Roadway Construction and Paving Agreement

LARAMIE COUNTY WYOMING and SIMON CONTRACTORS and MILLIRON TJ CONSTRUCTION

This Roadway Construction Agreement ("Agreement") is made and entered into between Laramie County, Wyoming, 310 W. 19th Street, Cheyenne, Wyoming, 82001 ("County"), and Milliron TJ Construction LLC ("Milliron") and Simon Contractors 6215 Clear Creek Parkway, Cheyenne Wyoming 82007 ("Contractor") {Milliron, County, and Contractor are collectively referred to herein as the "Parties" or individually as a "Party."}

The Parties, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. Work.

Contractor will perform the work described in Exhibit A (Documents 1 through 6) and Exhibit B, (Simon Construction Proposal and Standard terms and Conditions, 3 pages) the contents of which are fully incorporated herein. Such scope of work shall be referred to herein as the "Work."

Article 2. Contract Time.

The Work will be completed on or before ______ ("Finish Date") in accordance with Exhibit A, subject to modifications by change order. Increase in quantities or severe and extended weather delays will also result in modification to this completion date, as mutually agreed.

Article 3. Contract Price.

Subject to change orders, the "Contract Price" shall be \$ 973,559.68 for completion of the Work. Items of work will be measured in the field and actual payment will be based on quantities installed, at the unit prices included in the attached Exhibit A and B.

Milliron shall be responsible for one half of the cost of the Work subject to this Agreement, for the section of roadway between Road 136 and Earhart Road. The portion of the Work for which Milliron is financially responsible, as described in this paragraph, is the "Milliron Obligation." Subject to change orders, the Milliron Obligation is \$239,771.30 (the same being one half of \$479,542.60).

County shall be responsible for one half of the cost of the Work subject to this Agreement for the section of the roadway between Road 136 and Earhart Road. Additionally, County shall be responsible for the entirety of the cost of the Work subject to this Agreement for the section of roadway between Earhart Road and Road 137. The portion of the Work for which County is financially responsible, as described in this paragraph, is the "County Obligation." Subject to change orders, the County Obligation is \$733,788.39.

Article 4. Change Orders.

Any increase or decrease in the Contract Price, change in the Work or change in the Finish Date must be set forth in a written change order. Approval and acceptance of any change order must be made, and memorialized by mutual agreement and signature of the Parties as follows: 1) In regard to the "County Obligation" the project between Earhart Rd. and Rd. 137-Upon a written instrument by Contractor, indicating the nature of the change, prospective change orders shall be provided by Contractor to the County's representative, the Director of Laramie County Public Works, for review and recommendation to the Commissioners. 2) As to the project between Rd. 136 and Earhart Rd.- Upon a written instrument indicating the nature of the change. prospective change orders shall be provided by Contractor to the County's representative, the Director of Laramie County Public Works, for review and recommendation to the Commissioners and to Milliron.

Article 5. Contract Documents.

The Contract Documents which comprise the entire Contract between the Parties concerning the Work consist of all of the following: (1) this Agreement (6 pages); (2) Exhibit 'A' (6 pages) and (3) Exhibit 'B' (3 pages).

Article 6. Payment Procedures

Contractor will submit to County and Milliron on a monthly basis a request for payment ("Payment Request") in a format agreed to by the Parties which will cover completed and inspected work as related to the County and Milliron's respective obligations as set forth in Article 3. County and Milliron, over the course of the Work until completion, will pay Contractor ninety percent (90%) of the full amount covered by the Payment Request within ten (10) calendar days from the day it was presented while retaining ten percent (10%) thereof ("Retainage") to be paid upon final acceptance by County. Final payment of the balance of the Contract Price by County and Milliron including the Retainage, will be made when all Work is accepted by County.

Article 7. Retention of Records

Contractor agrees to retain all required records for three (3) years after the County makes final payment and all other matters relating to the Agreement are concluded. Contractor agrees to permit access by the County and Milliron, or any of their duly authorized representatives, to any books, documents, papers and records of the Contractor which are directly pertinent to this specific Agreement for purposes including but not limited to audit, examination, excerpts, and transcriptions. It is agreed that finished or unfinished documents, data or reports, prepared by Contractor under this contract shall be considered the property of the County and upon completion of the services to be performed, or upon termination of this Agreement for cause, or for the convenience of the County or as required by law, will be turned over to the County.

Article 8. Insurance.

- 8.1. Contractor's Insurance. Contractor will purchase and maintain the following insurance policies: (i) commercial general liability insurance with limits of liability no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
 - (ii) workers' compensation insurance as required by applicable state law; and (iii) automobile liability insurance with limits of liability equal to at least \$500,000 per occurrence.
 - (iii) Laramie County, its officers, officials, employees, and volunteers as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of Contractor.
 - (iv) For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees, and volunteers Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
 - (v) Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.
 - (vi) Contractor shall provide, in addition to the appropriate Certificate of Insurance, copies of any endorsement indicating: The status of Laramie County as an additional named insured, that the Contractors coverage is primary and the waiver of subrogation as indicated herein.
 - (vii) Contractor will deliver to County certificates or other evidence of the insurance that Contractor is required to purchase and maintain, including copies of endorsements indicating: The status of Laramie County as an additional named insured, that the Contractors coverage is primary and the waiver of subrogation as indicated herein.
- 8.2 County's Insurance. County, is self-insured governmental entity covered by an insurance pool, the "Wyoming Association of Risk Managers" pursuant to law including but not limited to, W.S. 1-39-101 et seq. (as amended). County will be responsible for maintaining its liability insurance and other reasonably appropriate insurance.
- 8.3 Notice of Substantial Completion: Pursuant to Wyo. Stat. Ann. § 16-6-116 Contractor shall, upon issuance of a certificate of substantial completion, cause notice to be published in a newspaper of general circulation, published nearest the point at which the work is being carried on, once a week for two (2) consecutive weeks, and posted on County's official website. The notice shall set forth in substance that the County entity has accepted the work, as substantially complete according to the contract and associated documents and that the general contractor is entitled to payment as provided in this Agreement upon the forty-first day (and the notice shall specify the exact date) after the notice was first published and posted.

Article 9. Miscellaneous.

- 9.2. <u>Independent Contractor</u>: The services to be performed by Contractor are those of an independent contractor and not as an employee of the County or Milliron. Contractor is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. Contractor assumes responsibility for its personnel who provide services pursuant to this contract and will make all deductions required of employers by state, federal and local laws and shall maintain liability insurance for each of them. Contractor is free to perform the same or similar services for others.
- 9.3 <u>Discrimination:</u> All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition, or national origin.
- 9.4 <u>ADA Compliance</u>: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. '12101, et seq., and/or any properly promulgated rules and regulations relating thereto.
- 9.5 Governmental/Sovereign Immunity: County does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including W.S. 1-39-101 et seq., by entering into this Agreement. Further, County fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on or related to this Agreement or its subject and purpose.
- 9.6 <u>Preference-Wyoming Labor</u> Should the subject of this agreement constitute the construction, reconstruction, improvement, enlargement, alteration, or repair, of any public works project or improvement, by signature below Contractor acknowledges the requirement for the use of Wyoming labor pursuant to W.S.§16-6-203 as amended, except in circumstances as provided by law including, but not limited to W.S.§16-6-201 et seq.
- 9.7 Acceptance Not Waiver: County or Milliron's approval of the reports, and work or materials furnished hereunder shall not in any way relieve Contractor of responsibility for the technical accuracy of the work. County or Milliron's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- 9.8 <u>Termination:</u> This Agreement may be terminated (a) by either party at any time for failure of the other party to comply with the terms and conditions of this agreement; (b) by either party, with thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.
- 9.9 <u>Modification:</u> This Agreement shall be modified only by a written agreement, duly executed by all parties hereto.
 - 9.10 Invalidity: If any provision of this Agreement is held invalid or unenforceable by

any court of competent jurisdiction, or if the County is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties that the provisions of this Agreement are fully severable.

- 9.11 Applicable Law and Venue: The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the Parties to be a material inducement to enter into this Agreement. This provision is not intended nor shall it be construed to waive County's governmental immunity or available defenses as provided in this Agreement.
- 9.12 <u>Indemnification</u>: To the fullest extent permitted by law, Contractor agrees to indemnify and hold harmless County, its elected and appointed officials, employees, and volunteers and Milliron, its officers, employees, and owners, from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with work performed by or on behalf of Contractor for County or Milliron except to the extent liability is caused by the sole negligence or willful misconduct of County or Milliron. Contractor shall carry liability insurance, as required herein and sufficient to cover its obligations under this provision and provide County and Milliron with proof of such insurance.
- 9.13 Force Majeure. Each Party hereto shall be excused from the performance of its obligations hereunder from time to time and at any time, but only for so long as it is prevented from performance by act of God or public enemy, war, blockade, civil insurrection, the elements, fire, pandemic, quarantines, compliance with any law, rule, order or regulation which has not been declared by a court of competent jurisdiction to be invalid or any other cause beyond the reasonable control of such party whether similar or dissimilar ("Force Majeure"), provided that lack of funds or circumstances resulting from the lack of adequate planning which a party should have reasonably been expected to perform shall not be considered a Force Majeure. In the case of work suspension due to Force Majeure, the Party claiming Force Majeure shall, within seven (7) days from the beginning of any such Force Majeure, notify the other Party of such failure of performance and the cause thereof, and shall specify the anticipated period of delay before performance can be resumed. The Party claiming Force Majeure must also show that it has taken all reasonable measures to overcome and/or minimize any delay arising from such Force Majeure.
- 9.14 <u>Limitation on Payment:</u> County's payment obligation is conditioned upon the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services provided by pursuant to the Agreement, the Agreement may be terminated by County at the end of the period for which funds are available. County shall notify Contractor and Milliron at the earliest possible time of the services which will or may be affected by any shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if County knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to County in

the event this provision is exercised, and County shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision.

- 9.15 <u>Third Parties:</u> The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to the Agreement, and shall inure solely to the benefit of the Parties to this Agreement.
- 9.16 <u>Notices:</u> All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.
- 9.17 <u>Compliance with Laws:</u> CONTRACTOR shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local, including but not limited to, the applicable provisions of Wyo. Stat. Ann. § 16-6-101 et seq.

LARAMIE COUNTY, WYOMING

By:	Date
Troy Thompson, Chairman, Laramie County Commissioners	
ATTEST:	
By: Debra Lee, Laramie County Clerk	Date
MILLIRON TJ CONSTRUCTION LLC	
By: / //	Date 11/09/22
Taft Love, Member, Milliron TJ Construction LLC	, ,
CONTRACTOR: SIMON CONTRACTORS	
By: Wy Middle	Date 11-9-2 2

RECEIVED AND APPROVED AS TO FORM ONLY BY THE DEPUTY LARAMIE COUNTY ATTORNEY

Lel. Weesl) 11.10.22

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DRAWING INDEX

1. TITLE SHEET

3. RIFE PLAN

3. RAILROAD ROAD - PLAN & PROFILE - STA 0+00 TO 19+00

4. RAILROAD ROAD - PLAN & PROFILE - STA 19+00 TO 56+00

5. RAILROAD ROAD - CROSS SECTIONS

6. RAILROAD ROAD - CROSS SECTIONS

RAILROAD ROAD (CR 215)

RAILROAD ROAD (CR 215) CONSTRUCTION PLANS ROADWAY DESIGN

LARAMIE COUNTY, WYOMING

PRIOR TO BEGINNING CONSTRUCTION, NOTIFY LARAMIE COUNTY PUBLIC WORKS DEPARTMENT (19745-2502) PRIOR TO BEGINNING CONSTRUCTION TO COORDINATE REQUIREMENTS. DIENKS AND FOLLOWING CONSTRUCTION THE COUNTY SHALL BE PROVIDED WITH THE FOLLOWING INFORMATION. GENERAL CONSTRUCTION NOTES:

- A) COMPACTION TEST RESULTS FOR ALL FILL AREAS AND BASE MATERIAL
- B) SUMMARY OF WEIGHT TICKETS ALONG WITH CALCULATIONS SHOWING THAT THE PROPER AMOUNT OF BASE MATERIAL WAS DELIVEDEA AND PLACED FOR ALL ROADWAYS FOR THE PROPER WITH AND A MINIMAM OF 6 DEPTH.
- D) SEED MIXTURE USED FOR RE-SEEDING
- D) THE COUNTY SHALL BE NOTIFIED UPON COMPLETION OF THE WORK SUCH THAT THEY CAN PERFORM INSPECTIONS AND APPROVAL FOR ALL ASSOCIATED WORK.
- E) CONSTRUCTION SHALL MEET OR EXCEED THE CURRENT EDITION OF THE WYOMING PUBLIC WORSS STANDARD SPECIFICATIONS SHALL ALBIONS AND SON INSTRUCTIONS SHALL MEET THE RECOUREMENTS OF THE CURRENT EDITION OF THE MUTIC.D. MANUAL.
 - THE CONTRACTOR SHALL SUBMIT A SUMMARY OF ALL THE WEIGHT TICKET'S FOR THE GRADING WANTERNEY OF ALL THE WEIGHT TICKET'S FOR THE CHANNEY WAS AND COMPUTATIONS SHOWNO THAT THE COUNTRY OF EACH STORE MEETS HE DEPTH REQUIRED FOR OF ALL COMPACTION TESTS FOR ALL THENCH BACKETL, ROUDMYS A COOP OF ALL COMPACTION TESTS FOR ALL THENCH BACKETL, ROUDMYS AND PREDAMENT, AND GRADING SHALL BESIDE ES SUBMITTED TO THE COUNTRY FOR REVIEW MAD PREDAMENT, ALL TESTING SHALL MEET THE REQUIRED FOR THE WYONING PUBLIC WORKS STANDARD SPECIALISMS.



VICINITY MAP

CONTRACTOR SHALL CONTACT LARAMIE COUNTY PUBLIC WORKS PRIOR TO BEGINNING CONSTRUCTION.

ALL CONSTRUCTION SHALL CONFORM WITH "THE LARAMIE COUNTY LAND USE REGULATIONS" ADOPTED JANUARY 1, 2019 AND "WYOMING PUBLIC WORKS STANDARD SPECIFICATIONS"

CERTIFICATE OF ENGINEER

I, LAWRENCE R, GALLAGHER, HEREBY CERTIFY THAT THE DESIGNO OF THESE PREFORMED BY WE OR UNDER WIN DIRECT SUPERVISION AND THAT I AM A DULY REGISTRED PROFESSIONAL ENGINEER IN THE STATE OF WYOMING







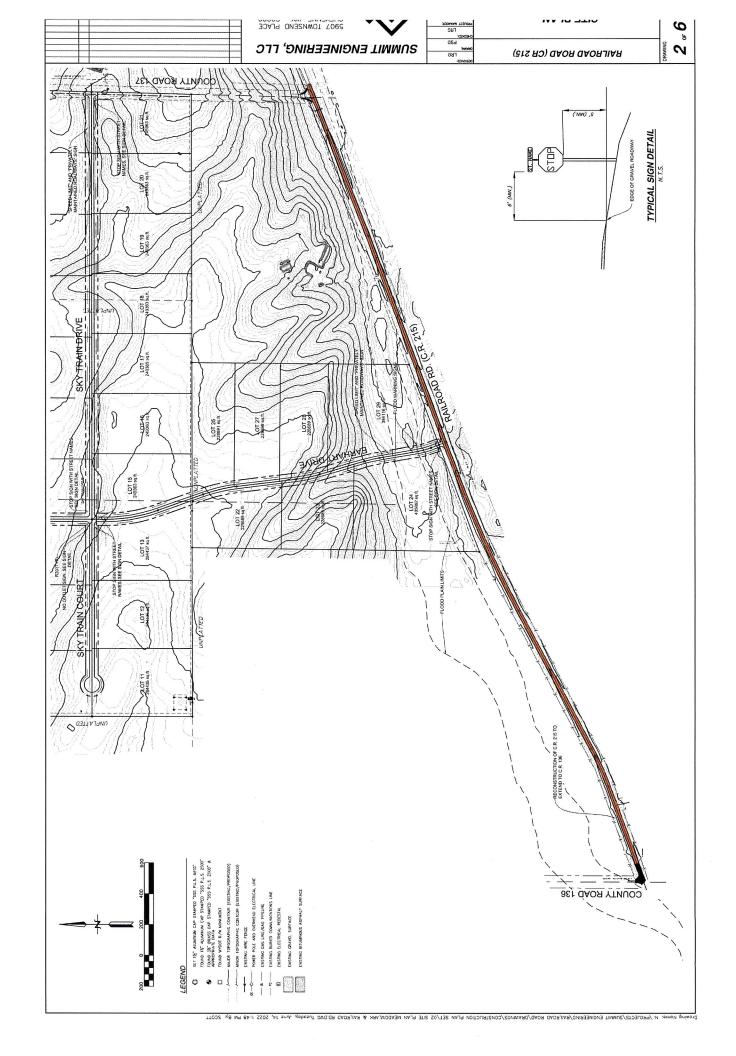
APPROVALS

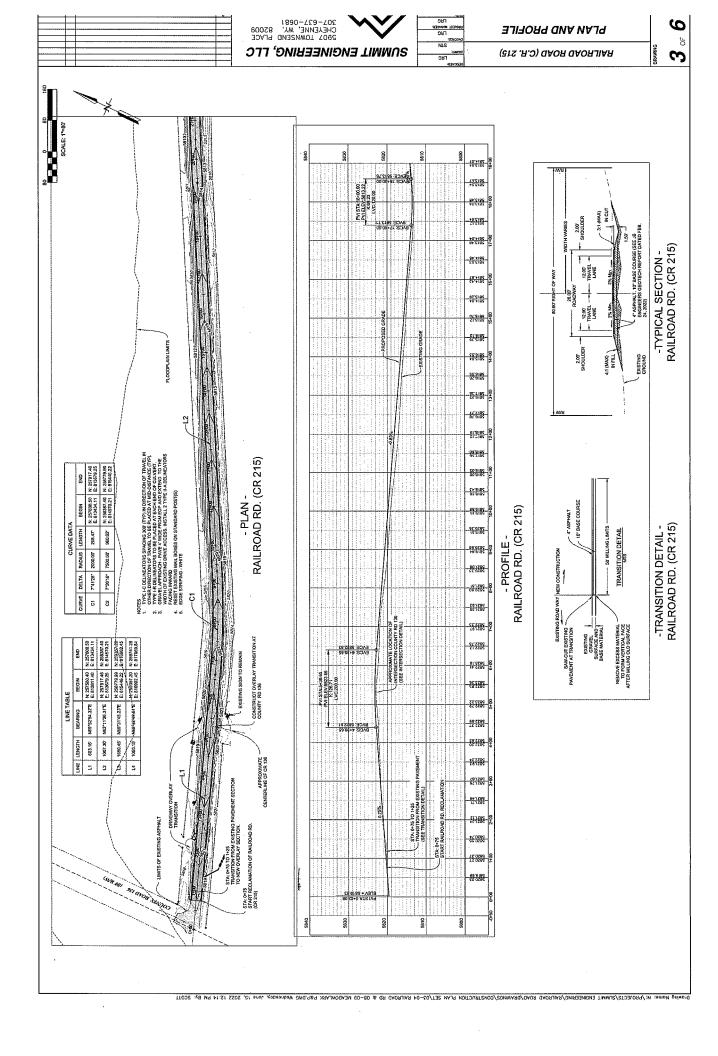
REVIEWED AND APPROVED PER COUNTY STANDARDS, ORDINANCES AND CODES PUBLIC WORKS DIRECTOR

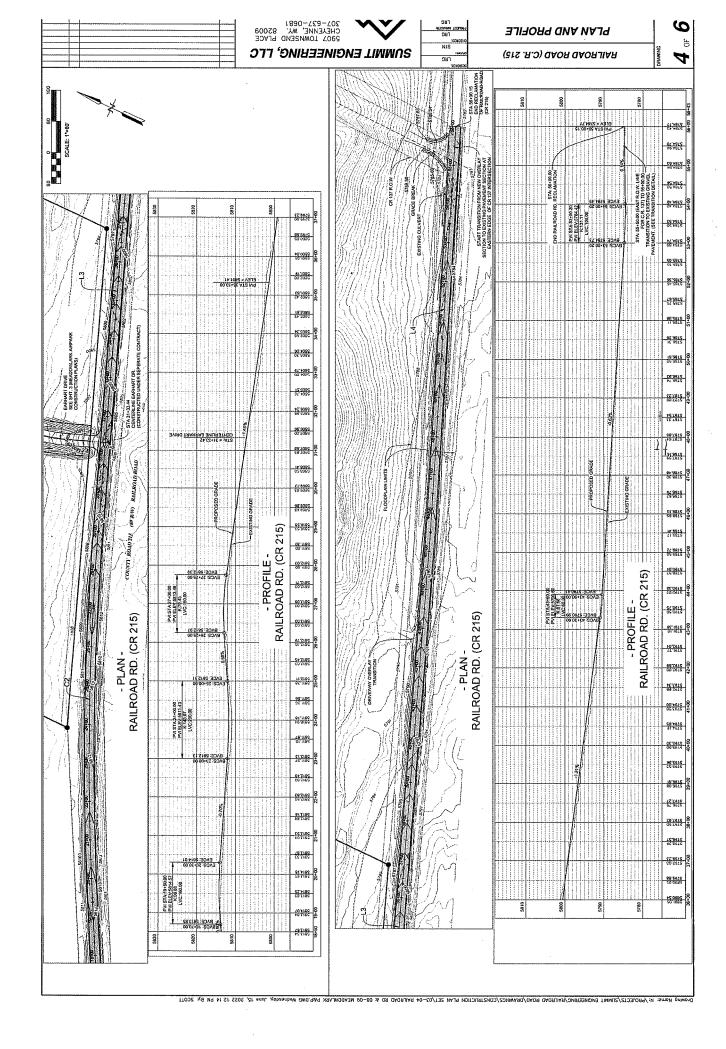
N. PROJECTS/SUMMIT ENGINEERING/PARLROAD ROAD/DPARNOS/CONSTRUCTION PLAN SET/OT COVER SHEET RRIDMG TURBLAND 14, 2022 5:44 PM By SCOT

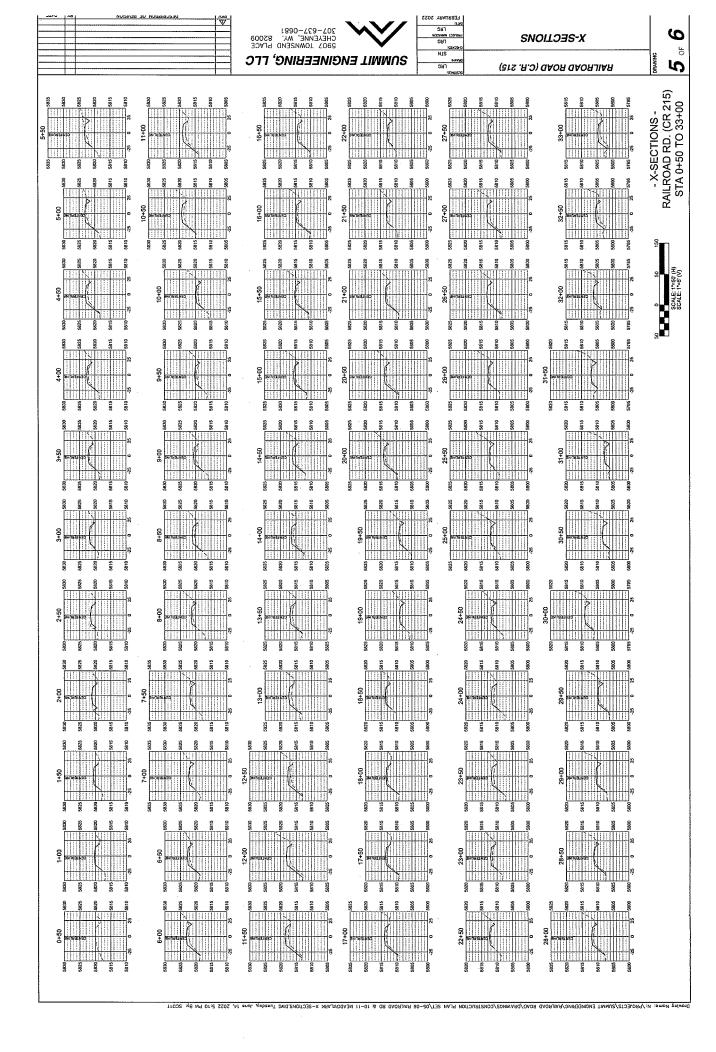
SUMMIT ENGINEERING 5907 Townsend Place Cheyenne, WY 82009 307-637-0681 **ENGINEER**:

SURVEYOR
JONES LAND SURVEYING, INC. 6750 Say Kelly Rd., Cheyenne, Wf 82009
307-633-7107









้อมา 307-637-0681 CHEYEUNE, WY. 82009-X-SECTIONS Ч SUMMIT ENGINEERING, LLC Ø RAILROAD ROAD (C.R. 215) - X-SECTIONS -RAILROAD RD. (CR 215) STA 33+50 TO 56+00 5780 5780 5780 20 08 08 V 27.90 67.8 57.80 657.80 \$672 2672 0 35. 86 g 5780 5780 5780 5780 5785 5785 5785 5775 -1982 5780 t

51+00



DATE:

10/6/2022

TO:

Taft Love / Laramie County

RE:

Railroad Rd Proposal (CR 136 to Earnhart)

Central Region 6215 Clear Creek Pkwy

Cheyenne, WY 82007

Pittps://simonteam.com/

Tel 307-632-7900

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	Mobilization	0.5	LS	\$ 19,941.00	\$ 9,970.50
2	Remove Replace Crushed Base (Railroad) 8"	11,616	SY	\$ 14.00	\$ 162,624.00
3	Hot Mix Asphlat (Railroad Rd) 4"	10,250	5Y	\$ 27.30	\$ 279,825.00
4	Traffic Control / Striping Rallroad Rd	0.5	LS	\$ 48,200.00	\$ 24,100.00
5	Seeding	0.5	LS	\$ 6,046.20	s 3,023.10
					s -
	Acceptance of Proposal valid for 15 days			TOTAL	\$ 479,542.60

Acceptance of Proposal The above prices, specifications and attached conditions are satisfactory and are hereby accepted. You are authorized to do work as specified. Payment will be made as outlined above.					
Simon Contractors	Acceptance of Proposal	Dated			
Wy/ /CM/1 . 10/6/2022	Signature				
Kyle Rademacher					
Central Region	Name (Print)				
Project Manager	-				
krademacher@simonteam.com	Títle				
Cell 307-631-4330	•				



DATE:

10/6/2022

TO:

Laramie County

RE:

Railroad Rd Proposal (Earnhart to CR 137)

Central Region 6215 Clear Creek Pkwy Cheyenne, WY 82007 https://simonteam.com/ Tel 307-632-7900

ITEM	DESCRIPTION	QUANTITY	UNIT	TINU	PRICE	TOTAL
1	Mobilization	0.5	LS	\$	19,941.00	\$ 9,970.50
2	Remove Replace Crushed Base (Railroad) 10"	9,256	SY	\$	25.28	\$ 233,991.68
3	Hot Mix Asphlat (Railroad Rd) 4"	8,166	5Y	\$	27.30	\$ 222,931.80
4	Traffic Control / Striping Railroad Rd	0.5	LS	\$	48,200.00	\$ 24,100.00
5	Seeding	0.5	LS	\$	6,046.20	\$ 3,023.10
	Acceptance of Proposal valid for 15 d	2000	L	TOTAL		\$ 494,017.08

Acceptance of Proposal The above prices, specifications and attached conditions are satisfactory and are hereby accepted. You are authorized to do work as specified. Payment will be made as outlined above.						
Simon Contractors	Acceptance of Proposal	Dated				
My Myld	Signature					
Kyle Radentacher						
Central Region	Name (Print)					
Project Manager						
krademacher@simonteam.com	Title					
Cell 307-631-4330	Environmental formation and interest in the second of the					



STANDARD TERMS AND CONDITIONS:

- 1. This proposal is for the 2022 construction season. Escalations may apply for work not completed in the 2022 construction season due to events and circumstances beyond the control of Simon Construction.
- 2. Pricing includes overhead, profit, insurance, burdens, fringe benefits, consumables, small tools, standard PPE, labc equipment and material.
- 3. All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed onl upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upc strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.
- 4. Simon Construction is to be included in negotiations with owner's on all modifications/change orders that will have an impact on our scope of work.
- 5. Payment is due 30 days from receipt of materials/services. If payment is not received within 30 days, a 1.5% per month service charge will be added to the total due until payment is received.
- 6. If not an established customer, a satisfactory credit check and/or down payment is required prior to the procurement of materials and mobilization. Additionally, an approved Purchase Order must be provided.
- 7. This proposal, in its entirety, must be included in the contract. No one item may be pulled from this quote, all pricing is based upon a complete package.
- 8. Quantities are based on firm and unyielding subgrade compacted to specified density within +/- 0.05foot of final grade as determined by a proofroll conducted prior to Simon Contractor's mobilization and witnessed by the Engineer, Owner, or their representative. Adjustment to subgrade elevations or correction of soft areas, as determined by the above proofroll, are excluded from this quote and would be performed on a Force Account basis
- 9. Quantities are estimates **ONLY**. Payment will be based upon actual field measurements and load tickets. Billing v be based upon measured quantities at the unit rates provided within.
- 10. Simon Construction offers a 1 year warranty on materials and workmanship.
- 11. Simon Construction to be provided a construction schedule and a minimum 2 weeks' notice prior to the commencement of Simon Contractor's scope of work.
- 12. Proposal assumes unimpeded access and egress of the site to perform our scope of work.
- 13. Simon Construction does not warranty design surfaces with less than 1% drainage.
- 14. Pricing is based upon < Construction Plans for Railroad Road (Summit Engineering) Dated 6-14-22>. Quantity and specification discrepancies between "Referenced" Plans and "Construction" Plans will need to be negotiated.
- 15. Proposal is based upon 1 mobilization. Additional mobilizations will be \$7,500.00
- 16. Manhole and water valve adjustments including lowering and raising are not included in this proposal unless there a specific bid item on the proposal.
- 17. Quote assumes frost-free subgrade.
- 18. The following items have been **EXCLUDED** from the proposal:

Engineering and design services.

Subgrade soft spot repair.

City permits (right of way, grading, building, etc.)

Performance and payment bond. Bonding, if required, can be provided.

Frost removal, winter protection, ground heaters, hot water, blankets, winter plant start up costs, or any additional costs that apply to winter work.

Import/export of dirt material unless expressly stated