

**AGREEMENT BETWEEN WEBER COUNTY AND ROCK HARD EXCAVATING FOR  
COMBE ROAD STORM DRAIN IMPROVEMENTS**

**ROADWAY DRAINAGE IMPROVEMENTS ON COMBE ROAD**

This agreement is entered into between WEBER COUNTY ("County"), a political subdivision of the State of Utah, located at 2380 Washington Blvd., Ogden, Utah, 84401, and ROCK HARD EXCAVATING ("Contractor"), a Utah LLC, located at 2841 West 1800 South West Haven, UT 84401. The agreement shall take effect as soon as both parties have signed it.

**RECITALS**

The County desires to obtain services for the following project:

Project will add drainage inlet boxes, junction boxes and associated pipe to improve the drainage on Combe Road. Contractor will be responsible to install the materials, and patch the road when the project is complete. Weber County will close the road prior to the project to assist with the project.

The Contractor has submitted a proposal to provide the desired services to the County and has been chosen to provide the services.

NOW THEREFORE, the Contractor and the County agree as follows:

**AGREEMENT**

**1. SERVICES OF THE CONTRACTOR**

- a. The Contractor will perform the following services (the "Work"):
  - i. Project will add drainage inlet boxes, junction boxes and associated pipe to improve the drainage on Combe Road. Contractor will be responsible to install the materials, and patch the road when the project is complete. Weber County will close the road prior to the project to assist with the project
- b. In performing the required Work, the Contractor shall follow practices consistent with acceptable professional and technical standards for work of this nature.
- c. Except as allowed by the County's Representative in writing, none of the Work specified by this agreement shall be subcontracted.
- d. The Contractor warrants that the Work will be free from material defects for a period of 1 year after the Work has been completed, as determined by the County.
- e. The Contractor shall, promptly and without additional compensation, correct deficiencies in the Work, as determined by the County based on the terms of this

agreement, unless such deficiencies are directly caused by the County, in which case the County shall pay for the corrective work. This paragraph applies during the performance of the Work and during the warranty period described in this agreement.

- f. If the Contractor performs corrective work during a warranty period, then a new warranty period of the same duration will begin after the corrective work is completed, and the Contractor will be under the same obligations as during the previous warranty period.
- g. All materials prepared or acquired by the Contractor during the performance of the Work specified by this agreement shall become the property of the County and shall be delivered to the County during or at the end of the agreement term. Such materials shall not be released by the Contractor to others at any time without the prior written approval of the County's Representative, unless required by law. It is understood and agreed that such materials are prepared exclusively for work required under this agreement, and that their use on other projects may not be appropriate. Therefore, the County agrees that its use of such materials on other projects shall be at its own risk, unless the Contractor has given its written approval for such use.

## 2. MANAGEMENT AND COORDINATION

- a. The Contractor shall designate a Project Manager for purposes of this agreement. The Project Manager shall be the Contractor's primary contact for all communications related to this agreement, unless someone else is designated as the primary contact for specific matters.
- b. The County Engineer, or his or her designee, shall serve as the County's Representative for this agreement. The County's Representative shall be the County's primary contact for all communications related to this agreement, unless someone else is designated as the primary contact for specific matters.
- c. The parties agree that for purposes of this agreement, the Contractor and its officers, agents, and employees are not to be regarded as the County's employees, and that the Contractor is an independent contractor in all respects.

## 3. TERM OF AGREEMENT

- a. Unless terminated earlier as provided herein, this agreement shall remain in effect until:
  - i. All Work has been performed and accepted as satisfactory by the County, all payments have been made, and the warranty period described above (if applicable) has expired.
- b. All provisions of this agreement that by their nature would continue after the termination or expiration of the agreement, including indemnification provisions

and other provisions related to the liability of the parties, shall continue in force until all applicable statutes of limitations have run and until all legal proceedings arising out of this agreement have reached final resolution.

#### 4. TIME SCHEDULE

- a. The Contractor shall commence the Work upon receipt from the County of written notice to proceed.
- b. The Contractor shall comply with the following schedule and deadlines, except where written notification of variance is received from the County's Representative:
  - i. Contractor anticipates starting the work on the project by the first week of November 2024 and finishing the project within the week.
- c. The time schedule is an essential condition of this agreement. If the Contractor fails to comply with the time schedule set forth in this section, or any extension of time granted by the County, then the Contractor shall be in default, unless the failure is beyond the control and without the fault and negligence of the Contractor. If the Contractor defaults, then the County shall be entitled to the recovery of direct damages, if any, resulting from the default, in addition to any other remedies granted by this agreement.
- d. The Contractor will not be liable for damages due to delay or failure to perform any obligation under this agreement if such delay or failure results directly or indirectly from circumstances beyond the control of the Contractor. Such circumstances shall include strikes, disturbances, riots, fire, water damage, flood, severe weather, governmental action, pandemic, acts of war, acts of terrorism, acts of God, or any other cause similar to the foregoing which are beyond the reasonable control of the Contractor.

#### 5. COMPENSATION

- a. The County shall pay the Contractor the following amount for the performance of the Work:
  - i. \$32,504.50
- b. Unless otherwise specified above, at the end of each 30-day period during the Contractor's performance hereunder, the Contractor may request a progress payment based upon Work performed within that 30-day period. Such requests must be in writing, in a form acceptable to the County, with sufficient detail to justify the request. The County shall pay to the Contractor the requested payment, if approved, or the undisputed portion thereof within 30 days after the progress payment request.

- c. Final payment, less the 5% retainage described in the following paragraph (if applicable), shall be made when the Contractor has completed all Work in a manner consistent with this agreement.
- d. If a warranty period applies, the County shall withhold, as retainage, 5% of the overall payment due under this agreement.
  - i. If, at the end of the warranty period, the Work remains in satisfactory condition, the County's Representative shall issue to the County, with a copy to the Contractor, a final acceptance notice, and the County shall release the retainage to the Contractor.
  - ii. If, during the warranty period, the County determines that the Work has material defects, then the Contractor shall be in breach of this agreement, and the County shall provide notice as described in the Default and Remedies section of this agreement. If the Contractor does not correct the defects as outlined in that section, then the Contractor shall be in default, and the County may use the retainage, in its sole discretion, to correct the defects in the Work. The County may also pursue any other remedy available to it under the law.

#### 6. INSURANCE AND INDEMNIFICATION

- a. The Contractor shall procure and maintain the insurance policies required in this article from an insurance company authorized to write casualty insurance in the State of Utah, to protect itself and the County from all claims including, but not limited to, bodily injury, death, or property damage which may arise from performance under this agreement. The County may reject or terminate this agreement if, at the County's sole discretion, the insurance policies are not satisfactory.
- b. The Contractor shall not commence performance under this agreement until it has obtained all insurance required by this article and filed a certificate of insurance or certified copy of insurance policy with the County. The amount of such insurance coverage will not be less than the following:
  - i. Workers' compensation statutory limits as required by the Workers' Compensation Act of the State of Utah and Employers Liability limits \$1,000,000 per occurrence.
  - ii. Commercial General Liability insurance in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 aggregate.
  - iii. Professional Liability insurance in an amount of not less than \$1,000,000.
  - iv. Automobile Liability insurance in the minimum amount of \$1,000,000 per occurrence with no deductible. "Any Auto" coverage is required.

- c. Before using any subcontractor, the Contractor shall require the subcontractor to provide proof of coverage showing workers' compensation coverage for its employees or, if applicable, a valid waiver of workers' compensation for an independent contractor without employees. The Contractor shall provide a copy of the required documentation to the County.
- d. Excluding workers' compensation and professional liability coverages, the Contractor's insurance coverage shall be a primary insurance. The County's self-insurance or insurance shall be in excess of the Contractor's insurance and shall not contribute with it.
- e. Notwithstanding any other provision of this agreement, the Contractor agrees to indemnify and hold harmless the County from and against any and all liability, claims, expenses, and costs arising from workers' compensation claims made by the Contractor, its employees, its subcontractors, its subcontractors' employees, and any additional subcontractors or employees engaged in the performance of this agreement.
- f. The Contractor agrees to indemnify and hold harmless the County, its officers, employees, and agents from and against any and all liability, claims, expenses, and costs arising out of or related to this agreement, to the extent that such liability, claims, expenses, and costs are caused by or result from the negligent or intentional acts, errors, or omissions of the Contractor, its agents, employees, and subcontractors. This indemnification requirement shall apply to the full extent allowed by law, regardless of whether or not the Contractor has complied with the insurance requirements of this agreement.

## 7. CHANGES

- a. The County may, at any time, make changes to the Work required under this agreement, as long as the changes remain within its general scope. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the agreement, an equitable adjustment in price or time will be made and the agreement modified accordingly.
- b. All changes shall be set forth in writing, signed by all parties.

## 8. DEFAULT AND REMEDIES

- a. Any material breach of this agreement shall constitute a default if the breach cannot be substantially cured within a reasonable time, or if the breaching party does not do the following:
  - i. Substantially cure the breach within ten days after receipt of written notice from the non-breaching party; or
  - ii. If a substantial cure within ten days is not possible, begin good faith efforts to cure the breach within ten days after receipt of written notice

from the non-breaching party, and diligently pursue the good faith efforts until the breach is substantially cured.

- b. If either party defaults on its obligations under this agreement as described in this section, the non-defaulting party may terminate the agreement for cause, by delivering to the other party a notice of termination explaining the reason for the termination and its effective date.
- c. This agreement does not limit, in any way, a party's remedies that are available to it under applicable laws.
- d. In the event of disputes that cannot be resolved informally, the parties may agree on any desired dispute resolution procedure. If they are unable to agree on an alternative dispute resolution procedure, either party may initiate litigation. In any litigation or other dispute resolution proceeding, each party shall be responsible for its own attorneys' fees, expert witness fees, and other expenses incurred in such litigation or proceeding.
- e. This agreement shall be governed by the laws of the state of Utah. Venue for any legal action shall be in the state or federal courts covering Weber County, Utah.

#### 9. TERMINATION

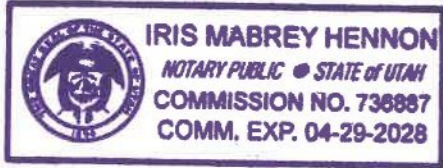
- a. In addition to each party's right to terminate the agreement for cause, the County shall have the right to terminate this agreement at any time, for any reason or no reason, by giving 30 days' written notice of termination.
- b. In the event the agreement is properly terminated prior to full performance by the Contractor, the Contractor shall be paid for Work rendered to the date of termination, based upon a percentage of completion of the full performance of this agreement.
- c. After delivery of a written notice of termination, the Contractor shall:
  - i. Stop work under this agreement on or before the date specified in the notice of termination; and
  - ii. Deliver to the County all work in process, completed work, completed or partially completed plans, drawings, information, and other property (including all electronic files and support files) which would be required to be furnished to the County if the agreement had been completed.

#### 10. MISCELLANEOUS

- a. The Contractor shall not assign any interest in this agreement without the prior written consent of the County.

- b. The invalidity of any term of this agreement shall not be deemed to affect the validity of any other term, and the remainder of the agreement will remain in full force and effect, unless the invalidation of the term materially alters the agreement. If the invalidation of the term materially alters the agreement, then the parties shall negotiate in good faith to modify the agreement to match, as closely as possible, the original intent of the parties.
- c. This agreement supersedes all previous agreements, both oral and written, between the County and the Contractor relating to the subject matter hereof.
- d. Failure or delay by either party to enforce any term of this agreement will not be deemed a waiver of future enforcement of that or any other term.
- e. Notice
  - i. Any notice required or desired to be given pursuant to this agreement shall be in writing and shall be either (1) delivered personally to the party's representative (i.e., the Contractor's Project Manager or the County's Representative); (2) delivered electronically, with confirmed receipt, to the party's representative; or (3) mailed to the party's representative. The following contact information shall be used, unless a party notifies the other party of a change in representative or contact information:
    - 1. Gary Myers, 2380 Washington Blvd, Ogden UT 84401
    - 2. Ray Holmes, 2841 West 1800 South West Haven, UT 84401
  - ii. Notice shall be effective upon delivery, if receipt is confirmed. If notice is properly mailed and receipt is not confirmed, notice shall be effective three business days after the date of mailing.

IN WITNESS WHEREOF, the parties have caused this agreement to be signed by their duly authorized representatives:



Rock Hard Excavating  
Signature Ray Holmes  
Date 10-3-24  
Printed Name Ray Holmes  
Title PROS

STATE OF Utah

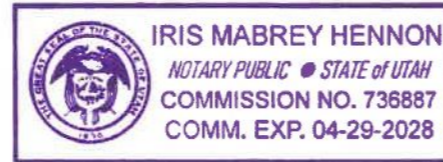
)ss.

COUNTY OF Weber

On this 3 day of October, in the year 2024, before me,  
(notary name) Iris M. Hennon, a notary public, personally appeared  
(signer name) Ray Holmes, proved on the basis of satisfactory  
evidence to be the person whose name is subscribed to this instrument, and acknowledged that he  
or she executed the same.

Iris M. Hennon  
Notary Public

Notary seal:



WEBER COUNTY

\_\_\_\_\_  
Chair, Board of County Commissioners Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Weber County Clerk/Auditor Date: \_\_\_\_\_



Exhibit 1  
Description of Work

Project Location Exhibit A  
Contractor Bid Exhibit B

# Project Location and Exhibit A



# Exhibit B; Estimate

Rock Hard Excavating LLC

2841 West 1800 South  
West Haven, UT 84401

## Estimate

Date	Estimate #
9/19/2024	218

Name / Address
Weber County Attn: Gary Myers

Project

Description	Qty	Rate	Total
Storm Drain Combe Road			
Transport of track hoe or other materials needed for job.	1	3,500.00	3,500.00
Asphalt Cut	1	450.00	450.00
Asphalt Removal	1	550.00	550.00
32' 15" RCP	32	72.00	2,304.00
Two 2x2x8 Boxes	2	6,500.00	13,000.00
Two 18x48 CB inlet boxes	2	4,200.00	8,400.00
3" Structural Fill 34 Tons	34	24.00	816.00
Roadbase 17 Tons	17	28.50	484.50
Asphalt Patch	2	1,500.00	3,000.00
Thank you for your business.	<b>Total</b>		\$32,504.50