

City Council Special Meeting Agenda

Date: 07-21-11
Time: 4:15 p.m.
Location: City Hall Council Chambers

- Mayor Nancy Tia Brown
 - Donny Anderson
 - Charles Cloud
 - Bryan Edwards
 - Jerry Fritz
 - Steve Miller
 - Stan Wolz
 - City Administrator, Jenni Rosencranse
 - Administrative Services Officer, Cindy Baker
 - City Attorney, Scott Kolpitcke
-
- Discuss the grant that the Cody-Yellowstone Air Improvement Resources group is applying for and authorize the Mayor to sign a letter of support.
 - Bob Hooper Yellowstone Regional Airport
 - Approve and authorize the Mayor to sign the grant agreement between the City of Cody and the Wyoming Department of State Parks and Cultural Resources for Building the Wyoming Veterans' Memorial Park – Freedom Monument.
 - Jenni Rosencranse, City Administrator
 - Discuss selling City property.
 - Cindy Baker, Administrative Services Officer
 - Scott Kolpitcke, City Attorney
 - Consider authorizing the Mayor to sign an Affidavit of Possession and Claim under tax Deed for Block 12, Lot 7, Valley View Subdivision, Park County, WY
 - Scott Kolpitcke, City Attorney
 - Consider authorizing payment of taxes in the amount of \$12,545.15 to Park County for Block 12, Lot 7, Valley View Subdivision, Park County, WY
 - Cindy Baker, Administrative Services Officer
 - Staff Updates
 - Council Updates
 - Meeting Reminders:
 - Thursday, July 28, 2011 – Council Work session 4:15 p.m. City Council Chambers
 - Tuesday, August 2, 2011 – Regular Council Meeting 7 p.m. City Council Chambers (pre-meeting at 6:30 p.m.)

Time Adjourned: _____

**CONTRACT BETWEEN THE CITY OF CODY, WYOMING AND THE
WYOMING DEPARTMENT OF STATE PARKS AND CULTURAL
RESOURCES FOR BUILDING THE WYOMING VETERANS' MEMORIAL
PARK – FREEDOM MONUMENT**

1. **Parties.** This Contract is made and entered into by and between the Department of State Parks and Cultural Resources (“Department”), whose address is 2301 Central Avenue, Barrett Building, Fourth Floor, Cheyenne, WY 82002, and the City of Cody, (“City”) whose address is 1338 Rumsey Avenue, Cody, WY 82414.

2. **Purpose.** This Contract sets forth the terms and conditions under which the City will receive funding from the Department to assist the City in developing and building the Wyoming Veterans’ Memorial Park – Freedom Monument (“Monument”) in partnership with the Wyoming Veterans’ Memorial Park Committee. This Contract also sets forth the reporting requirements of the City. The Monument shall be built in Cody, Wyoming to recognize and honor Wyoming veterans who have fought and died in military conflicts which have occurred since the Vietnam War.

3. **Terms of the Contract.** This Contract shall commence on July 1, 2011, and terminate on December 31, 2011, or sooner if terminated by either party. Prior to the expiration of this Contract, and upon the designated terms herein, and provided there is no default, the parties may renegotiate the terms of an extension of this Contract. There is no right or expectation of a renegotiation and any renegotiation will be determined at the sole discretion of the Department.

This Contract is not valid and shall not become effective until it is signed by an authorized representative of the City and an authorized representative of the Department, approved as to form by the Office of the Attorney General, and, if required by W.S. 9-2-1016(b)(iv), approved by the Governor or his designee. The effective date of this Contract shall be the last date of signature, and this Contract shall commence on the last date of signature or on the date specified in the Term of the Contract provision, whichever is later.

4. **Responsibilities of the City of Cody.** The City shall:

A. Distribute the funds it receives from the Department to the Wyoming Veterans’ Memorial Park Committee, who shall:

1. Conceive, build, plan, design, construct and maintain the Monument which is described in part in Attachment A, which is attached hereto. Attachment A is incorporated hereto and is made a part of this Contract.

B. Use the money transferred from the Department to the City to distribute to the Wyoming Veterans’ Memorial Park Committee for the sole purpose of conceiving, planning, building, developing, designing, and constructing the Monument.

The City shall oversee and supervise the Wyoming Veterans' Memorial Park Committee's use of the funds to ensure that the funds are used in a prudent, businesslike manner and in accordance with this Contract.

C. Provide a written summary to the Department outlining the Monument project and explain how the funding will be spent on the Monument. This summary must be provided to the Department prior to release of any funds. A final report on the completion of the Monument shall be sent to the Department and the Governor's Office, no later than December 31, 2011, or sooner if construction is completed. The final report shall describe how the funding was spent on the Monument.

D. Return all funds provided by the Department to the City if the Monument is not built and completed by December 31, 2011. The City shall return all funds within sixty (60) days of written request by the Department. Further, the City shall return all unused funds to the Department within sixty (60) days after completion of the Monument.

E. Allow the Department, its agents, and their authorized employees to visit and examine the Monument during the construction phase at any reasonable hour of the day.

F. Shall make sure that in all contracts entered into by the City or the Wyoming Veterans' Memorial Park Committee include a clause whereby all contractors, subcontractors and all other persons and entities agree to indemnify, defend and hold harmless the State, the Department, and the City, including their employees from any and all claims, lawsuits, losses and liability arising out of the contractor's, subcontractors, person's or entities' failure to perform any of their duties and obligations related to the conceiving, building, planning, designing, constructing and maintaining the Monument.

5. **Responsibilities of State Parks and Cultural Resources.** The Department shall perform the following:

A. Upon receipt of the required summary as identified in Section 4C, and other necessary documents, the Department will have drawn a warrant in the amount of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00) in the name of the City of Cody. The Department shall have no other responsibilities, obligations or duties with regard to this Contract and/or Project.

6. **General Provisions**

A. **Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all the parties to this Contract.

B. **Applicable Law/Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming. The parties intend and agree that the State of Wyoming, the Department and the City do not waive sovereign immunity by entering into this Contract and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law.

C. **Assignment/Contract 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 Contract without prior written consent of the other party. The City shall not use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Department.

D. **Assumption of Risk.** The City shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the City's failure to comply with state or federal requirements. The Department shall notify the City of any state or federal determination of noncompliance.

E. **Audit/Access to Records.** The Department and any of its representatives shall have access to any books, documents, papers, and records of the City which are pertinent to this Contract.

F. **Availability of Funds.** Each payment obligation of the Department is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the purposes set forth in this Contract, the Contract may be terminated by the Department. The Department shall notify the City at the earliest possible time if there is a shortage of funds. No penalty shall accrue to the Department in the event this provision is exercised, and the Department shall not be obligated or liable for any payments due or for any damages as a result of termination under this section.

G. **Indemnification.** Each party to this Contract shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

H. **Compliance with Laws.** The City shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract. The parties recognize that the City will not directly hire, perform or contract for the work described in this Contract and that the Wyoming Veterans' Memorial Park Committee will perform the work described under this Contract, under the supervision and oversight of the City.

I. **Entirety of Contract.** This Contract, consisting of six (6) pages and Attachment A (proposed concept and cost breakdown), consisting of six (6) pages, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

J. **Ethics.** The City shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*), and any and all ethical standards governing the City.

K. **Extensions/Renewals.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the Department, and shall be effective only after it is reduced in writing and executed by all parties to the Contract. Any agreement to extend this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.

L. **Force Majeure.** Neither party 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.

M. **Independent Contractor.** The City shall function as an independent contractor for the purposes of this Contract, and shall not be considered an employee of the Department or the State of Wyoming for any purpose. The City shall assume sole responsibility for any debts or liabilities that may be incurred by it 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 the City or its agents and/or employees to act as an agent or representative for or on behalf of the Department or State, or to incur any obligation of any kind on behalf of the Department or State.

N. **Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties either by regular mail, facsimile, e-mail, or delivery in person.

O. **Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed under the terms of this Contract, and the Wyoming State Auditor shall not draw warrants for payment on this Contract, until this Contract has been reduced to writing, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming or his designee if required by Wyo. Stat. § 9-2-1016(b)(iv).

P. **Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

Q. **Sovereign Immunity.** The State of Wyoming and the Department do not waive sovereign immunity by entering into this Contract and the City does not waive governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity.

R. **Termination.** This Contract may be terminated immediately for cause if either party fails to perform in accordance with the terms of this Contract.

S. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, namely the City and the Department. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract. The parties to this Contract expressly agree that only parties signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Contract, or to bring an action for the breach of the Contract.

T. **Miscellaneous.** The terms, agreements and covenants herein recited shall be binding upon and inure to the benefit of all successors and assigns of the parties hereto.

U. **Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language to this Contract.

V. **Waiver.** 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. Failure to object to a breach shall not constitute a waiver.

W. **Funding.** This Contract is subject to the available funding of the one-time designated appropriation in the 2011 Supplemental Budget of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00).

7. **Signatures.**

IN WITNESS THEREOF, the parties to this Contract through their duly-authorized representatives have executed this Contract on the day and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract as set forth herein. This Contract may be executed by original signatures on separate pages.

STATE PARKS AND CULTURAL RESOURCES

Milward Simpson, Director
State Parks and Cultural Resources

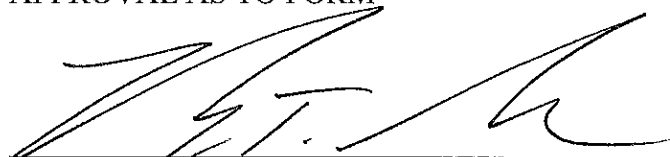
Date

CITY OF CODY

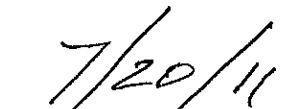
Nancy Tia Brown, Mayor

Date

ATTORNEY GENERAL'S OFFICE
APPROVAL AS TO FORM



Ryan Schelhaas
Senior Assistant Attorney General
Attorney for State Parks



Date



York Engineering
2329 W. Spring Hollow Rd.
Morgan, Ut. 84050

(801)876-3501

Date: 26 Apr 2011

Mark H. Bott Co.
Attn: Dave Bott

Subject: War Memorial Cody Wyoming

The purpose of this letter is to provide the following directions for the construction of the concrete base for the War Memorial to be built in Cody Wyoming (see attached sketch):

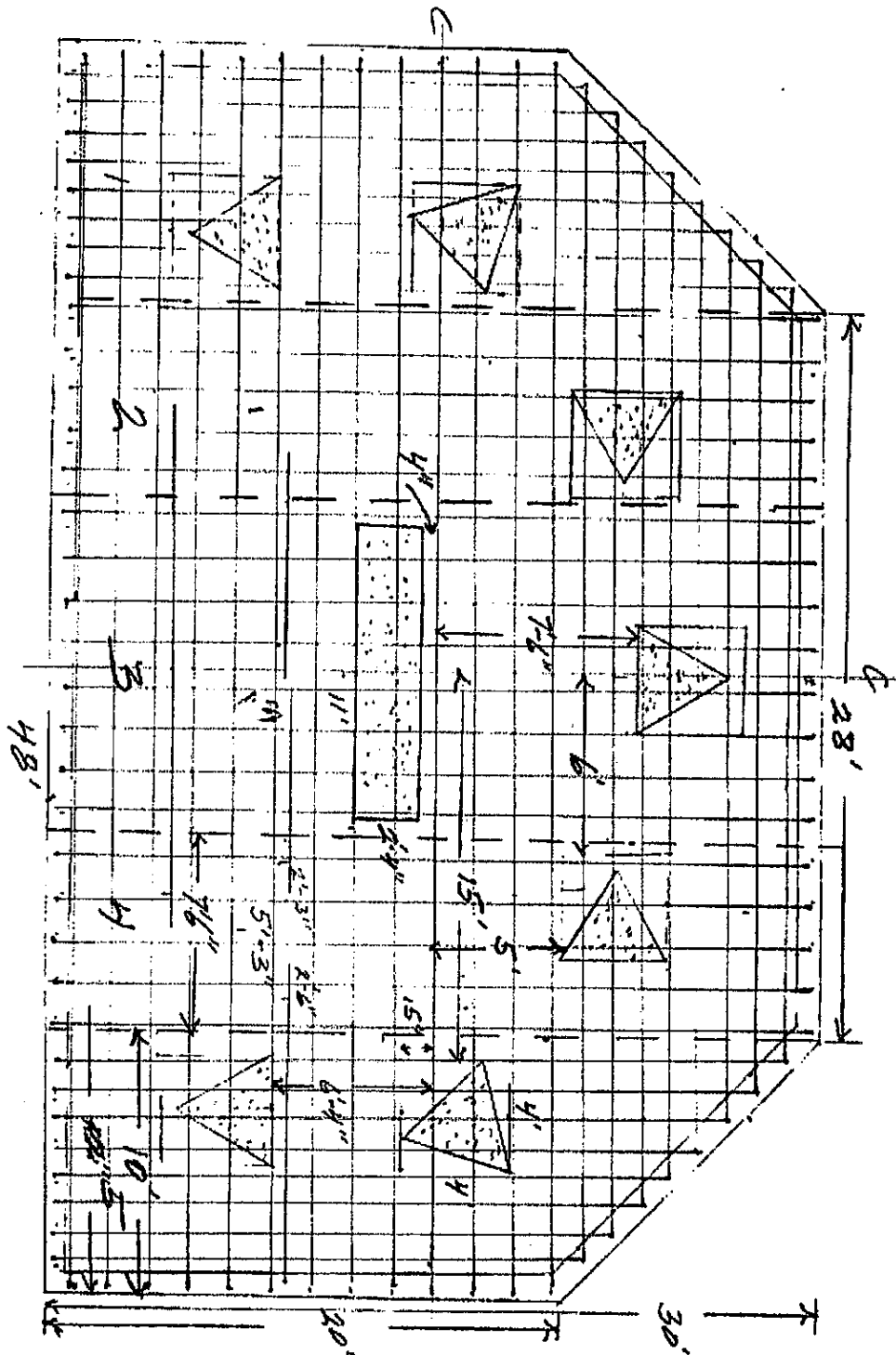
1. Pour 6" slab over 8" gravel. use 3000 psi concrete
2. Install #4 bars (grade #3) @18" O.C. throughout slab.
3. Form the slab edges 12" thick and turn down 12" below grade over 12" gravel.
4. Install 12#4 bars continuous around slab perimeter. one bar within 3" of top and bottom.
5. Install #4 bars @9" O.C. under each monument.
6. Thicken the slab to 10" extending 6" beyond the sides of the 11,800 lb monument.

Please feel free to call if there are any questions or concerns.

Respectfully Yours:
York Engineering Inc.

William W. York, PE SE



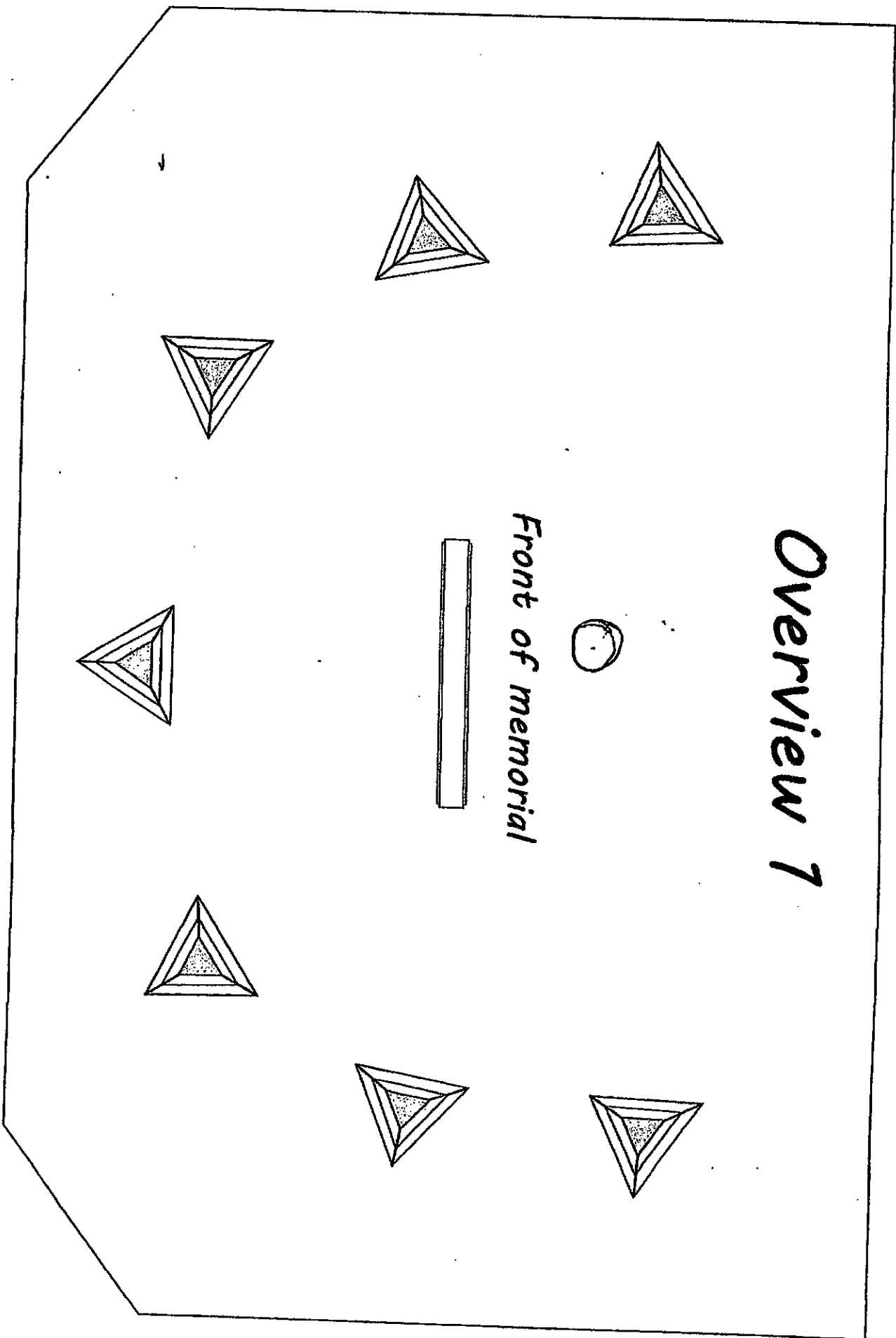
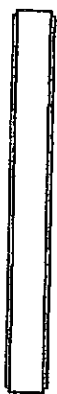


Sidewalk

Overview 1



Front of memorial



Beartooth Inn



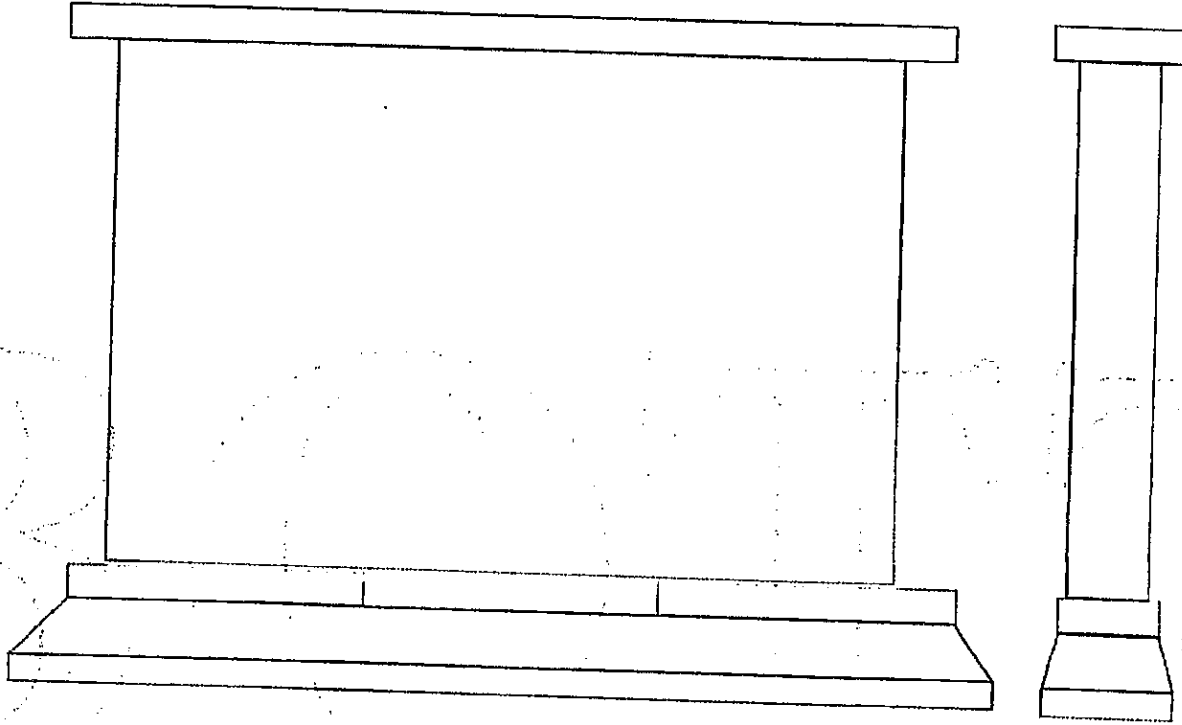
BOTT

BOTT MONUMENT



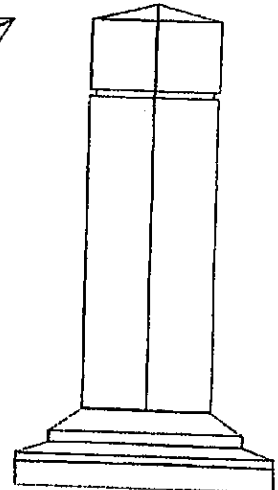
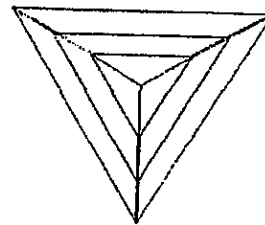
A Family Craft Since 1875

State of Wyoming Veterans Memorial



Memorial\$184,167.00

- Select Dakota Mahogany
- Tablet is 8' wide & 5'-4" tall (\$41,997)
 - Over 5 Tons
 - Base is 10'-0" long and 0-10" tall
 - Overall height of 6'-10"
 - Mahogany granite, all polished w/accents
- (7) 6' tall triangular pillars with bases (\$20,310 each)
 - Each weighs near 2 Tons
 - Overall height of 7'-5"



Total
\$207,567.00



BOTT

BOTT MONUMENT

A Family Craft Since 1875



State of Wyoming Veterans Memorial

Foundation and finish cement work.....\$23,400.00

- Foundation certified and signed by engineer
- Includes all equipment rental, foundation work, engineer work, cement finish work.

**Does NOT include removal or adjustment to any current electrical lines or sprinkler systems, preparing access to site or repair of damage to site.*

*** Does NOT include installation of new lighting.*

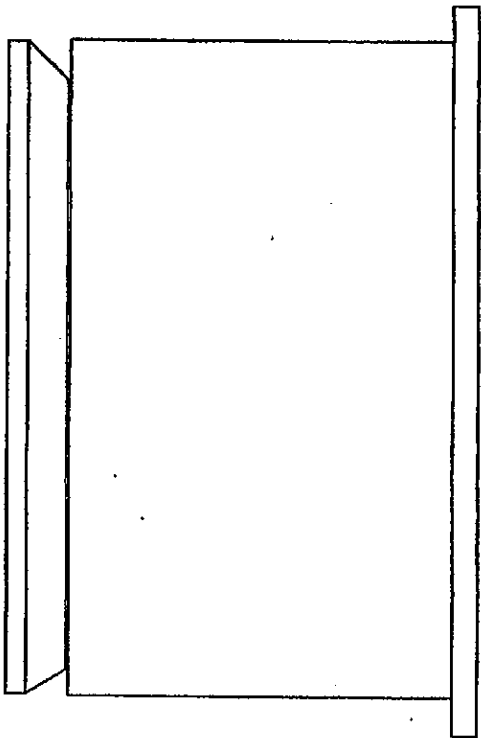
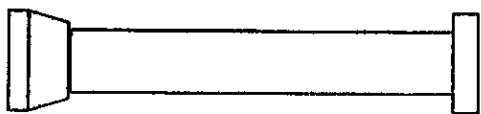
Committee Representative _____

Date _____

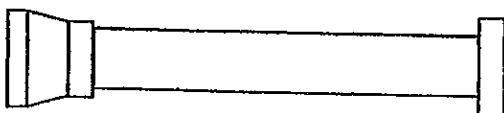
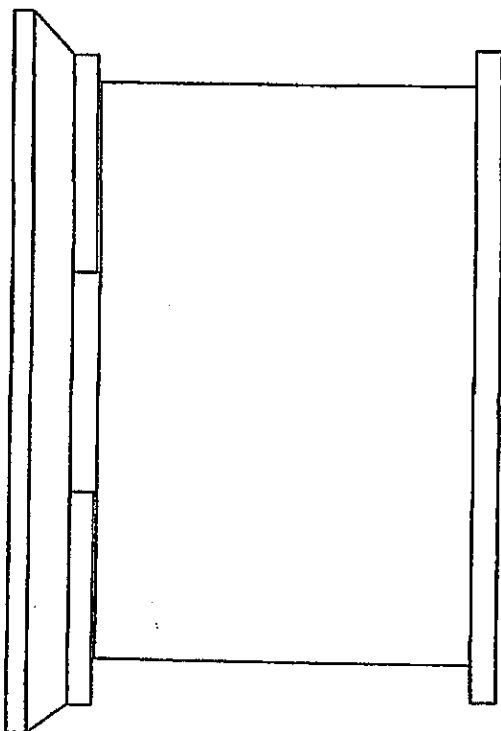
Bott Monument Representative _____

Date _____

****Bott Monument must have approval on or before July 4th, 2011 to perform foundation work.*



END VIEW- FEED



STATE OF WYOMING)

)SS

COUNTY OF PARK)

AFFIDAVIT OF POSSESSION AND
CLAIM UNDER TAX DEED

I, NANCY TIA BROWN, Mayor of the City of Cody, P.O. Box 2200, Cody, Wyoming, being first duly sworn, depose and say that on November 23, 2004, a property deed was issued to the City of Cody, (grantee) for the following described real estate:

Valley View Subdivision Block 12, Lot 7, Park County, Wyoming that said Property (tax) deed was filed for record in the office of the county clerk and ex officio register of deeds for Park County, Wyoming, on November 29, 2004, at Document No. 2004-8927; that the City of Cody, Wyoming is now in possession of such real estate and claims title to the same by virtue of such Property (tax) deed; that the City of Cody, Wyoming, has been in possession of such real estate for a continuous period of not less than six (6) months immediately preceding the date of this affidavit; and that the facts concerning the possession of such real estate from the date of recording the tax deed to the date of this notice are, insofar as known to me, as follows: the City of Cody, Wyoming, has been in possession of such property from November 23, 2004 to and through the date of this affidavit.

CITY OF CODY, WYOMING

ATTEST:

By: _____
MAYOR

Clerk

Subscribed and sworn to before me by Nancy Tia Brown, Mayor of the City of Cody, Wyoming, this _____ day of July, 2011.

Notary Public in and for Park
County, Wyoming