cases, the extension of the Contract Time will be an amount equal to the time lost due to such delays. This shall be Contractor's sole and exclusive remedy for such delay.

- E. Any claims for weather days, contract adjustment, or delays shall be delivered to Owner in writing with supporting data and documentation within ten (10) days after the occurrence of the event giving rise to the claim or within ten (10) days after the Contractor first recognized the condition. The Owner's Representative shall provide a decision, in writing, upon review of submitted materials and consultation with the Owner's Consultant (if applicable) within thirty (30) days of receipt of the request and all applicable materials.

Should the decision of the Owner's Representative be found unsatisfactory by the Contractor, the Contractor may submit an appeal to the Campbell County Board of Commissioners within fourteen (14) calendar days of the date of the decision by the Owner's Representative. Upon receipt of the appeal, the Campbell County Board of Commissioners shall provide a decision within sixty (60) calendar days. Should the decision of the Campbell County Board of Commissioners be found unsatisfactory by the Contractor, only then, may the Contractor submit for a decision by the District Court, in Campbell County, Wyoming.

- 13. Change Orders.** Subsequent to issues arising under Sections 11 and/or 12 of this document, all changes to the Contract Price or Contract Time will be formalized by the parties executing a Change Order to this Agreement. Upon receipt of an executed Change Order, Contractor shall proceed with the Work involved. All such Work shall be executed under the same applicable conditions and include any adaptations provided in the Change Order. If a notice of contract changes to the surety is a requirement of a bond, it will be the Contractor's responsibility to make the notification.

- 14. Progress Payments.** When requested by the Contractor, progress payments may be made as follows:

- A. Contractor shall submit to Owner monthly pay applications for the work completed through the date of the pay application. Contractor shall use the Contractor's Application for Payment document included in the Project Manual.
- B. The application will be supported by information that is reasonably requested by Owner to verify the work is done and the amount is due.
- C. Payment for materials purchased specifically for the Project may be included in the application; so long as the materials are stored on site or at another secure location that can be observed by the Owner. Proof of insurance will be required.
- D. Lien waivers must be included from major subcontractors and suppliers through the date of the most recent previous pay application; to verify that payment has been received from the Contractor per Wyoming Statute §16-6-1001(a)(iv). Contractor shall use the Release and Waiver of Lien document included in the Project Manual.
- E. Retainage shall be deducted from each pay application as described in Section 15 of this document.
- F. Progress payments shall be made in accordance with the current Campbell County Public Works Accounts Payable schedule, which is attached and labeled/identified as Exhibit A to this agreement.

- G. Each application shall be promptly reviewed by the Owner's Representative and/or the Owner's Consultant. A reasonable amount of time is permitted for this review.
- H. No progress payment shall be construed to be a final acceptance or approval of that part of the services or Work to which the payment relates. A progress payment will not release a Contractor from any of the Contractor's obligations under this Agreement or liabilities with respect to such services or Work.
- I. Owner may withhold payments to the extent necessary to protect Owner against any loss or damage due to, but not limited by, the following: (1) Contractor's repeated failure to carry out the Work in accordance with the Contract Documents, (2) defective work not remedied, (3) failure of the Contractor to promptly pay their subcontractors, materialmen, suppliers or laborers, (4) receipt of a third party claim, lien, or demand, or reasonable evidence of a pending claim, lien, or demand, or (5) if Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Work under this Agreement.
- J. Contractor warrants and guarantees that title to all Work, materials and/or equipment covered by any pay application will pass to Owner at the time of payment, free and clear of all and any liens, claims, security interests and/or encumbrances.

15. Retainage. Retainage shall be administered in accordance with Wyoming Statute §16-6-701 through 706. Retainage will be deducted from each progress payment in the amount of five percent (5%). Contractor may provide for retainage in all of its contracts with subcontractors consistent with the requirements set out in this agreement. Retainage will be held in one of the 2 following methods, based on the contractors preference until after the Final completion and the 40 day advertising period:

- A. The Contractor shall set up an account in Contractor's name with an acceptable depository to serve as custodian of retained monies during the Project. An agreement shall be executed between the Owner, Contractor, and depository identifying the following: (1) the Contractor shall be responsible for all fees associated with the account as well as any tax liabilities from interest accrued, (2) the terms of the account are such that no funds will be released to the Contractor until the depository has received written authorization from the Owner to release the funds, (3) should the Contractor fail to satisfactorily complete the work, the Owner will have access to these funds, and (4) the Owner bears no responsibility for the safety of the funds in the account. The form of such an agreement is to be titled Joint Account Agreement for Retainage. This form is included in the Project Manual.
- B. Retainage amounts will be calculated on the pay applications and will remain in the project budget as money not yet paid. Contractor may provide for retainage in all of its contracts with subcontractors consistent with the requirements set out in this agreement.

16. Project Closeout. To closeout a project, the following items will take place in the order provided:

- A. Substantial Completion. After inspection of the work by Owner and Owners Consultant, and when substantial completion has been met as determined in the definitions, a punch list will be created of minor items to be completed prior to Final Completion and will be issued to the Contractor along with the Certificate of Substantial Completion. Project will be advertised for forty (40) days as required

per Wyoming Statute §16-6-116. The last pay application for 100% of the Contract Price may be submitted and processed.

- B. **Warranty.** Contractor is to issue a warranty for materials, equipment, and workmanship as described in Section 7T of this document. The Warranty will be for one (1) year from the date of Substantial Completion. The document to be used to draft the Warranty is titled Warranty and is included in the Project Manual.
- C. **Final Completion.** When all punch lists are completed, and the Owner is satisfied that the Project is in all ways complete and acceptable, the Certificate of Final Completion will be issued. Final Completion shall be attained within 2 weeks of the issuance of the Substantial Completion certificate.
- D. **Lien Waivers.** During the advertisement period, final lien waivers must be obtained from the subcontractors and major suppliers; as indicated on the form named Lien Waivers included in the Project Manual. If the Contractor is still holding retainage from the subcontractors or suppliers, the lien waivers shall indicate as such.
- E. **Affidavit.** The Contractor shall provide a final lien waiver and sworn statement of payment, stating call claims of all subcontractors and suppliers per Wyoming Statute §16-6-117. The form to be used is titled Affidavit on Behalf of Contractor and is provided in the Project Manual.

17. Final payment. The final payment will be the release of the Contractor's retainage from the joint account or the payment of the retained amounts held in the Owners budget. Owner shall make final payment to Contractor when (1) items 16 A-E are complete to the Owner's satisfaction, (2) there have been no claims or payment issues brought to the Owner's attention that are not covered by an appropriate bond, and (3) the Owner is in all ways satisfied with the Project.

Owner's failure to identify defective or incomplete work shall not impair Owner's right to recover for any defective work or breach of this Agreement by Contractor. The making of final payment by Owner will not constitute a waiver by Owner of any claims against Contractor arising from a breach of this Agreement or from defective work or failing to comply with the terms of this Agreement.

18. Acceptance of Final Payment. The acceptance of final payment will constitute a waiver of all claims by Contractor against Owner.

19. Liquidated Damages. The Owner will suffer financial loss if the Work is not completed within the Contract Time. Owner and Contractor agree that, as liquidated damages for delay (but not as a penalty), Contractor shall pay: \$200/day.

20. Termination or Suspension. Work may be terminated or suspended per the following:

- A. **Owner suspension for convenience.** Owner may without cause order the Contractor in writing to suspend the work. If the suspension is without cause, Contractor may seek an adjustment of the Contract Price or Contract Time or both if its work has been adversely impacted by any suspension; unless the actions or inactions of the Contractor, its subcontractors, or suppliers are the reason for the suspension.

- B. Owner termination for convenience. Owner may, at any time, terminate this Agreement, for Owner's convenience and without cause, by giving written notification to the Contractor. Upon receipt of this notification, Contractor shall cease operations, take actions necessary for the protection of the existing Work, and terminate existing subcontracts.

20.B.1. In such case the contractor shall be paid for (1) work properly executed through the termination date including reasonable overhead and profit, (2) expenses sustained through the termination date in performing services and furnishing labor, materials, or equipment for the Project, (3) costs incurred in settlement of terminated contracts with subcontractors and suppliers, and (4) reasonable expenses directly attributable to termination.

20.B.2. Contractor shall not be paid on account of lost anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

- C. Owner termination for cause. If the Contractor is (1) guilty of a substantial breach in this Agreement, (2) repeatedly disregards laws, regulations, ordinances, codes, or orders of a public authority, (3) fails to make payment to subcontractors or suppliers for which Owner has made payment to Contractor, (4) repeatedly refuses to properly complete the Work and supply necessary materials or workers, or (5) fails to deliver the insurance certificate, payment, and performance bonds within fourteen (14) days of the Owner executing this Agreement, if required; the Owner may terminate this Agreement.

During such a termination and after providing written notification to the Contractor, the Owner may take control of the Project site and materials or equipment that have been paid for and finish the Work. If the unpaid balance of the Contract Price is not enough to finish the Project, the Contractor shall remain liable to the Owner for the difference in price. If there is an excess balance of funds after the Owner completes the Project, allowing for construction costs and any other legal or other costs attributable to the Owner taking over the Project, that amount will be paid to the Contractor. Any applicable bonds in place for the Project may be executed in behalf of the Owner and used in conjunction with or separate from the process described here.

- D. Contractor termination. As long as the following does not occur due to acts or faults of the Contractor its subcontractors, suppliers, or anyone it has control over; the Contractor may terminate this Agreement if without reason or justification, Owner has not made payment to the Contractor as described in this Agreement or if work is stopped for sixty (60) consecutive days due to: (1) a court order or act of government official requiring the Work to be stopped, (2) delays by anyone the Owner is responsible for, (3) suspensions by the Owner as described in Section 20A, or (4) the Owner repeatedly failing to fulfill contractual obligations with respect to matters important to progress of the Work. The Owner shall pay the Contractor for work properly executed and materials stored on site through the termination date, restocking fees on materials that have been ordered for the project but not yet delivered, and reasonable demobilization costs.

21. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner and its representatives, agents, and employees, and Owner's Consultant from and against all claims, demands, damages, causes of action, liabilities, losses and expenses, including, without limitation, attorneys' and consultants' fees and expenses arising out of, or resulting from, performance of the Work by Contractor, its subcontractors or anyone employed by them or for whose acts they may be liable.

22. Limitation on Liability. Notwithstanding any other provisions of this Agreement, the Owner's liability to Contractor for any claimed breach of this Agreement or breach of any alleged representations or warranties, whether expressed or implied, shall never exceed the Contract Price less any payments made by Owner to Contractor.

Further, the Owner shall not be liable to Contractor for consequential damages, loss of bonding capacity, loss of profits from other transactions or contracts, impairment of capital, loss of financing, loss of business, or loss of reputation.

23. Disputes. Claims, disputes or other matters in question between the parties to this Agreement shall, initially, attempt to be resolved through good faith efforts. If not resolved through good faith efforts by the parties, the aggrieved party may pursue any and all legal remedies available.

24. Jurisdiction. This Agreement shall be governed by the laws of the State of Wyoming. The Sixth Judicial District, Campbell County, Wyoming shall have exclusive jurisdiction of all disputes arising out of this Agreement.

25. Governmental Immunity. By entering into this Agreement, Owner does not waive any governmental immunity to which Owner is entitled under Chapter 39, Governmental Claims, of the Wyoming Code of Civil Procedure. Further, Owner expressly reserves the right to assert governmental immunity to any claims arising under this Agreement.

26. Entire Agreement. This document represents the entire and integrated agreement between Owner and Contractor and may be amended only by a written instrument; signed by both parties.

Campbell County Board of Commissioners
(Owner)

(Contractor)

Signature _____

Signature _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____