

**Standard Form of Agreement between Owner
and Contractor on the Basis of
A Stipulated Price**

This agreement is dated as of 4th day of June, 2024, by and between Yellowstone County, Montana (hereinafter called Owner), and Montana Fence(hereinafter called Contractor).

Owner and Contractor, in consideration of the material covenants hereinafter set forth, agree as follows:

1. Scope of Work

Contractor shall provide all labor, materials and equipment necessary for Installation of approximately 269 lineal feet of cedar privacy fencing as noted on the Contractors proposal for the Yellowstone County Youth Services located at 410 South 26th Street.

Project expected completion by September 30th, 2024.

3. Contract Price

Owner shall pay the Contractor a total not to exceed \$11,448.00 upon completion and acceptance of the project by the Owner.

Any change orders for the project must be approved in writing by the County prior to the work being started.

Progress payments are subject to 5% withholding.

4. Contractors Representation

4.1 Contractor has examined and reviewed the Contract Documents and other related paperwork.

4.2 Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the work.

4.3 Contractor is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the work.

4.4 Contractor has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that the Contractor has discovered in the Contract Documents and that the Contract Documents are generally

sufficient to indicate and convey the understanding of all terms and conditions for performance and furnishings of the work.

5. Contract Documents

The Contract Documents, which comprise the entire agreement between Owner and Contractor, consist of the following:

- 5.1 This Agreement.
- 5.2 Contractor's Submitted proposal
- 5.3 Contractor's current Certificate of Insurance and Workers Compensation coverage.

6. Miscellaneous

- 6.1 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without written consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will discharge the assignor from any duty or responsibility under the Contract Documents.
- 6.2 The successful bidder (herein after Contractor), shall maintain at its sole cost and expense, commercial general liability insurance naming Yellowstone County, as additional insured against liability for damages for bodily injury, including death and completed operations and property damages in a minimum amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) for each claim and One Million Five Hundred Thousand Dollars, (\$1,500,000.00), in the aggregate arising from incidents which occur as the result of Contractors negligence while performing any work or service and for which Yellowstone County, sole basis of liability is vicarious liability for the acts or omissions of the Contractor or/and subcontractors. Contractor shall maintain at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with work or service by Contractor, agents, employees, representatives, assigns and sub-contractors. This insurance shall cover claims as may be caused by any negligent act or omission. The policy of insurance shall be an occurrence policy with a Best Rating of A- or better and must be in force throughout the period.

Contractor shall name on the Certificate of liability insurance Yellowstone County, as additional insured for on-site work or Maintenance Service. In addition, Contractor will furnish to Yellowstone County a copy of the policy endorsement, CG 32 87 05 10, indicating that Yellowstone County, are named as an additional insured under the Contractors insurance policy.

Contractor agrees to furnish both the Certificate of insurance and policy endorsement at least ten (10) days prior to beginning work.

Contractor agrees to defend, indemnify and hold harmless Yellowstone County from and against any and all claims demands, obligations causes of action, lawsuits and all damages and liabilities fines, judgments, costs, (including settlement costs), and expenses associated therewith (including reasonable attorney's fees and disbursements), arising from incidents that occur the result of Contractors negligence. And for which Yellowstone County, sole basis of liability is vicarious liability for the acts or omissions of Contractor. The defense and indemnification obligations under this paragraph of the Invitation to Bid shall not be limited by any assertions or finding that Yellowstone County, is liable for any damages by reason of a non-delegable duty.

- 6.3 Contractor is required to maintain workers compensation insurance, or an independent contractor's exemption issued by the Montana Department of Labor covering Contractor and Contractor's employees. Contractor is not, nor is Contractor's workers, employees of Yellowstone County. Workers Compensation insurance or the exemption from the workers compensation obligation must be valid for the entire period.
- 6.4 Owner and Contractor each binds itself, its partners, successors, assign and legal representative to the other party hereto, its partners, successors, assign and legal representative to respect to all covenants, agreements and obligations contained in the Contract Documents.
- 6.5 Contractor must give preference to the employment of bona fide residents of Montana in the performance of this work.
- 6.6 All work and materials must be warranted for a period of one year from date of installation.
- 6.7 The Parties agree that the laws of the State of Montana shall govern this contract, and that venue shall be in the Thirteenth Judicial District Court, Yellowstone County, Montana

- 6.8 Contractor agrees to defend, indemnify and hold harmless the County against all claims for injuries to person or damages to property occurred from or in Connection with the Contractors performance under the Agreement.
- 6.9 In the event of litigation between Contractor and the County, the Prevailing party shall be entitled to reimbursement of Court costs and Reasonable Attorney fees by the non-prevailing party.
- 7.0 The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state or local laws, rules, regulations, including the Montana Human Rights Act, Civil Rights Act of 1964, The Age Discrimination Act of 1975 and the American with Disabilities Act of 1990. Any subletting or subcontracting by the Contractor subjects contractors to the same provisions. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualification and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the person performing under the contract.

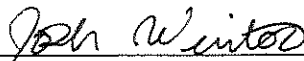
IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each will be delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR.

This Agreement will be effective August 6th 2024.

OWNER:
Yellowstone County
Billings, MT 59101

CONTRACTOR:
Montana Fence
Billings, MT

John Ostlund, Chair



Authorized Signature

Attest:

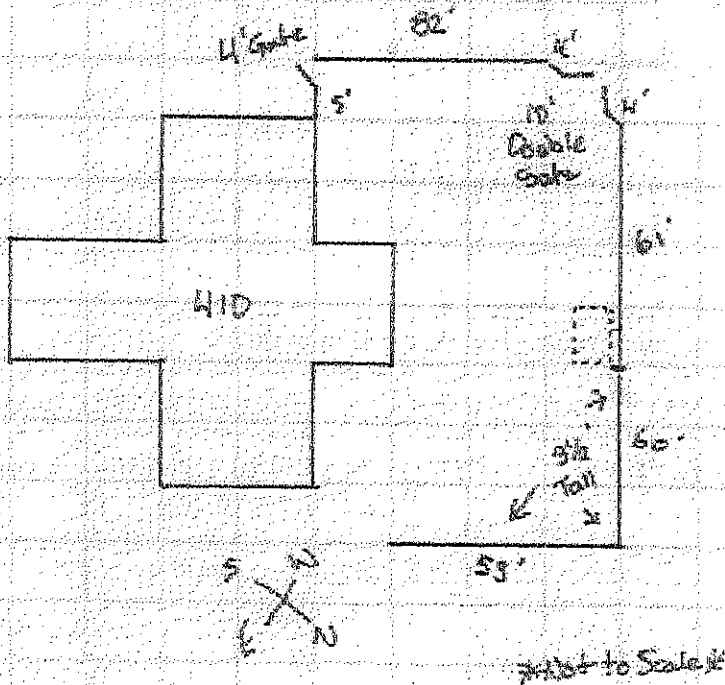
Jeff Martin, Clerk and Recorder

7403 Entryway Drive
 Billings, MT 59101
 (406) 259-6511

MT Reg. Number: 3123
 ND Reg. Number: 43696 Class A

| TAX CODE | | OPTION | OPTION | OPTION |
|---|--|-----------------------------------|------------------|--------|
| Customer Name <i>Tim Kaczmarek</i> | | PRICE | <i>11,448.00</i> | |
| Address <i>410 S 26th Street</i> | | TOTAL | | |
| City/State/Zip <i>Billings, MT 59101</i> | | DEPOSIT | <i>1/2</i> | |
| Install/Job Address | | BALANCE | | |
| Project <i>3 1/2' and 6' Cedar Privacy Fence</i> | | Contract Name <i>Tim</i> | | |
| Home Phone | | Cell Phone <i>406 594 0382</i> | | |
| Work Phone | | Fax | | |
| Email <i>tkaczmarek@yellowstonecountrymt.gov</i> | | Estimate Date <i>5-8-21</i> | | |
| Location and Date | | Estimator <i>Josh Winter</i> | | |

| | | | |
|--------------|--|------------------------|---|
| Type | <i>Cedar</i> | Min | <input type="checkbox"/> Spread |
| Style | <i>Dogear</i> | | <input type="checkbox"/> Pile On Site |
| Fabric Gauge | <i>Privacy</i> | | <input checked="" type="checkbox"/> Hurl Away |
| Terminale | Picket Size <i>3/4" x 6" x 6"</i> | Grade | <input checked="" type="checkbox"/> Straight Top |
| Line Posts | <i>R & L</i> | | <input type="checkbox"/> Follow Grade |
| Gate Posts | Line Posts <i>7.6 Steel</i> | Property Pins Visible? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Top Rail | Gate Posts <i>8' Steel</i> | Gates - Swing | <input type="checkbox"/> In <input checked="" type="checkbox"/> Out |
| Spacing | Rail <i>2x4x8'</i> | Houseowners | |
| Height | Spacing <i>8' none</i> | Effect Crew? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Set Size | Length <i>209 + 6 gates</i> | Removal | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Walk Gates | Height <i>3 1/2 + 6'</i> | | <input type="checkbox"/> Customer |
| Drive Gates | Set Size <i>3' x 30'</i> | Type of Material | <i>Wood</i> |
| Tension Wire | Walk Gates <i>1 @ 4'</i> | Footage Amt. | <i>250'</i> |
| Barbed Wire | Drive Gates <i>1 @ 10'</i> | Remove Sats? | <input checked="" type="checkbox"/> All <input type="checkbox"/> None |
| Slats | Post Caps | | <input type="checkbox"/> Some |
| Color | Picket Caps | Pets Secured? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Other | Color <i>Natural</i> | | |
| | Customer Responsible For <i>Strapping</i> | | |



PLEASE READ SIGN AND RETURN

CUSTOMER IS RESPONSIBLE FOR PROCUREMENT AND PAYMENT OF ALL NECESSARY PERMITS AND FEES WHERE APPLICABLE PRIOR TO COMMENCEMENT OF WORK. CUSTOMER IS RESPONSIBLE FOR OBTAINING PERMISSION TO TIE IN TO EXISTING UTILITY IF APPLICABLE. ALL FENCE TO BE INSTALLED ABOVE GRADE. CUSTOMER ASSUMES FULL RESPONSIBILITY OF LOCATION OF LINE OF FENCE. MONTANA FENCE IS NOT RESPONSIBLE FOR DAMAGE OR REPAIR OF ANY BURIED PRIVATE UTILITIES OR SEPTIC NOT LOCATED. MONTANA FENCE IS NOT RESPONSIBLE FOR DAMAGE OR REPAIR OF UNDERGROUND SPRINKLER LINES OR SPRINKLER HEADS. THIS BID IS VALID FOR 30 DAYS FROM THE DATE OF THE ESTIMATE. I HAVE READ AND UNDERSTAND THE ABOVE CONDITIONS AND MONTANA FENCE'S TERMS AND CONDITIONS. (CUSTOMER INITIALS ABOVE)

CONTRACT TERMS

1. Montana Fence shall furnish only the materials and labor specified in this contract. Any changes made from the specification, necessitating additional materials or labor shall not be included or covered by this proposal, but shall be provided for under a written job change order signed by the customer. Any surplus materials remaining upon the completion of the installation shall remain the property of and be returned to Montana Fence. When materials covered by this contract are for the replacement of or additions to existing equipment, Montana Fence shall in no way be responsible for the functioning of any part of the existing system on which changes are not made by Montana Fence nor exact matching of color, shape or size.
2. The customer, by accepting this Montana Fence contract, warrants that there are no violations of any zoning, building, plumbing, electrical, or heating codes, regulations, laws, or ordinance of any duly constituted public authorities and customer agrees to defend, hold harmless, and indemnify Montana Fence from and against all claims, liabilities, and expenses regarding same. Montana Fence assumes no liability for damage or repairs to underground sprinkler lines, sprinkler heads, or any other above or below ground obstruction or obstacles. Montana Fence will notify UDIG for location of underground public utilities. The customer is responsible for locating private lines and notifying Montana Fence of their location.
3. Customer hereby assumes full responsibility for the location of the line upon which said fence materials are to be installed and Customer agrees to defend, hold harmless and indemnify Montana Fence from and against any and all claims, liabilities, and expenses for injury, death, or damage to persons, property damage, trespass and all other damage, loss or other liability of any kind arising from the installed location of said fence materials.
4. The customer by accepting the Montana Fence Contract, either verbally or in writing, acknowledges that they shall be responsible for the payment and procurement of all necessary permits and/or fees prior to the commencement of work, where applicable. Customer also acknowledges that this estimate and contract does not include any permits and/or fees that may be required by any agency in connection with the installation of the requested fence. Customer agrees to defend, hold harmless and indemnify Montana Fence against any and all claims, liabilities and expenses relating to the failure of the customer to obtain or pay any required permits or fees. In the event that Customer's failure to obtain any necessary permits and/or pay any required fees to the appropriate agency causes a delay or stoppage of work on the project, Montana Fence shall have the right to be reimbursed for lost wages, travel time, re-mobilization costs and any other costs that may be caused by the delay.
5. The amount of this contract does not include the furnishing of any materials or labor necessitated by the occurrence of unforeseen circumstances subsequent to the date of this proposal or to any condition not readily discernible at the date of this proposal, and Montana Fence shall have the right in addition to any other right it may have, to cease any installation which has begun and/or cancel this Agreement and recover the reasonable value of the material and labor furnished to the date of cancellation, the reasonable value of such labor and materials to be based on Montana Fence's current retail prices thereof and the labor charges of any subcontractor who is performing any part of the installation. Unforeseeable circumstances or not readily discernible conditions above referred to shall include but not be limited to, (i) Subsequent destruction, damage or loss of the premises or materials furnished by Montana Fence by fire, explosion, acts of God, theft or vandalism not caused by Montana Fence's negligence, (ii) governmental regulation or intervention.
6. Montana Fence shall not be liable for any delays in the completion of an installation resulting from or due to labor difficulties, strikes, acts of God, weather, fire explosion, government regulations, or causes beyond the control of Montana Fence.
7. This contract, any attached specifications, sketches, blueprints, and the credit agreement, if any, shall constitute the entire agreement between the parties, which may not be altered or modified except by written agreement duly executed by the parties. Oral understandings and agreements with a Montana Fence representative are not binding. This contract is valid for thirty days, but is subject to changes in price of materials. If this contract is canceled before work has begun, the customer shall pay Montana Fence 25% of the contract price as stipulated damages for such breach.
8. If the parties cannot resolve any dispute arising out of this contract, both parties agree to have the matter settled by one-person arbitration, applying the rules of the American Arbitration Association, with the decision being final and binding. At such arbitration, the substantially prevailing party shall be entitled to an award of attorney fees and costs. This arbitration provision does not prevent Montana Fence from enforcing its mechanic's lien rights in court.
9. Rock and Underground Clause Montana Fence reserves the right to charge extra for hand digs or other extra work necessitated by sub-surface obstructions, rock, concrete, or asphalt not able to be seen above ground by estimator. If fill dirt has been used along fence line Montana Fence does not warrant against settling of posts due to lack of compaction. Ground must be 90% compacted or extra charges may apply. Additional labor will be charged at the standard Montana Fence hourly rate, plus any equipment costs. Montana Fence does not have the capability to determine ground compaction and therefore offers no guarantees or warranties pertaining to ground compaction.
10. Warranty: Montana Fence warrants all Chain Link, Wood, Poly Vinyl Chloride (PVC) and Ornamental Iron fence installations for a period of 5 years from date of installation to be free of defects in workmanship when installed by Montana Fence. This warranty is void if the fence is used as a retaining wall; if fence shifts because of high water table; if excess vegetation is allowed to grow on or into fence; or if fence is embedded in frozen ground. This warranty does not apply if customer installs privacy slats in a fence that was not designed and/or approved for the installation of privacy slats or to damages caused by adverse weather conditions, negligence, vehicular damage, vandalism, or other acts of God. All materials are warranted by manufacturer.
11. Warranty: Montana Fence warrants all Gate Operator installations for a period of 1 year from the date of installation to be free of defects in workmanship when installed by Montana Fence. All parts of the operation of the gate operator including, but not limited, electronics, keypads, etc. shall be warranted by the manufacturer. This warranty does not cover icing over of rollers, gate and/or chains. Warranty also does not apply to damages caused by adverse weather conditions, misuse, negligence, vehicular damage, vandalism, or other acts of God.
12. **ALL WARRANTIES APPLY ONLY TO ORIGINAL PURCHASER OF INSTALLED FENCE, AND ARE NOT TRANSFERABLE. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF FITNESS FOR PARTICULAR PURPOSE AND WARRANTY OF MERCHANTABILITY ARE HEREBY DISCLAIMED.**
13. Customer also agrees that in lieu of a signature below Customer's tender of an advance deposit for the work will signify that the customer has read, understands and accepts the foregoing terms and conditions and the tender of such deposit will have the same effect and force as a signature below.

SALES AGREEMENT

There are no agreements regarding payment other than those contained below.

DATE: _____ SALE PRICE: _____
DEPOSIT: _____

Payment Due Upon Completion in Full: _____

Immediately following completion of the installation detailed in this contract, I will pay to Montana Fence the remaining unpaid balance of the agreement. Until payment of this amount is made I agree that title to and right of possession of the fence material shall remain with Montana Fence; that I will not sell, remove or encumber this fence material; and that upon default of payment Montana Fence, may at its option, take back the fence material, or affirm the date and hold me liable for the full unpaid balance plus applicable late charges, (1 1/4% or a minimum of \$2.00 per month, which is an annual percentage rate of 18%). Additionally, if I have left a credit card number on file with Montana Fence, I authorize Montana Fence to charge the remaining unpaid balance of the work on said credit card. By signing this agreement I confirm that I have read, understand and agree with the above terms and conditions.

CUSTOMER SIGNATURE



MONTANA FENCE

Preparation & Expectations

Montana Fence appreciates the opportunity to bid/install your fencing project and we are committed to giving you the best experience possible! Please read the following information carefully as we strive to meet your expectations.

- We try our best to install your fence within the time frame you will be given when we receive your deposit. Please keep in mind that circumstances do occur that cause us to delay scheduling a fence installation. We will clearly communicate delays if they occur.
- Due to the variance of fencing projects, weather, and scheduling conflicts, we make our schedule one week at a time, each Friday. When you sign your contract and give us your deposit, we give an approximate time frame on the installation of your fence. **We will call you one day prior to install.** Examples of a schedule change can include the crew scheduled to install your fence may call in sick, have an accident, or there may be unforeseen equipment issues. Weather issues are a constant obstacle and customer change orders or delays may also affect the customers scheduled for an install after them.
- It is very important that you meet the crew on the job site, **the first day**, to go through the layout of your project and review what you have contracted with Montana Fence. If changes occur, it may affect pricing and any changes before or during installation may result in the delay of your project.
- Please make sure any clearing, brush/tree removal or leveling/grade work has been completed **prior** to the arrival of the install crew. Clearing, tree removal etc. is typically not a part of the fence build, unless otherwise noted on the contract. Out of respect for our crews and equipment, please have all dog poop cleaned up prior to the arrival of the crew. We also ask that you keep your dogs contained away from the crews during the fencing process.
- When fencing property lines, it is **your** responsibility to clearly have survey pins visible or the layout of the fence marked. A service fee of \$150.00 may be charged if unmarked lines cause a crew delay.
- Please have HOA approval, if required, for any fencing covenants.
- **The average fence project takes from 1 to 1 ½ weeks to complete.** In some circumstances, we install your posts the first week (this allows the concrete to set and gives us time to build your gates to fit the actual gate opening) and finish the fence approximately 6 to 9 business days later (we do not normally give notice when we come back to complete your fence project.)
- **Montana Fence is responsible for having the public utilities marked by UDIG.** It is your responsibility to clearly mark any private utilities, (sewer, drain field, septic lines, water/well lines, propane gas, power to outbuildings etc.) underground sprinkler lines and sprinkler heads. If private underground lines are not marked properly, Montana Fence is **NOT** responsible for locating or repairing.
- If you are at home when the project is complete, please walk the fence line with the foreman. This gives them the opportunity to correct any issues you may have with the fence. It is easier for us to address the issue while the crew is there, than to schedule a crew to come back and make minor adjustments.
- Final payment is due upon completion of your fence project. You will receive your final invoice via email. We offer a six-month financing program through Wells Fargo. The credit application for financing must be completed and approved prior to the installation of your fence.
- **Montana Fence employs qualified, drug-tested, hard-working employees, dedicated to building you a quality fence.**

We appreciate your business and look forward to working with you.

Sincerely,
MONTANA FENCE

MONTANA FENCE



MONTANA FENCE Sprinkler and Private Utility Clause:

Dear Customer,

Thank you for considering Montana Fence for your fencing project. As you may have noticed several times throughout your estimate and contract documents, Montana Fence does not cover the cost of repairs to private utilities, media lines, sprinklers etc. that are not professionally located. Montana Fence submits locates for the public utilities to the locating service in your area. They, however, do not locate private utilities. Examples are, but are not limited to, private gas, propane, power to shop, private telephone or internet line, septic drains, and all underground sprinkler systems. To clarify, if you do not know the exact location, then neither will we. Underground sprinkler lines are **NOT LOCATABLE** and are commonly set right on the property line where we are preparing to install your fence.

By signing this document, you acknowledge and accept that Montana Fence is not responsible for payment or repair to any private utility lines, propane, septic, media lines, or sprinkler systems.

Customer: _____ Date: _____

Thank You