

**AGENDA  
OURAY CITY COUNCIL**

**Tuesday, September 6, 2022**

**Massard Auditorium - <https://zoom.us/j/9349389230> password 491878 or dial 408-638-0968**

**320 6th Ave  
Ouray, CO 81427**

**VIRTUAL OPTION - <https://zoom.us/j/9349389230>**

Meeting ID: 934 938 9230 Passcode: 491878 Or dial: 408 638 0968 or 669 900 6833

**Ouray City Council Regular Meeting**

- Changes to this agenda can be found on the bulletin board at City Hall
- Electronic copies of the Council Packet are available on the City website at [www.cityofouray.com](http://www.cityofouray.com). A hard copy of the Packet is also available at the Administrative Office for interested citizens.
- Notice is hereby given that a majority or quorum of the Planning Commission, Community Economic Development Committee, Beautification Committee, Tourism Advisory Committee, and/or Parks and Recreation Committee may be present at the above noticed City Council meeting to discuss any or all of the matters on the agenda below for Council consideration

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. CEREMONIAL/INFORMATIONAL - Proclamation of Suicide Prevention Month
5. APPROVAL OF MINUTES - August 15, 2022
6. CITIZENS' COMMUNICATION
7. CITY COUNCIL REPORTS/INFORMATION - Tamara Gulde, Peggy Lindsey, John Wood, Josh Smith, and Ethan Funk
8. DEPARTMENT REPORTS
  - a. City Administrator
  - b. Police Chief
  - c. Fire Chief
  - d. Public Works Director
  - e. City Resources Director
  - f. Tourism and Destination Marketing Director
9. CONSENT AGENDA
  - a. Liquor License Renewal - Ouray Liquors
  - b. Winery Sales Room Permit Application - Mountain View Winery
  - c. Festival Permit Application - The Gray and Silver Eagle Saloon for Oktoberfest, September 24, 2022
10. ACTION ITEMS
  - a. Resolution 16, Series 2022 - Regarding Undergrounding Requirements for Utility Wires
  - b. Ordinance 8, Series 2022 - Regarding Fiber on Utility Poles - First Reading
  - c. Ordinance 9, Series 2022, Regarding Alcohol in City Parks - First Reading
  - d. Water Treatment Building Exterior
  - e. Construction Oversight Agreement with JVA for WWTP Project
  - f. Construction Agreement with Aslan Construction Inc. for WWTP Project
  - g. Fixed Encroachment Request from Owners of 201 Queen Street
  - h. IGA with Ouray Public Library District for IT Services
  - i. Bachelor Switch Water Users Agreement Addendum

- j. Authorize OBC to Order Flowers for Main Street, not to Exceed \$22,000
- k. Agreement Addendum with Tangram Design for Next Phase Branding Services

11. DISCUSSION ITEMS

- a. Snow and Ice Removal from Sidewalks
- b. Requirements for CEDC Membership
- c. Future Agenda Items

12. ADJOURNMENT



**A PROCLAMATION BY  
THE MAYOR OF THE  
CITY OF OURAY, COLORADO**

**PROCLAMATION NO. 4 2022  
SUICIDE PREVENTION MONTH**

This Proclamation recognizes suicide as a national, statewide, and local public health problem, and suicide prevention as a national, statewide, and local responsibility, and designates **September 2022** as “National Suicide Prevention Month” in Ouray. This month overlaps World Suicide Prevention Day, September 10<sup>th</sup>, recognized internationally and supported by the World Health Organization.

**WHEREAS**, suicide remains the 12<sup>th</sup> leading cause of death in the United States and the 3<sup>rd</sup> leading cause of death among children and teens ages 10-19 and the 2<sup>nd</sup> leading cause of death among individuals between the ages of 20 to 34;

**WHEREAS**, in the United States over 45,000 people died by suicide in 2020 (Centers for Disease Control);

**WHEREAS**, suicide rates have increased 30% over the last 2 decades, with suicide rates finally decreasing 2.1% between 2018 and 2019 and decreasing 2.9% between 2019 and 2020;

**WHEREAS**, it is estimated that in 2020, there were 1.2 million suicide attempts;

**WHEREAS**, in 2020, suicide was the 8<sup>th</sup> leading cause of death in Colorado (Centers for Disease Control);

**WHEREAS**, in 2020, 1,302 people died by suicide in Colorado (Centers for Disease Control);

**WHEREAS**, over 90% of the people who die by suicide have a diagnosable and treatable mental health condition, although often that condition is not recognized or treated;

**WHEREAS**, organizations such as the American Foundation for Suicide Prevention and Tri-County Health Network are dedicated to saving lives and bringing hope to those affected by suicide, through research, education, advocacy and resources for those who have lost someone to suicide or who struggle, and urge that we:

1. Recognize suicide as a preventable national, state, and local public health problem and declare suicide prevention to be a priority.
2. Acknowledge that no single suicide prevention program or effort will be appropriate for all populations or communities.
3. Address the disparity in access to mental healthcare for underrepresented groups, and advocate for ending these disparities
4. Fund new suicide research to support culturally informed and evidence-based mental health care and services.

5. Encourage initiatives based on the goals contained in the National Strategy for Suicide Prevention and the 2022 Colorado Suicide Prevention Plan.
6. Promote awareness that there is no single cause for suicide, and that suicide most often occurs when stressors exceed the coping abilities of someone struggling with a mental health condition.
7. Develop and implement strategies to improve and increase access to quality mental health, substance use, and suicide prevention services and programs.
8. Continue advocacy to ensure we can reimagine a comprehensive suicide, mental health, and substance use crisis response system that builds on the historic new 988 number for the Suicide and Crisis Lifeline.

**NOW THEREFORE**, I, Ethan Funk, the Mayor of the City of Ouray, do hereby proclaim **September 2022 as National Suicide Prevention Month** in the City of Ouray. I call upon the citizens, government agencies, public and private institutions, businesses and schools in the City to recommit our community to increasing awareness and understanding of the many reasons why suicide occurs in our community, the steps our citizens can take to help their fellow citizens who are considering suicide, and the need for appropriate and accessible services for all people who are living with mental health challenges.

\_\_\_\_\_  
Ethan Funk, Mayor

September 6, 2022

ATTEST: \_\_\_\_\_  
Melissa M. Drake, City Clerk

# Ouray City Council Regular Meeting

Monday, August 15, 2022 6:00 PM

Massard Auditorium, 320 6th Ave, Ouray, CO 81427

Ethan Funk: Present  
Tamara Gulde: Present  
Peggy Lindsey: Present  
Josh Smith: Present  
K. John Wood: Present

## 1. CALL TO ORDER

*Mayor Funk called the meeting to order at 6:00 pm.*

## 2. ROLL CALL

## 3. PLEDGE OF ALLEGIANCE

*The Pledge of Allegiance was recited.*

## 4. PUBLIC HEARING - Joint Planning Intergovernmental Agreement (IGA) with Ouray County

*Mr. Clarke introduced the IGA. Mayor Funk opened the floor for public comment. Since there were no comments, Mayor Funk closed the floor.*

## 5. CEREMONIAL/INFORMATIONAL

### a. CEDC Business Grant Presentation

*Kevin Schiffer presented the micro-grant program and criteria for existing or new businesses in the City.*

### b. Ouray Ice Park Inc. (OIP) Presentation of 2022 Economic Impact Study

*Peter O'Neil, Executive Director of the Ouray Ice Park, initiated an economic impact study that was completed by Professor Shawn Rohlin of Kent State University. Professor Rohlin presented the results, showing that the Ice Park brought in \$17.8 million to the County during the last season.*

## 6. APPROVAL OF MINUTES - August 1, 2022

Motion to approve minutes as presented. This motion, made by Josh Smith and seconded by K. John Wood, Carried.

Ethan Funk: Yea, Tamara Gulde: Yea, Peggy Lindsey: Yea, Josh Smith: Yea, K. John Wood: Yea

## 7. CITIZENS' COMMUNICATION

*Mayor Funk opened the floor for public comment. John Hart said he represents a group of concerned citizens in response to the August 1st work session, believing the Council has lost scope of their duties and responsibilities. Mr. Hart believes the City should not buy the lot at Silver Shield Trail and Hinkson Terrace to build affordable housing, and leave affordable housing to developers. Mayor Funk closed the floor.*

## 8. CITY COUNCIL REPORTS/INFORMATION - Tamara Gulde, Peggy Lindsey, John Wood, Josh Smith, and Ethan Funk

- *Councilor Gulde - Attended the County planning commission meeting on 8/2 to discuss updates to the Planning IGA. IPAT met on 8/3, provided an update on what has been done since the last meeting, and upcoming changes. The next IPAT meeting is on 10/5. The CEDC work session was held on 8/4, finalizing the micro-grant program. Discussion of holding a fall business roundtable in October. The Main Street Program meeting date is coming soon. "Love Your Gorge" cleanup day will be on 9/17. The next CEDC meeting will be on 9/8.*
- *Councilor Lindsey - Met on 8/3, discussed electrical lines to be installed for Christmas lights at Rotary Park. The flower order deadline for next summer is coming up, needs the Council's "OK". Lori Leo has asked each City staff member to help with work on the riverwalk trail for two days in September.*

- *Councilor Wood - OIPI meeting report is partially included elsewhere in the agenda (Economic Impact Study and commercial guide fee increase). OIPI also discussed guide training standards. The TAC meeting will be held tomorrow, 8/16.*
- *Mayor Pro Tem Smith - PARC met on 8/8. The softball league championship is tomorrow, 8/16, and the last game will be 8/19. The committee is brainstorming on organizing fall activities, as well as Ice Rink improvements. The next meeting will be on 9/13 (one week later than normal due to the Regular Council meeting falling on a Tuesday due to Labor Day).*
- *Mayor Funk - MAC group is alternating meeting topics between COVID and other public safety issues. High Alpine Road Map 9.5 group is looking for a letter of support for them to pursue grant money to study high alpine needs. Mayor Funk stated that the exterior design approval of the wastewater treatment plant has been postponed until another guaranteed maximum price is received from another contractor. Councilor Gulde added that the MAC group is monitoring monkeypox in the area.*

**9. DEPARTMENT REPORTS**

a. City Administrator

*Mr. Clarke gave an overview of his report. Autumn Bailey, Communications and Community Engagement Coordinator, gave an update on the website update process. Main Street Program steering committee to meet in person on either the 22nd, 23rd or 24th of August. Updated tourism maps are being distributed to local businesses. Ribbon cuttings for Kami's Samis and Sauvage Spectrum on 8/19. National Night Out on 8/2 was very well attended. The compensation and benefits survey will be starting soon. TAC meeting tomorrow at 6:00 pm.*

b. Director of Finance and Administration

*Mr. Clarke presented the financial reports.*

c. Community Development Director

*Report in packet.*

d. Information Technology Director

*Report in packet. Mr. Willis said the live web camera is up at the Visitor Center and looks great.*

*Councilor Gulde stated that the new Tourism and Destination Marketing Department is doing a great job. Councilor Wood added that a draft of Ms. Rhoten's marketing plan will be presented at the TAC meeting tomorrow.*

**10. CONSENT AGENDA**

I make a motion to approve the Consent Agenda. This motion, made by K. John Wood and seconded by Tamara Gulde, Carried.

Ethan Funk: Yea, Tamara Gulde: Yea, Peggy Lindsey: Yea, Josh Smith: Yea, K. John Wood: Yea

- a. Special Events Permit Application - Ouray Highgraders, August 19-21, 2022
- b. Special Events Permit Application - Ouray Climbers Alliance, OuROCK 2022, September 18
- c. Liquor License Renewal - JTP Inc. dba Ouray Riverside Resort - Inn & Cabins

**11. ACTION ITEMS**

a. Joint Planning IGA with Ouray County and Extension of the Existing Agreement

Motion to approve amended IGA with Ouray County, modifying section 5.9 6 months be changed to 12 months and give an extension through September 30th. This motion, made by K. John Wood and seconded by Tamara Gulde, Carried.

Ethan Funk: Yea, Tamara Gulde: Yea, Peggy Lindsey: Yea, Josh Smith: Yea, K. John Wood: Yea

*John Holbert thanked the Council for their work updating the IGA.*

b. Name Ouray Visitor Center in Honor of Mary Mitchell

Motion to rename the Visitor center in honor of Mary Mitchell. This motion, made by Tamara Gulde and seconded by Josh Smith, Carried.

Ethan Funk: Yea, Tamara Gulde: Yea, Peggy Lindsey: Yea, Josh Smith: Yea, K. John Wood: Yea

*Mary Mitchell's daughter, Charene, and her husband were in attendance and thanked the Council for honoring her mother's memory in this way.*

c. Funding Request from Home Trust of Ouray County

Motion to table the decision until the applicant provides financial information, a full narrative of the project, the organization's bylaws, and full pro-formas on all current projects. This motion, made by Tamara Gulde and seconded by K. John Wood, Carried.

Ethan Funk: Yea, Tamara Gulde: Yea, Peggy Lindsey: Yea, Josh Smith: Yea, K. John Wood: Yea  
*Andrea Sokolowski, Executive Director for the Home Trust of Ouray County, presented a request for \$100,000 to help purchase a six-unit apartment building to help maintain those units as affordable housing in Ouray. The Home Trust will also be applying for funds from DOLA grants, and to Ouray County for \$100,000, and a local resident is willing to make a large contribution as well. In order to keep the existing rental rates, the Home Trust is looking to make a larger down payment. Councilor Lindsey asked how many projects they have currently going, Ms. Sokolowski said there are two properties in the purchase process, and one duplex lot in Ridgway in the works. Councilor Gulde asked if there would be stipulations for the tenants to work in Ouray. Ms. Sokolowski said because of the Fair Housing Act, it is hard to put restrictions like that in place. Councilor Wood expressed concern about the sustainability of the Home Trust if they purchased this property along with the other projects they have in the pipeline. Mayor Pro Tem Smith and Councilor Gulde would like more numbers, including an agreed-upon purchase price, before making a decision.*

d. OIPI Request to Increase Commercial Guide Operators Fees

Motion to approve guide fee increases. This motion, made by Peggy Lindsey and seconded by K. John Wood, Carried.

Ethan Funk: Yea, Tamara Gulde: Yea, Peggy Lindsey: Yea, Josh Smith: Yea, K. John Wood: Yea  
*Peter O'Neil presented the proposed guide fee increases, stating that cached web pages of the commercial guide operators show rate increases since the 2018-2019 season, but the Ice Park has not raised their fees, but still has increasing operating costs. Mr. O'Neil stated that the sponsorship prices are increasing as well to fairly raise rates for everyone, not just the guides. Mayor Funk opened the floor for public comment. Mark Luppenlatz said the guide services are happy to contribute, but believe all users should pay. John Hart said the rate increase was not approached lightly by the board. Kitty Calhoun would like to see more activity in the membership drive to help raise fees beyond commercial guide fees. Logan Tyler felt there should be an incentive offered to local guides over guides who come from across the country. Kevin Schiffer felt the rate increases are a good short-term solution, but a long-term solution needs to be reached in order to fairly charge all Ice Park users. Nathan Disser said he has been guiding for 20 years in Ouray, and has a lot of background information on fee conversations. Lora Slawitchka said the fee increase is only \$10 a person, and felt that the commercial guide operations are not being singled out. Katie, a guide, suggested looking for other ways to raise that money, since the guides are already so vested in the success of the ice park. Frank Robertson said last year the guides' fees accounted for 6% of the operating budget, and they are slated to account for 10% next year, with 90% of the operating funds coming from sources other than commercial guide operations. Pete Davis, operations manager at the Ice Park, said guide operations are in Ouray because they can count on the revenue from guiding in the ice park, and owe a "debt of gratitude" for making the park available to them.*

**12. DISCUSSION ITEMS**

a. Plaque for Visitor Center Honoring Mary Mitchell

*Council discussed how to memorialize and publicize the newly renamed Mary Mitchell Visitor Center.*

b. Ordinance 5, Series 2020 - Temporarily Exempting Fiber Optic Cable from Being Placed Underground  
*Council discussed phased pole removal while still allowing OurayNet to install fiber lines on poles.*

c. Future Agenda Items

**13. ADJOURNMENT**

Motion to adjourn at 9:04 pm. This motion, made by Peggy Lindsey and seconded by K. John Wood, Carried.

Ethan Funk: Yea, Tamara Gulde: Yea, Peggy Lindsey: Yea, Josh Smith: Yea, K. John Wood: Yea

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Ethan Funk, Mayor

ATTEST:

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Melissa M. Drake, City Clerk

CERTIFICATION

I, Melissa M. Drake, do hereby certify that I am the City Clerk of the City of Ouray, Ouray County, State of Colorado, and that the above minutes are a true and correct summary of the meeting of the Ouray City Council held on Monday, August 15, 2022. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this Monday, August 15, 2022.

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Melissa M. Drake, City Clerk

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**City Administrator**  
**Report for September 6, 2022 City Council**  
**August 16 – September 2, 2022:**

**Geothermal Line Replacement Project (Box Canon):**

Williams Construction has begun the replacement project and there have been no issues identified at this time.

**Hot Springs Pool:**

Layne (Well Drilling) stated they should have the quote to us by the end of this coming week to sleeve and screen the OX2 well. My plan is to have a City Council Work Session, upon receipt of this quote. The quote, along with the previously provide ME&E report, can then be discussed in detail and the City Council can provide guidance on which solution it would like to pursue.

**WTP:**

Element Engineering will have the 90% plans completed by the end of this week.

Some fantastic news, the loan was granted for the Water Treatment Facility for \$12.1 million (we hope this is high) and it includes the maximum grant amount of \$5 million. That means the total bond for repayment is \$7.1, assuming full use of bond funding and grant obtainment. The 90% plans will be released this Friday by Element Engineering. I was hoping to have the GMP before the loan was granted, however we could have lost out on the full \$5 million grant based on other projects in line for funding.

**Parks Master Plan RFP:**

My plan is to have this RFP released by the end of this week.

# City of Ouray Police Department

August 2022

For the month of August 2022 OUPD ran approximately 414 calls for service. This is 139 more calls than last month's 414 calls for service. By comparison we ran 412 calls for service in August 2021.

This month's calls included:

- **271 Patrol checks** (the bulk of the increase in calls was here as last month's was 159)
- **51 Parking complaints** (last month's was 46)
- **7 Traffic stops** (last months was 23)
- **7 VIN inspections**
- **17 Bar checks**
- **3 Noise complaints**
- **1 Theft report** (later determined unfounded)

## Recent Events:

We had a successful National Night Out with good feedback from the public.

We did a test run of the revamped Ouray Police Shooting Range and have everything running smoothly. I was recently informed by former chief Anthony Chelf that at its completion the range had been dedicated to Chief Richard Zortman who served as the police chief here from 1981 to 2003 and himself did much of the construction of the range. I would like the City Council to consider formally naming the site the Chief Richard B. Zortman Memorial Police Range.

## Upcoming Events:

Reminder, the 9/11 memorial will be held on Sunday, September 11 at 8:30 am at City Hall.

We are working with the Ouray School on security protocols and with getting officers back into the schools as public safety liaisons like we did prior to the pandemic.

## Fire Department Report for August 2022

09/01/22

Firemen's Picnic in September. This is one of the 2 events for our members to thank them for their service.

Will have a resignation at September Meeting

2 training opportunities in August

Changing officers call signs with WestCO.

Budget planning in process.

Slab repair in front of fire station will be performed in September. Truck may be at residence at that time.

Calls for August have not been downloaded from dispatch.

Will advise on next report

## Public Works August 2022 Update

### Water

- Water Usage Numbers for **July**:
  - Influent (Water from spring) – 39,197,056 Gallons
  - Effluent (Water to town) – 21,524,144 Gallons
  - Micro Hydro Plant – 12,720,752 Gallons
  - Mineral Farms – 316,300 Gallons
- City staff collected the third round of water samples for the Measurable Results Program. The Measurable Results Program systematically and scientifically measures the water quality improvement derived from the implementation of new treatment technologies funded through the SRF (State Revolving Fund). The program will monitor the Uncompahgre River and wastewater effluent prior to the new Wastewater Treatment Plant and then a similar monitoring strategy will be used after the new Wastewater Treatment Plan is operational. Data collected in both phases will be compared to determine water quality changes. The City will benefit from the water quality characterization of their receiving stream, receive all data collected and could potentially be showcased as a success story.
- Continued to monitor and sample chlorine residuals at the two entry points of the distribution system. The City has been in compliance and meeting all CDPHE requirements.
- Disinfection Byproduct (DBP) samples were taken in the August to meet the City's compliance schedule. Disinfection byproducts (DBP) can form when naturally occurring organic carbon reacts with a chemical disinfectant such as chlorine.

### Sewer

- For the month of July, the City of Ouray WWTP was at 172% of its organic capacity. The plant is designed to handle 400 pounds a day, the 30-day average for the month of July was 687 pounds.
- Resumed Covid 19 testing in the Wastewater influent stream for CDPHE. To be in the program the City needs to pull samples twice a week. This has created approximately three hours of work a week for City staff.
- Replaced failed aerator in Lagoon #1.
- Continued to clean head works three to four times daily.
- Continued to skim lagoons of debris as needed.
- Cleaned and jetted sanitary sewer main between HWY 550 and 2<sup>nd</sup> St. This sewer line collects a lot of grease due to the restaurants.

### Streets

- Grade roads and cleaned intersections throughout town.
- Poured new concrete valley pan on 8<sup>th</sup> Ave.
- Poured a new section of curb and gutter along 3<sup>rd</sup> Ave. This repair was made due to damage to the old section.
- Replaced one lightbulb on Chautauqua Dr. and two photocells along Oak St.
- Cleaned and jetted multiple storm drains and throughout town with contractor.

## City Resources Department

September 6, 2022

- Cooler cloudy weather at the end of August, combined with reduced geothermal water flows, made it necessary to periodically close one of the pools at the Hot Springs. With one pool closed heat is directed to other pools to maintain desired temperatures. Pool temperatures are prioritized to keep one pool approximately 102-104 degrees, one pool at warm temperatures for family soaking, and the lap lanes open.
- Public swim lessons were offered in August. Community members have expressed appreciation for the increased opportunities to participate in swim lessons.
- Participants in the Mount Sneffels Marathon race are allowed one ½ price admission to the Hot Springs Pool on the weekend of the race. This year nearly eighty ½ price admissions were redeemed.
- During the past two months there have been multiple highly qualified applicants for positions at the Hot Springs Pool who were offered positions, or hired, who have left for other jobs in the area that offer higher pay and more competitive benefits. There are currently two highly qualified applicants that are interested in working at the Hot Springs Pool but cannot find housing in the area. Highly qualified means they possess Lifeguard Instructor certification, Water Safety Instructor certification, WSI Trainer certification, have several years aquatics experience, Certified Pool Operator certification, Aquatics Facilities Operator certification, etc.
- There were very few lifeguards who were recruited as a result of the State's Pool Special Initiatives Grant. The grant was announced and awarded at the end of June/early July. By this time most of the seasonal workers in the area had already found summer employment (the Hot Springs Pool recruits year-round and begins heavy recruitment in February and March). The grant was helpful with retention of employees longer through the summer.
- A private firm from Montrose has been contracted for bi-weekly cleaning of the gym. The labor shortage this summer has forced Hot Springs Pool management into positions of needing to close a pool in order to take a lifeguard out of rotation to clean the gym. Pool staff will continue to perform daily cleaning.
- Hours of operation at the Hot Springs Pool will be 11 am to 9 pm daily after Labor Day. From 11 am to noon will be members only.
- The Colorado Department of Public Health Vaccine Bus will be located at the Hot Springs Pool parking lot October 14 with Covid and flu shots available to the public.
- Trail crews with Volunteers for Outdoor Colorado will be working on the Cascade Falls section of the Ouray Perimeter Trail September 10 and 11. The trail will be closed periodically that weekend for safety of the crew and hikers. The volunteers come from across Colorado with many coming from the Denver area. The crews will be camping at Rotary Park. This project is a collaborative with the Ouray Trail Group, Volunteers for Outdoor Colorado, and the City.
- An application has been submitted to GOCO for funds for a Youth Conservation Corps crew next summer to perform conservation work on the Perimeter Trail near Cascade Falls. If awarded, this grant will support a youth trail crew for two weeks. Award announcement will be in December.
- A replacement rope for the ski tow has been ordered and scheduled for installation in the second part of September. This was budgeted for replacement this year. Tow ropes typically last four years at Lee's Ski Hill.
- Weeds have been cut at the ski hill in preparation for the ski season.
- City Resource staff assisted staff from Ouray Library with the larger than usual crowd that attended the August story time.
- The service mechanic with Otis Elevator completed a maintenance inspection and repairs in August on the elevator in the Community Center.

- Windows in the Massard Room were cleaned using the City's bucket truck.
- Black swift chicks have hatched at the Box Canon Falls. The chicks will likely leave their nests by mid-September for migration to Brazil.
- Wet weather in August created a situation where disease could spread at the bird feeders at the Box Canon Falls. Staff cleaned and disinfected the feeders and also cleaned and disinfected the ground below the feeders to kill mold and pathogens.
- A new pressure reducing valve was installed on the water line serving City Hall.
- All fresh air filters at City Hall have been cleaned and serviced.
- Interior trim and touch-up painting has been completed at City Hall.
- Construction of the new Administrator office space at the Community Center has continued through August with installation of granite counter tops, assembly of new desks, fresh air and air conditioning, and installation of glass.
- The swamp cooler for the Community Center kitchen was repaired and a new water line for the cooler installed in August.
- Multiple leaks in the sprinkler system at Fellin Park have been repaired.
- Graffiti was removed at the restroom at Fellin Park.
- A pressure reducing valve needs to be installed at Rotary Park for the new restrooms. This should be completed within the next two weeks as staff is available.
- Repairs were made on the door to City Hall.
- New LED fixtures were installed in the woman's restroom at City Hall.
- An electric line was installed at the Visitor Center to support an upgrade in the IT components at that building.
- A live web camera is installed at the Visitors Center overlooking the hot springs pool with a view south to Mount Abram. The camera is available on the Visit Ouray website.
- The Wiesbaden geothermal drain line was jetted.
- When available, Parks staff has assisted Beautification Committee volunteers on Tuesdays and Thursdays with brush clean up on the Uncompahgre River Trail. The parks crew has not been available some weeks due to absences.
- The Parks crew repaired a street light on North Oak Street.
- Daily rounds include cleaning of restrooms at City Hall, Box Canon Falls, Fellin Park, Cascade Falls, Rotary Park, North Oak Street, Ouray Community Center, and Citizens State Bank, Visitor Center, as well as removal of trash from Main Street, Rotary Park, Box Canon Falls, Fellin Park, Uncompahgre River Trail, Cascade Falls. Daily rounds also includes watering of flowers on Main street and sidewalk planters throughout downtown.



September 6, 2022

## TOURISM & DESTINATION MARKETING REPORT

### *Visitor Center*

- Hired an additional part time employee, Patricia Ann Pitts. She goes by Patty
- We had 4,110 guests in August
- Total of 10,891 guests this summer
- Created a customer satisfaction survey beginning of August. 39 Responses. Please see VC Survey document for all responses.
  - Question 1 - How satisfied were you with the Ouray Visitor Center? (39 responded with highest satisfaction)
  - Question 2 - How satisfied were you with the staff at the Ouray Visitor Center? (39 responded with highest satisfaction)
  - Question 3 - Any comments you would like to leave? (good or improvements needed) Please see attached VC Survey document (22 responses)
  - Question 4 - What brought you to Ouray? (39 responses) 25.6% Hiking, 25.6% Jeeping, 25.6% Just traveling through
  - Question 5 - How would you describe Ouray? Please see attached VC Survey document (33 responses)
- Had a total of \$2,151.76 in sales for the month of August

### *Visit Ouray*

- Continuing the business spot lights once a week. August we had:
  - Little Bucket of Flowers, Khristopher's Culinaire, Ouray Bookshop, and Canyoning Colorado. You can see the results on the "Businesses Advertised" document.
- Continuing to make sure all businesses are included on the highlights on Instagram and on our stories. A list of all businesses featured in highlights are on the "Businesses Advertised" document.
- Facebook Insights for August 1 - August 31 | 80,119 page reaches
- Instagram Insights for August 1 - August 31 | 39,948 reaches
- Added new highlight categories on Instagram per TAC's request: Relax, Hike, Off-Road, Brews, and Ouray Made
- Created a LinkTree account for Instagram. Currently we have a link to our website and the link to the New York Times story on the Ouray Via Ferrata.
- 82 followers on TikTok



## TOURISM & DESTINATION MARKETING REPORT

### *Visit Ouray Continued*

- Sent in a request to Instagram and Facebook to have our accounts verified (blue checkmark). This improves security and means we are a notable account.
- Created three videos: Basecamp Ouray, Canyoning Colorado, and Ouray Fall Promo. These videos are on Youtube.
- Website updates:
  - Updated Hot Springs page (up 18.89%)
  - Updated Ghost Towns page
  - Updated Hiking page (up 5.89%)
  - Updated Lodging page (up 74.66%)
  - Updated Shopping page (up 62.12%)
  - Created Ouray County Historical Museum page
  - Created Art & History page
  - Created Know Before You Go/ Do Ouray Right page
  - Created Blog page
    - Made a blog post about Basecamp Ouray's Gold Mountain Via Ferrata
      - Included 1-minute video
    - Working on a blog post about Canyoning Colorado's Oak Creek Canyon
      - Will include 1 -minute video
    - Looking to have guest writers
  - Created Adventure page
  - Created Itinerary page
    - Currently hosts family-friendly and dog-friendly things-to-do
    - Working on adding more themed itineraries and 1-3 day itineraries
  - Created Dog-Friendly page
  - Created Climbing page
  - Added a testimony section in the contact us page (and added captcha for security)
  - I added SEO to the section in the website that was either left blank or was named "General #" See page 6 for an example
  - See current results of web traffic on page 7



## TOURISM & DESTINATION MARKETING REPORT

### *Visit Ouray Continued*

- Added the City Map document to the Visit Ouray App
  - Currently we have 153 downloads and 36 users
- Media:
  - Julia Dorazio | Freelance Writer | Australia
    - Thank you to Basecamp Ouray, Twin Peaks Lodge, Box Cañon Falls, Ouray Hot Springs Pool, and Ouray Brewery for making her stay one she will never forget!
    - Deliverables, mentions on her social media @theroamingflamingo, written story in online travel publication (Colorado Tourism Office will share once published)
  - Matt Masich | Writer | Colorado Life Magazine | Colorado
    - Thank you to Ouray Hot Springs, Ouray Ice Park, The Wright Opera House, San Juan Mountain Guides, Basecamp Ouray, Altitude Adventures, Ouray Glassworks and Pottery, Ouray Brewery, and the Ouray Mountain Rescue Team for making the time to talk and interview with Matt.
    - Deliverables, story in the winter Colorado Life Magazine.
  - Jon and Tiffany Bitner | Travel bloggers/ influencers | Colorado
    - Thank you to the Ouray Hot Springs Pool and Box Cañon Falls.
    - Deliverables, 5 stories, 1 post, 2 reels, 1 blog post, and 20 high-quality photos for Visit Ouray to use.
  - Ivy Carruth | Travel Writer and Copywriter | Australia
    - She is only in town for half the day, but she is going to explore the Box Cañon and Hot Springs and having lunch downtown.
    - Deliverables, mention in the VacationTravel.com online publication.
  - Cindy Hirschfeld | Writer | New York Times
    - Shoutout to the Ouray Via Ferrata crew for making a New York Times worthy story for the Via Ferrata in the Uncompahgre River Gorge.
  - Tomeka Jones | Travel Expert | Colorado
    - Was on the Channel 9 News 9/1/22 and had a five minute segment on Historic Opera Houses
    - Mentioned and showcased photos of Ouray and the Wright Opera House
  - Historic Hot Springs Loop Photoshoot set to take place 9/7-9/8 for all hot springs properties.



## TOURISM & DESTINATION MARKETING REPORT

### *Visit Ouray Continued*

- Tourism Advisory Committee Meeting 8/16/22
  - Gave a marketing update, showcased the Marketing Plan (see attached document, "Marketing Plan", gave updates on the Reimagine Destinations Grant, and Wayfinding project.
  - Presented recommendation for Crowdriff and Localhood to be used for destination marketing (They approved)
  - Discussed recommendation for Visitor Center store items. They decided to talk to their constituents and bring back their findings on the communities thoughts on the gift shop before moving forward in a decision.
  - Gave an update for the Branding program and presented a recommendation for switching from Karsh Hagan to Tangram Design for the next phase in the process:
    - Looking at refreshing the Visit Ouray logo (keeping the same base structure in mind)
    - Coming up with a new all-encompassing tagline for Visit Ouray
    - Designing a Branding Standards guideline for the proper use of the logo and tagline
  - They approved this change
- See "Karsh Hagan" document for final results of the Phase 1 Branding project
- Reimagine Destinations Program
  - Created our Core Team
  - Submitted background information to the state for review
  - Had our first core team meeting:
    - See attached for the "Visit Ouray Core Team meeting #1 presentation" for results from the core team responses of Tourism Survey.
    - Top priorities of the group: Responsible Visitation, Enhancing Visitor Experience, Off-Peak Season Opportunities, Advancing Tourism Workforce
    - Additions to the Legacy Projects section: Community involvement to help support projects, community sustainability, and always keeping locals in mind.



## TOURISM & DESTINATION MARKETING REPORT

### *Visit Ouray Continued*

- We are working together in distributing a Tourism Stakeholder Survey. This survey is for any person whose business is effected by tourism. Last year we conducted a survey for residents (OURAY-Resident Survey-Final document).
- We started distributing these one week ago and we have 63 responses thus far.
- There will be a community workshop October 25, 2022 from 10 am - 4 pm to discuss the results and create action plans in how we move forward with marketing Ouray.
- The Tourism Grant opportunity for the 2023 funding is open until the end of September. The application can be found at [TinyURL.com/TACgrant](https://tinyurl.com/TACgrant).
  - Emails have been sent to inform recipient's of last year's grant funding.
- Applying for the 2023 Marketing Matching Grant
  - 50% match, we would ask for \$20,000 and we would match \$10,000
  - \$30,000 would go towards marketing programs



## Search Engine Optimization Example

### Before

SEO TITLE (OPTIONAL)

Add title... 100

---

SEO DESCRIPTION (OPTIONAL)

Add description... 400

Search results typically show your SEO title and description. Your title is also the browser window title, and matches your [title formats](#). Depending on the search engine, descriptions displayed can be 50 to 300 characters long. If you don't add a title or description, search engines will use your page title and content.

### After

SEARCH RESULTS PREVIEW

[Box Cañon Falls and Nature Center — Visit Ouray](https://www.visitouray.com/box-canyon-falls)  
https://www.visitouray.com/box-canyon-falls

Box Cañon Falls, Ouray's own wonder of the world, is the culmination of Canyon Creek narrowing and spilling thousands of gallons a minute of water over the falls. At this most spectacular geological formation, the 285-foot waterfall plummets into a narrow quartzite canyon. The narrow rock walls tower over the falls by nearly 100 feet!

---

SEO TITLE (OPTIONAL)

Box Cañon Falls and Nature Center

---

SEO DESCRIPTION (OPTIONAL)


Box Cañon Falls, Ouray's own wonder of the world, is the culmination of Canyon Creek narrowing and spilling thousands of gallons a minute of water over the falls. At this most spectacular geological formation, the 285-foot waterfall plummets into a narrow quartzite canyon. The narrow rock walls tower over the falls by nearly 100 feet!

64

https://www.visitouray.com › box-canyon-falls

[Box Cañon Falls and Nature Center - Visit Ouray](#)

Box Cañon Falls, Ouray's own wonder of the world, is the culmination of Canyon Creek narrowing and spilling thousands of gallons a minute of water over the ...

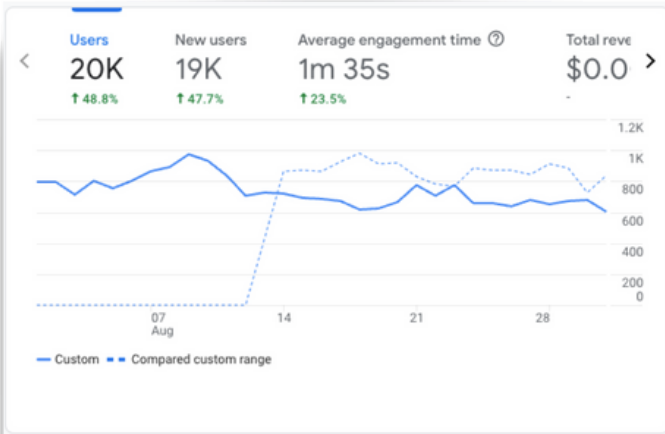


*As shown on Google*

**Back End**



## Google Analytics for VisitOuray.com August compared to July



Sessions by Session default channel group

SESSION DEFAULT ...	SESSIONS	Change
Organic Search	18K	↑ 66.2%
Direct	7.3K	↑ 41.6%
Referral	3.4K	↑ 44.3%
Organic Social	534	↑ 39.4%
Unassigned	77	↓ 23.0%
Organic Video	1	0.0

COUNTRY	USERS	Change
United States	20K	↑ 49.3%
Canada	131	↑ 63.7%
United Kingdom	70	↑ 66.7%
China	27	↓ 49.1%
Germany	37	↑ 32.1%
France	18	↑ 28.6%
Netherlands	17	↑ 21.4%

*\*The increase in organic search means that we are showing up better on Google*

Satisfaction with VC	Staff satisfaction	Any comments you would like to leave (good or improvements needed).	What brought you to Ouray?	How would you describe Ouray?
5	5	The advice and conversation with Kent was fantastic. I am so grateful for your help and time. Thank you. Also thankful for the hot coffee	Camping	Stunning, hidden, wild
5	5	Super friendly staff	Hiking	GORGEIOUS! Always a fun trip.
5	5	Mary was amazing!!	Camping	
5	5	Paulawas very helpful	Jeeping	Fun town!
5	5		Jeeping	Beautiful mt town
5	5		Hiking	Beautiful
5	5		Just traveling through	Lovely and beautiful
5	5		Just traveling through	Beauty at its very best!!
5	5	Great resource.	Jeeping	Great town. Lots to do and very friendly people.
5	5		Camping	Beyond awesome!
5	5		Just traveling through	Very pretty
5	5	Cindy was lovely !	Just traveling through	Awesome
5	5		Hiking	
5	5	Super friendly and helpful	Camping	Quant
5	5		Jeeping	Awesome
5	5	Very kind people	Hiking	Favorite anniversary destination
5	5	Super helpful information!!	Just traveling through	Picturesque
5	5	None	Just traveling through	Beautiful
5	5	Staff was great!	Hiking	Incredibly beautiful

5	5	Mary is an amazing person and advocate for Ouray. Very knowledgeable and kind	Hiking	Beautiful and friendly!!
5	5	Staff was great!	Hiking	Incredibly beautiful
5	5		Hiking	Beautiful
5	5	N/a	Just traveling through	Very cute
5	5		Just traveling through	
5	5		Jeeping	Gorgeous
5	5	Friendly staff. Enjoyed everyone. Made us feel welcomed.	Jeeping	
5	5		Hiking	
5	5	You are great!	Just traveling through	Awesome
5	5	Inform hikers with dog on trails not to leave poop with plastic bags on the trail	Hot Springs	Absolutely beautiful and magical
5	5		Jeeping	
5	5		Hiking	Packed with people and very scenic.
5	5	Really friendly staff.	Jeeping	Breathing challenges for Midwest folks.
5	5		Hot Springs	Paradise
5	5	Staff was very friendly, and had great information	Camping	Such a beautiful little town!
5	5	The staff was very helpful! Truly helped heighten our visit to Ouray!	Wedding	B-E-A-utiful!
5	5	Very inviting and helpful!	Million Dollar Highway	Spectacular and awe inspiring
5	5		Jeeping	Beautiful! I love it here!

5	5	The people are very friendly and knowledgeable! More postcards and pins would be fun. (Pins are an easy collectable).	Just traveling through	Small dog-friendly valley town with vintage vibes and unique art.
5	5		Jeeping	Wonderful

SHOPPING							
NAME OF BUSINESS	DATE ADVERTISED	WHERE PUBLISHED	RESULTS IG	RESULTS FB	RESULTS TT	KEY	
Columbine Mineral Shop	7.25.22	TT, IG, FB, IG Highlights	24,495 views	4,053 reached	549 views	TT = TikTok	
Ouray Bookshop	8.22.22	Highlights, TT, IG, FB	10,507 views	1715 reached	73 views	IG= Instagram	
Gator Emporium		Highlights				FB= Facebook	
Chief Ouray Trading Post		Highlights					
Twig and Feather		Highlights				*Results are after 7 days	
Little Bucket of Flowers	8.1.22	TT, IG, FB, IG Highlights	9,199 views	2,307 reached	75 views		
Ouray Mountain Sports		Highlights					
Ouray Grocery		Highlights					
The Shaggy oo		Highlights					
Khristopher's Culinaire	8.16.22	IG, FB, Highlights	5,919 reach	3,041 reached	-	Note: Didn't do video. Only photos	
Silver Lynx		Highlights					
O'Toys		Highlights					
Color and Quil		Highlights					
Mountain Fever		Highlights					

GUIDES							
NAME OF BUSINESS	DATE ADVERTISED	WHERE PUBLISHED	RESULTS IG	RESULTS FB	RESULTS TT	Notes	KEY
Ouray Via Ferrata		Highlights					TT = TikTok
Hot Springs		Highlights					IG= Instagram
Ouray E Bike Rentals		Highlights					FB= Facebook
San Juan Mountain Guides		Highlights					
Basecamp Ouray		Highlights					*Results are after 7 days
Alpine Scenic 4X4		Highlights					
Canyoning Colorado	8.29.22	Highlights, IG, FB, TT	11,287 viewers	4,097 reached	102 views	These results were only after 4 days. Posted a gallery of photos on Facebook instead of TikTok video	
Altitude Adventures		Highlights					
Switzerland of America		Highlights					
Ouray Riverside Resort Jeep Rentals		Highlights					
Ride-N Adventures		Highlights					
Ouray Mountain Adventures		Highlights					
San Juan Scenic Jeep Tours		Highlights					
Colorado West Jeeps		Highlights					

ART							
NAME OF BUSINESS	DATE ADVERTISED	WHERE PUBLISHED	RESULTS IG	RESULTS FB	RESULTS TT	KEY	
Mountain Dog Arts		Highlights				TT = TikTok	
The Wright Opera House		Highlights				IG= Instagram	
Ouray Glassart and Pottery	8.8.18	Highlights, IG, FB, TT	13,700	2,044	81	FB= Facebook	
							*Results are after 7 days

LODGING							
NAME OF BUSINESS	DATE ADVERTISED	WHERE PUBLISHED	RESULTS IG	RESULTS FB	RESULTS TT	KEY	
Box Canyon		Highlights				TT = TikTok	
Imogene Hotel		Highlights				IG= Instagram	
Ouray Riverside Resort		Highlights				FB= Facebook	
Wiesbaden		Highlights					
Twin Peaks Lodge		Highlights				*Results are after 7 days	
Hotel Ouray		Highlights					
Alpily Inn		Highlights					
Beaumont Hotel & Spa		Highlights					
China Clipper Inn		Highlights					
River Run Cabins		Highlights					
Timber Ridge Lodge		Highlights					
San Juan Chalet		Highlights					
4J+1+1 RV Park & Campground		Highlights					
Ouray Main Street Inn		Highlights					
Hot Springs Inn		Highlights					
St. Elmo Hotel		Highlights					

<b>RESTAURANTS</b>						
<b>NAME OF BUSINESS</b>	<b>DATE ADVERTISED</b>	<b>WHERE PUBLISHED</b>	<b>RESULTS IG</b>	<b>RESULTS FB</b>	<b>RESULTS TT</b>	<b>KEY</b>
Ouray Brewery		Highlights				TT = TikTok
Goldbelt		Highlights				IG= Instagram
Sauvage Spectrum		Highlights				FB= Facebook
Kamis Samis		Highlights				
Bon Ton		Highlights				*Results are after 7 days
Mojo's		Highlights				
Thai Chili		Highlights				
The Outlaw		Highlights				
Timber Line Deli		Highlights				
Ouray Cafe & Steakhouse		Highlights				
Imogene Hotel and Rooftop Bar		Highlights				
Brickhouse 737		Highlights				
Ouray Meat and Cheese		Highlights				
Ouray Liquors		Highlights				
Maggies Kitchen		Highlights				
Artisan Bakery & Cafe		Highlights				

<b>HEALTH</b>						
<b>NAME OF BUSINESS</b>	<b>DATE ADVERTISED</b>	<b>WHERE PUBLISHED</b>	<b>RESULTS IG</b>	<b>RESULTS FB</b>	<b>RESULTS TT</b>	<b>KEY</b>
Elevate Day Spa		Highlights				TT = TikTok
Salon Envy		Highlights				IG= Instagram
Wiesbaden Hot Springs		Highlights				FB= Facebook
						*Results are after 7 days



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# MARKETING PLAN

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**Written by: Kailey Rhoten**  
Tourism and Destination Marketing Director

August 16, 2022

1230 Main Street 

VisitOuray.com 

@VisitOurayCO



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# COMMUNITY VISION

Ouray is a family-oriented city with a strong sense of community and pride in its history. It enjoys a high quality environment, natural beauty and resources, historic character, social diversity and active community involvement. Its residents want to ensure that those unique attributes not be jeopardized, and that development and growth occur in a manner that protect and preserves Ouray's assets.

Ouray's residents recognize the **need for a balanced and diverse economy**. They want to maintain the current qualities that make Ouray a desirable and affordable place to live, play, and raise a family, while enhancing its public facilities and services.

The citizens of Ouray wish to **provide for orderly and managed growth with respect for capacity and quality of the natural environment to improve and expand community functions and services**, and to **protect and enhance the historic character** and the quality of life in Ouray.



# PURPOSE OF MARKETING

In Ouray, Co tourism is essential for a healthy economy. The best way to ensure that stays the same is to market. Marketing is a powerful tool that allows us to find our perfect tourist. Strategic marketing is essential because that is what empowers us to control the five W's:

**WHO:** Who do we want to advertise to? In-State, Out-of-State, International, leisure, adventure, etc.

**WHAT:** What do we want to market? The relaxing hot springs, the fall scenery, the epic ice park, the perfect family-friendly vacation, hiking, jeeping, etc.

**WHEN:** When do we want to market? All year, all but summer, fall, spring, etc.

**WHERE:** Where do we want to market? Online, social media, print media, billboards, vacation guides, etc.

**WHY:** Why do we want to market? Ensure a healthy economy, drive consistent business, raise awareness, educate, etc.

Once we have all five W's answered, we know that we understand our target. It then controls our spending in a focused manor and saturate our message how we want it to be perceived.



# WHY IS MARKETING IMPORTANT

## Tourism

Marketing tourism is a vital element to Ouray's economy. The word tourist is defined as, "one that makes a tour for pleasure or culture (Merriam-Webster)." That means, Ouray Visitors from Ridgway and Montrose are considered tourists. The money we see come into the economy from outside Ouray make up the majority of its annual income. If we take tourism away, it would be inevitable that businesses would close, and we would lose our charming community.

## Responsible Recreation

Marketing isn't just a tool for getting visitors here. It is also a great way to educate current or future visitors. Using our platforms include VisitOuray.com, our printed materials, and our social media, we have multiple ways of hitting our audience. Using these outlets, we can promote the Care for Colorado Principals in Ouray, Leave No Trace, Know Before You Go, Tips, Do's/ Dont's, and other updates (large majority being weather/ road conditions). The more we promote these, the more people learn. Our hope is to help alleviate bad behavior in and around Ouray.

Visit Ouray are proud members of the Care for Colorado Coalition. This is a state-wide program that is in conjunction with Leave No Trace. That allows us access to materials to help promote responsible tourism. The Ouray Visitor Center staff completed a training put on by the state and received the Gold-Level Certification. This means that we are proficient in knowing "all things Colorado." Amongst the training topics was a Care for Colorado Principals program, so now we are able to educate our guests word-of-mouth when they stop into the visitor center.

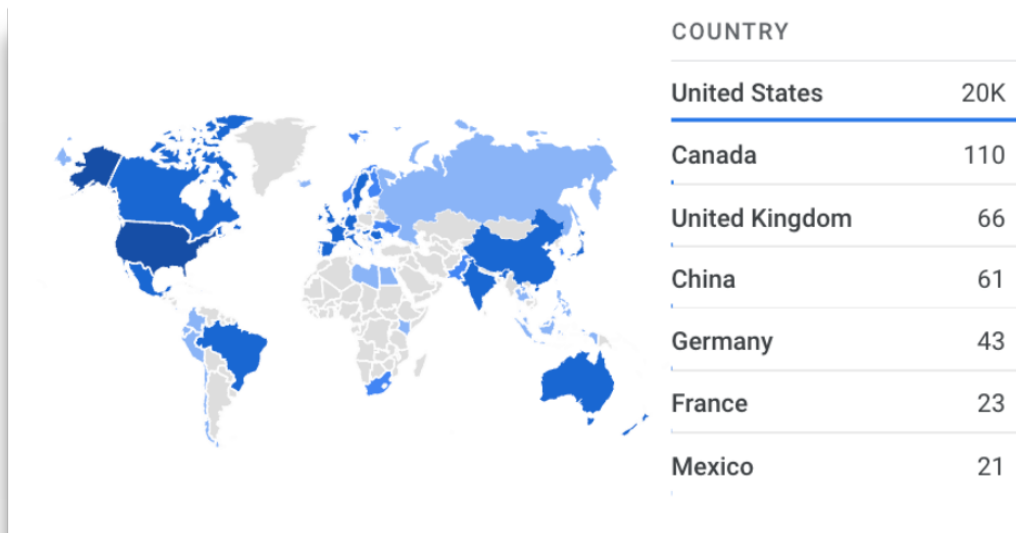


"Tourist Definition & Meaning." Merriam-Webster, Merriam-Webster, <https://www.merriam-webster.com/dictionary/tourist>.

# VISITOURAY.COM DATA

We started tracking our users of VisitOuray.com as of July 11, 2022 and to this date, here is what we know.

## Top Countries



## Top Cities

1	(not set)	2,454
2	Phoenix	2,076
3	Chicago	1,597
4	Denver	1,473
5	Ridgway	1,199
6	Dallas	959
7	Englewood	832
8	Los Angeles	614
9	New York	586
10	Houston	294

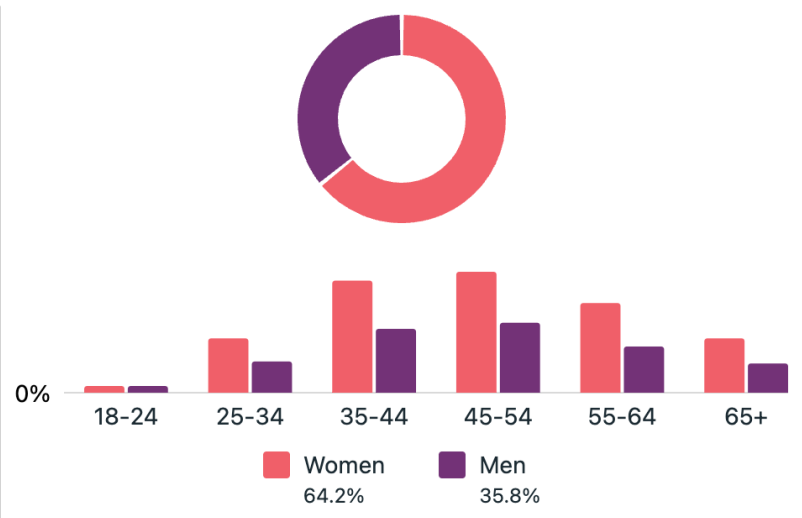
## Top Pages They Visit

1	Visit Ouray	20,256
2	Web Cams – Visit Ouray	6,103
3	Hot Springs – Visit Ouray	3,763
4	Box Cañon Falls – Visit Ouray	3,266
5	Where To Stay – Visit Ouray	2,961
6	Hiking – Visit Ouray	2,707
7	Visitors Guide – Visit Ouray	1,354
8	4x4 and OHV – Visit Ouray	1,281
9	General 2 – Visit Ouray	1,219
10	Shop – Visit Ouray	751



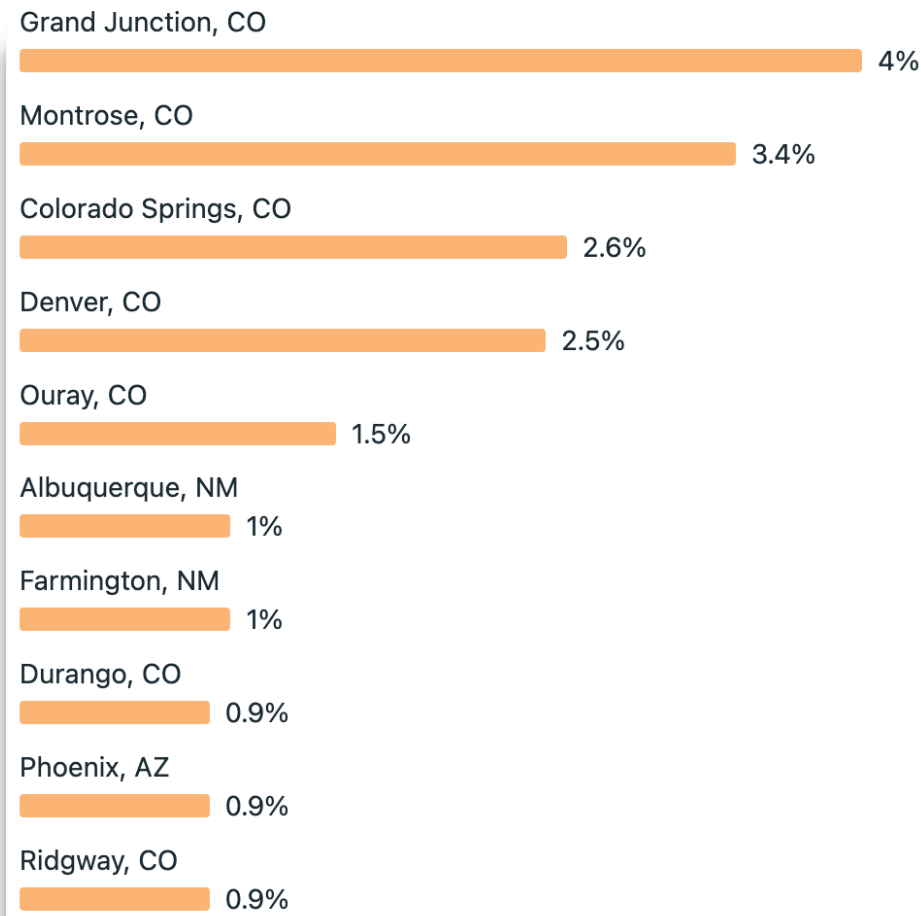
# FACEBOOK DATA

## Age & Gender



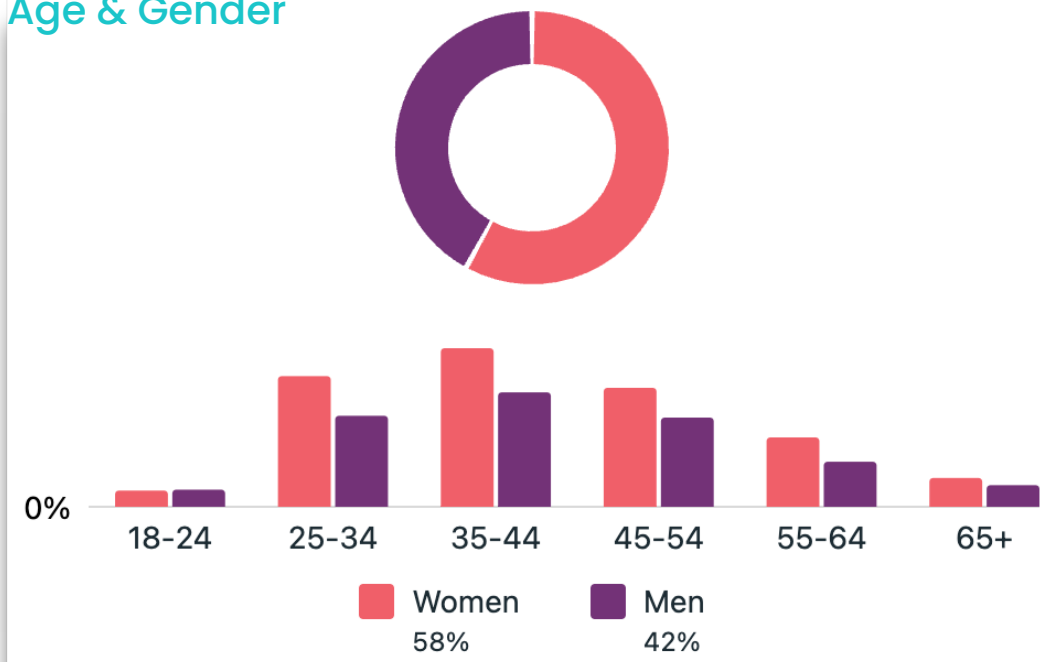
64.2% Women  
35.8% Men

## Top Cities

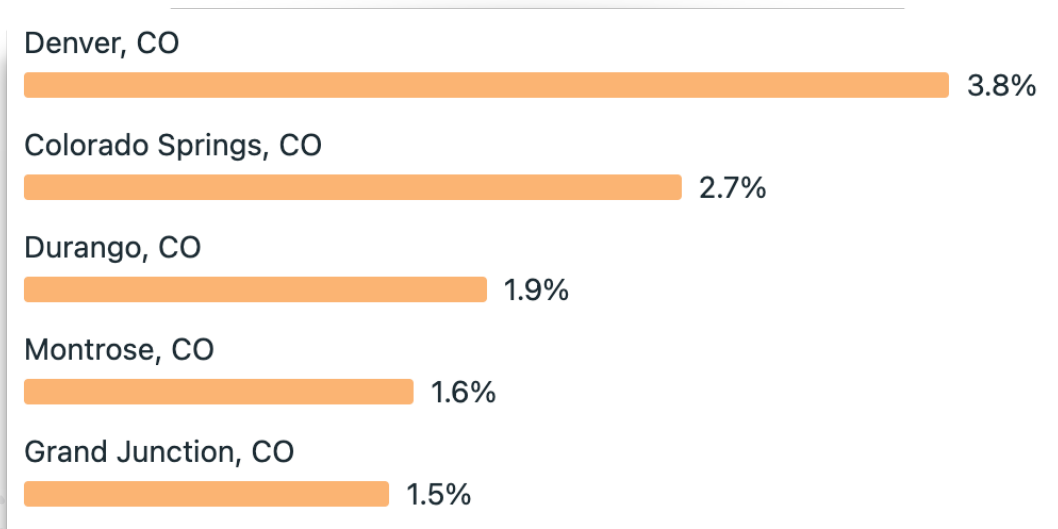


# INSTAGRAM DATA

## Age & Gender



## Top Cities



# MARKETING PLAN

To begin any type of marketing push or campaign you MUST have your fundamentals finished. Those include:

- Create your destination (Visit Ouray)
- Create and get all names of social media cohesive (@VisitOurayCo)
- Get domain name for destination (VisitOuray.com)
- Create website
- Best Search Engine Optimization practices on website
- Content for social media and website
- Visitor Guide

The reason why we want to start here is for the information. Guests will need a home base where they can find all the information they possibly could need. Visit Ouray has the framework complete, but now we need to add the juicy content. With internet being the leading resource for people to find information about us, that is where we need to focus our efforts.

Currently the website needs to be updated with more information in order to perform better when people are searching on Google. The younger demographic is more persuaded by videos and photos (social media). By adding more diverse content we will appeal to that demographic. We can then turn around and use those photos and videos on our website and visitor guide. At the moment, Visit Ouray, is not producing a guide. This we plan on changing, so we can produce what we need.

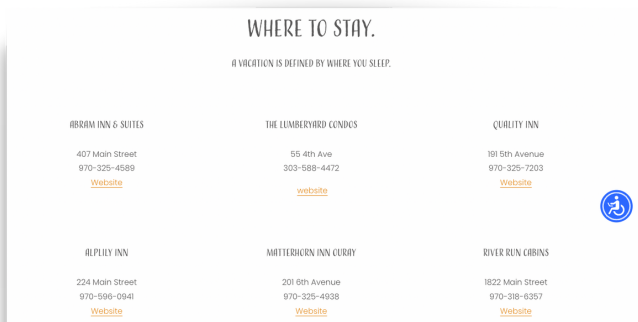


# WEBSITE

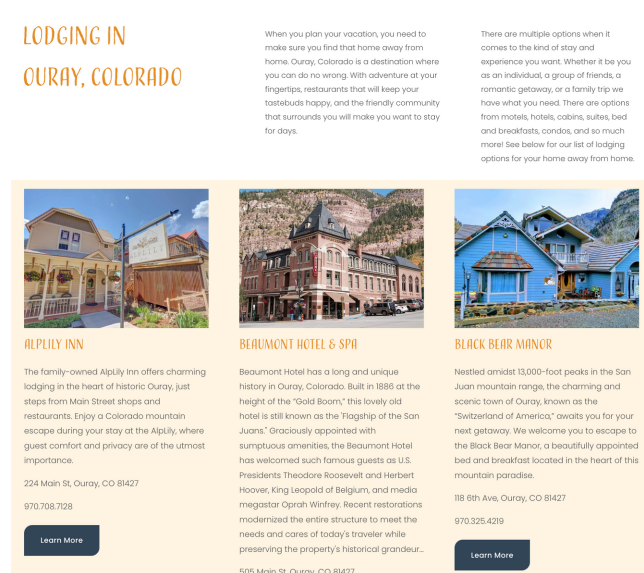
As mentioned on the previous page, now is the time to really work on building up our website. This is an outlet to make sure we highlight all activities, shops, restaurants, lodging, guiding services, etc. within Ouray. Not only will this help make the potential guest feel like there are a lot of options, but it is a great outlet on having educational materials as well. We can highlight the Care for Colorado Principals and Know Before You Go. By working on increasing our verbiage across the site we will help increase our Search Engine Optimization (SEO).

SEO is the process of optimizing content on a website so that it appears in search engine results. This is a key in my marketing strategy. That way we can attract guests who create searches that show what they are interested in. That is where we come in.

## Not good SEO (Before)



## Good SEO (After)

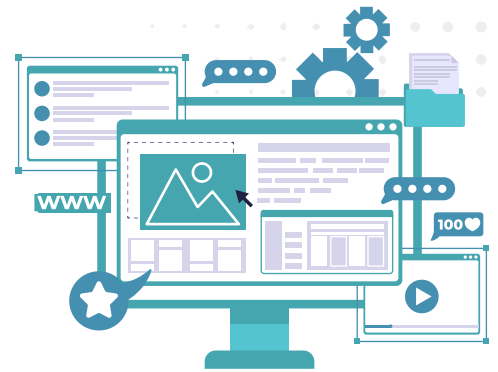


# WEBSITE continued

With the example from the last page, that is what needs to happen across all of VisitOuray.com. There were a lot of missing pieces like the museums, general history, and some new businesses/ guiding services.

## Task List

- Update and reorganize all pages to best suit what the user needs. MAKE IT AS EASY AS POSSIBLE TO FIND
- Create a page that is for all hot springs locations
- Create page for Alchemist Museum
- Create a guiding services page (layout like shopping)
- Expand on all activities since this is the majority of what people want/ look for.
- Include photos of all activities (many have no photos currently)
- Condense the "Plan" dropdown materials
- Create a "Relax" category to include our healthy and beauty businesses
- Dog-Friendly vacation page (growing to be very popular)
- Blog post page (this helps tremendously with SEO)



# SOCIAL MEDIA MARKETING

To sum up why social media is another key player in successful marketing, here is an article put out by Crowdriff.

"30% of American travelers refer to social media when planning trip and more than half (52%) of all Facebook users draw travel inspiration directly from their friends' photos.

People are looking to social media for vacation ideas because it's where their friends and influencers share their own travel stories. Travelers appreciate UGC because it's unfiltered and unbranded — and this is the content they're gravitating towards more and more."

\*UGC- User Generated Content

## Key Things To Know

- 30% of U.S. Travelers use social media to find trip inspiration
- 52% of Facebook use their friends' photos for inspiration
- 42% of people use their phones for travel inspiration
- 40% of online travel bookings are made on phones
- 74% travelers use social media while on vacation
- 60% travelers use navigation apps while traveling
- 97% Millennials share photos while traveling
- 60% travelers share photos on social media



Ching, Elizabeth. "How Travelers Use Social Media for Travel (& 5 Ways Tourism Brands Can Respond)." Crowdriff, 17 Feb. 2021, <https://crowdriff.com/resources/blog/how-travelers-use-social-media-travel>.



# SOCIAL MEDIA continued

With social media at most peoples fingertips, that makes it a must for marketing. Currently, we have Instagram, Facebook, and recently TikTok.

From the past two months, we see that:

- TikTok is primarily to create story quick videos. We just started this, so we are still working on growing our audience.
- Instagram gets more views with Reels, but more likes with photos
- We average about 450 people who watch our stories on Instagram
- Facebook performs best with photos then anything else

When it comes to paid advertising, this is the most cost-effective route. We get to choose how much we spend, what kind of interests we want to target, and where we want to push the message to.



## Types of Advertising Ideas

- Local Business Spot Lights
- Activities that Ouray offers
- Know Before You Go Tips
- Care for Colorado Tips
- Bathroom locations
- In-Town Photos
- How-To Photos
- Trailhead locations
- OHV/ Jeeping Information
- Scenic Photos
- Historic Facts
- Road Closures
- Weather Updates
- Rules

# SOCIAL MEDIA continued

## Task List

- Collecting/taking photos
- Collecting/taking videos
- Creating storylines
- Generating engaging captions
- Researching the key hashtags to help increase our reach
- Post content every weekday on Facebook, Instagram, and TikTok
- Work on an auto account to post automatically to save time everyday posting
- Create digital campaigns to boost on social media
- Increase awareness of Know Before You Go/ Care for Colorado
- "Do Ouray Right" messaging



# PRINT MARKETING

Print is a more expensive route of advertising, but nonetheless another option to hit another demographic. For in-house print materials, we have rack cards for our guests and visitor guide. Unlike social media, where we can track the results to see our success rate, we don't know how many people actually view our portion of the magazine or newspaper.

## Task List

- Create the Ouray Visitor Guide/ Possibility of mailing copies
- Create themed rack cards (hiking, ohv/ jeeping, climbing, etc)
- Look at magazines to advertise in (cost depending)
- Work with Colorado Tourism Office on Media Relations and opportunities
- Work with writers, bloggers, and influencers (see page 16 fore more information)



# MEDIA/ PRESS/ INFLUENCERS

Creating relationships with press is a great way to get the content we need, get a different perspective, and get in front of new audiences. The way we meet these people are:

- Through the Colorado Tourism Office
- Direct messages through Instagram, and Contact Us on VisitOuray.com
- Media Conferences virtual and in-person
- Word-of-mouth
- Research
- Pitching stories to news stations
- Local Media

Recently, we did a Familiarization Tour through the Colorado Tourism Office for Julia Dorazio, and Australian freelance writer. In exchange for arranging a couple of activities, and collaborating with Ouray businesses, we made her trip a huge success. Julia writes online articles, and has the connections to publish some stories to other publications.

We have also gotten inquiries from people reaching out to us via Instagram and our website to see if there is an opportunity for them to come to Ouray.

## Why?

- Allows a different point of view
- Hits a different demographic for each visitor that comes to Ouray
- They have time to create that content, and are good at it!
- Typically hits different types of media: Print, online, blogs, and social media
- Allows us to have more content and build our base/ followers
- We can help direct what we want them to do/ say



# MEDIA/ PRESS/ INFLUENCERS continued

## Vetting Process

We don't allow anyone and everyone to do this type of exchange. We also DO NOT DO ANY TYPE OF MONETARY EXCHANGE. Here is our typical process when we get an inquiry based on where it came from:

**COLORADO TOURISM OFFICE (CTO):** They do the vetting process for us. These groups or individuals are what we call "FAMS" aka familiarization tours (like the one mentioned on the previous page). Once CTO vets them, they do a call out to destinations in Colorado that best fit the interests of the FAM. The destinations then have to either accept or pass on the trip. We look at what their background is, what their followership/ readership is, or where they are going to be talking about the destination. While they are here, we work with local businesses on the activities, typically Ouray Hot Springs Pool and Box Cañon Passes, then we work with CTO, Ouray lodging, and Ouray Restaurants for the rest of their trip. Each one is different based on the FAM. After they depart, they are subject to send CTO their finished product, which then they send to us. Afterwards, CTO also does special "thank you" shout outs to the destinations who hosted in their e-newsletter.

**SOCIAL MEDIA/ WEBSITE:** When we get inquiries from here, the first thing is looking at their website, social media, or blog page. They typically send a media kit that has their breakdown of statistics about how many views, engagement, link clicks, etc for us to view. We then work with them on what they want out of their experience and what they can offer us. The biggest thing is, we need content now. If they offer to write blogs or articles, give us photo rights, or create video assets, that will rank them higher as a "Let's Work Together" category. Once again, we don't offer monetary compensation.



# MEDIA/ PRESS/ INFLUENCERS

## continued

In the last month, here is what we have done and what we are planning on doing.

### Completed

- **Julia Dorazio - Australian freelance writer @TheRoamingFlamingo**
  - Collaborated with: Ouray Hot Springs Pool, Box Cañon, Basecamp Ouray, Ouray Brewery, and Twin Peaks Lodge & Hot Springs
  - Deliverables: social media shoutouts, written online publication

### Upcoming

- **Jon and Tiffany Bitner - Colorado @travelingbitners, social media and blog**
  - Collaborating with: Ouray Hot Springs Pool, and Box Cañon
  - Deliverables: creation and posting on Instagram 5 stories, 1 post, 2 reels, 1 blog post to travelingbitners.com, with an additional 20 high-quality, and professional images in an online, digital gallery.
- **Matt Masich - Colorado Life Magazine, Print Publication**
  - Connecting interviewees: Hot Springs, Ice Park, The Wright Opera House, San Juan Mountain Guides, Basecamp Ouray, Altitude Adventures, and a representative from the Ouray Mountain Rescue Team
  - Deliverables: An article in Colorado Life Magazine for the winter publication
- **Ivy Carruth - Australian Freelance Writer vacationstravel.com**
  - Collaborating with: Ouray Hot Springs Pool, and Box Cañon
  - Deliverables: Mention of Ouray in her article
- **Myranda Hausheer - Colorado @myrandainthemountains, social media**
  - In discussion phase
- **Kimberly Irwin - Colorado @DenverSheWrote, social media, and blog**
  - In discussion phase



# UNDERSTANDING TRENDS

## CTO Content Calendar

Each month, the state has themes and categories of what they are going to promote based on data they collect over the years. Destination Marketing Organizations (DMO's) are then encouraged to follow those trends to help generate more impressions. As an example of what visitors could potentially look for during the months of September through December that would "peak" more interest include:

- September - Fall Festivals/ Events, Fall Color, Wine Trips
- October - Haunted/ Halloween Activities, Sweet Stuff, Oktoberfest
- November - Winter Lodging, Winter Fun, Warming Activities
- December - Holiday Events

## Google Searching "Key Words"

Following the trend of content, we also need to stay as up-to-date as possible for the key words. That way we can use those in our captions, hashtags, and website to get the Search Engine Optimization.

SEASONAL WORDS:

- Fall: Halloween, Fall Colours, Indigenous, Coffee, Beaches, Hiking, Wine Tasting, Food, Golf, Fishing, Museums, Skiing, Snow Activities, Mountain Biking, Camping
- Winter: Date Ideas, Skiing, Winter, Museums, Wine Tasting, Snow Activities, Coffee, Camping, Spring, Food



COLORADO  
TOURISM OFFICE

@VisitOurayCO



# CURRENT PROGRAMS

## Wayfinding

We are collaborating with Tangram Design on our Wayfinding efforts. Wayfinding is a signage program to help direct people to important points of interest within Ouray City Limits. Some of those points would be Downtown, Trailheads, Parking, Public Restrooms, Hot Springs, Parks, etc. Thus far, Tangram Design has spent four days in Ouray doing their community research and assessment. During their stay, we hosted a Wayfinding Community Workshop for community members to come and listen to what their goals are, the process, and to engage in key points Ouray would like to have. The next phase has Tangram Design coming up with the drawings on how the signs would look and feel, followed by a presentation to community members.



## Branding

This project is to help bring Visit Ouray to the next level. For the discovery phase of this project, we worked with Karsh Hagan. They did research on other destinations, conducted interviews with locals, then presented their results and findings to community members in July. We are working on our next step in the journey based on that meeting.

- Updating our logo (keeping the same idea and base)
- Creating an all-inclusive tagline
- Developing a Brand Standard Guideline

## Reimagine Destinations Program (CTO Grant)

This grant was awarded to City of Ouray July of 2022 and is to be completed by June of 2023. This program is to help generate a marketing strategy for Ouray. There are a variety of ideas on what success looks like. One of the goals of the program is to help Ouray businesses be successful. There will be a full day workshop, \$20,000 worth of photo/video assets created, and access to a consultant for 100 hours to help with implementation.



# PROGRAM WISH LIST

## Crowdriff

Crowdriff is a platform that uses geofencing and hashtag tracing to generate a gallery of images and videos that anyone who is in the fence of Ouray, or uses certain hashtags, we can ask permission to use for both print and digital rights. This would save a lot of time and energy trying to get all perspectives and diverse content. It can be used for our social media accounts and in our visitor guide or rack cards. This program also has Connect Portal for businesses to sign up under. This would allow us to easily access photos that highlight the business. I will note, that is DOES NOT ALLOW the business to post those photos, but they can share what we posted. The last portion of Crowdriff is the collector feature. This is if we are looking for a broad category of imagery, we can ask anyone/everyone to add their photos to build the gallery. An example could be, "Hey, do you love showing off your dog? We do too, submit your photos of your fur baby(ies) here"



## Localhood

Localhood is where Search Engine Optimization meets content. This program helps us generate a story-like feature you would find on Instagram Stories. The biggest difference is it works directly with Google. Every "slide" we have a photo, a pinned location tagged to the photo, a description, and two opportunities for links to websites. Each story we post with Localhood then correlates it back to Google search, Google Discover, Visual Stories, and/or our website when we have it hosted there too. Visuals are the number one attraction. If we can capture our audience, and lead them to where we want them to go, that is a huge win. Using Localhood is what would get us noticed more in Google. Online is the new Main Street, this is where we need to be noticed.



# FUTURE CAMPAIGNS

## Food Fridays

This campaign would highlight the local eateries in Ouray. We would need to schedule times with each restaurant to film the food preparation, the cooking process, b-roll of the layout, and of course, the final food product. This would help highlight the businesses in the food industry, allow for more video content to be shared, and used in building Visit Ouray videos.

## Dog-Friendly Vacation

This campaign would be a mix media push. There would be a separate page on VisitOuray.com, itineraries on social media, fun videos "from a dogs perspective," to showcase that Ouray is a top dog-friendly destination for vacationing. Since the pandemic, people (and pets) are used to being with them more often than before. We need to tap into that demographic to showcase you don't need to leave your dog behind when you go on vacation.

## Itinerary Building

This campaign is to help tell a story of Ouray. What to expect, what to do, where to stay, where to eat, and of course... showing off our town. This would be media we would consider paying to boost on social media to promote because it is all encompassing, gives people ideas on what they could do, and ultimately initiates travel. There would be different types of itineraries based on how many days to stay, types of activities, the type of traveler, and time of year. This content would be crossed used on all social platforms, our website, and Youtube.



City of Ouray

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**BRAND POSITIONING RD1**

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08.23.2022

KARSH HAGAN

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## AGENDA

- Review brand foundation, including positioning
- Review creative brief
- Review recommended deliverables

## BRAND FOUNDATION:

These are the different elements that inform and build off of each other to create a fully integrated foundation from which to build the City of Ouray tourism brand.

### BRAND ESSENCE

A single thought that captures the soul of the brand. It should reflect the fundamental nature of City of Ouray tourism.

### BRAND PURPOSE

A brand's raison d'être. It should convey the larger impact that the City of Ouray tourism wants to have in the world.

### BRAND POSITIONING

The conceptual territory claimed by your brand relative to other brands. Your positioning statement should clearly state what differentiates City of Ouray tourism in the minds of your target audience.

### BRAND VALUES

The set of guiding principles that shape every aspect of your brand both internally and externally. It should be what the City of Ouray tourism is committed to—and loved for being.

### REASONS TO BELIEVE

The compelling evidence with meaningful proof points supporting the brand foundation, especially the brand positioning statement.

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Let's start with brand essence  
and brand purpose.

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**Colorado in its purest form.**

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**To be a catalyst for meaningful self-discovery.**

---

The best brands stand out in the minds of their target audience—this is done through strong brand positioning.



# What is positioning?

**Positioning describes how a brand is (or wants to be) seen in the marketplace by its target audience.**

It captures the distinct impression a brand wants to make and is rooted in what makes them different (aka differentiators).

Positioning ultimately drives all brand and marketing strategy.

---

But to develop positioning, we  
need to first find the white space.



# What is white space?

**White space is the optimum area for a brand to situate itself among its competitive set.**

We find it by analyzing what makes the brand both unique within the category and relevant to their audience.

It is an especially helpful strategic tool for brands in a crowded playing field.

**WHITE SPACE ANALYSIS**

**NATURE-CENTRIC  
EXPERIENCE**

**LUXURY-CENTRIC  
EXPERIENCE**

**The City of Ouray's brand strengths sit here, which also reflects the preferred values of the ideal Ouray tourist.**

**TOURISM-DRIVEN  
CULTURE**

**COMMUNITY-DRIVEN  
CULTURE**

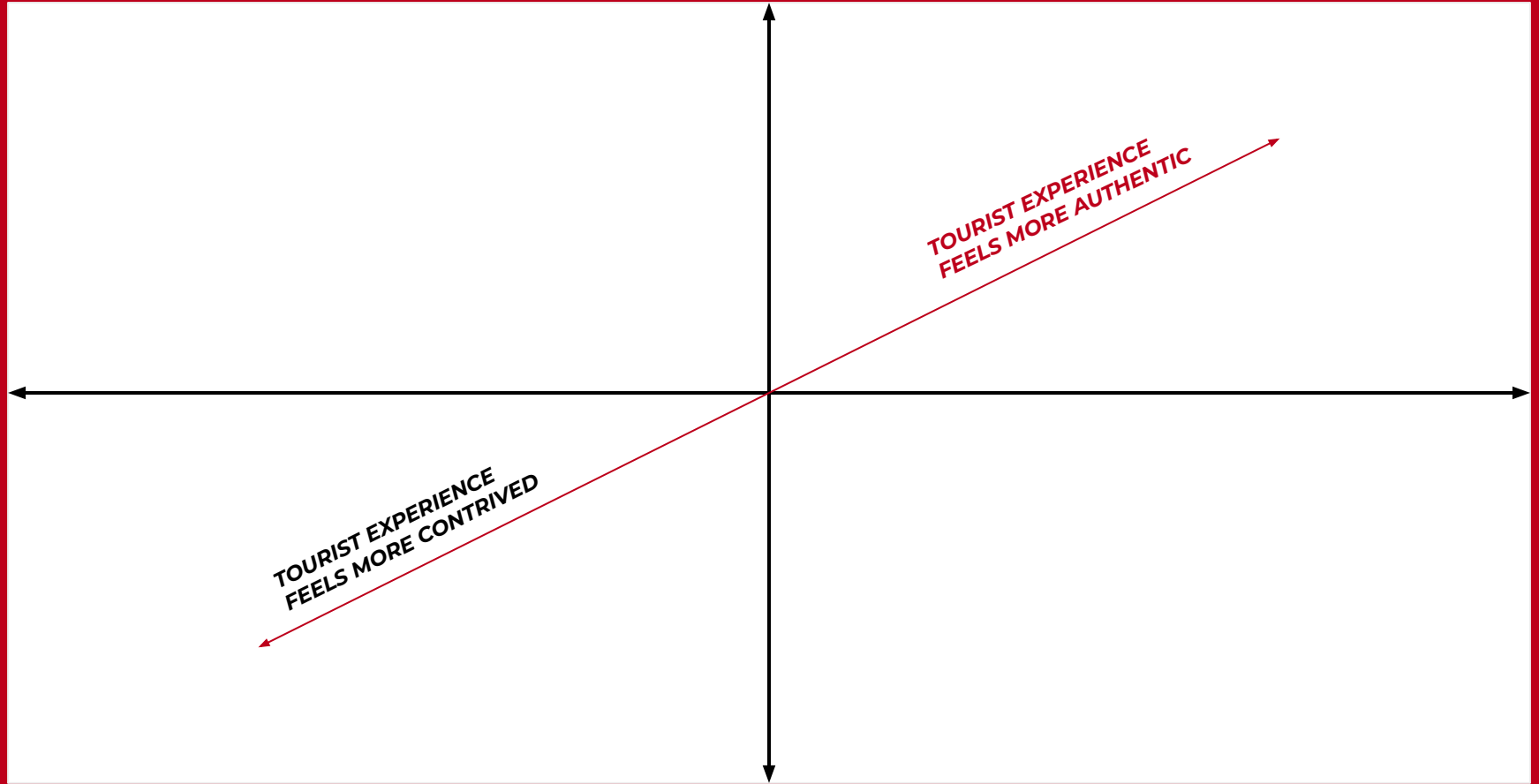
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WHITE SPACE ANALYSIS

NATURE-CENTRIC EXPERIENCE

COMMUNITY-DRIVEN CULTURE

TOURISM-DRIVEN CULTURE

LUXURY-CENTRIC EXPERIENCE



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**For genuine outdoor lovers seeking an awe-inspiring, authentic Colorado experience, City of Ouray is a high mountain town where visitors can escape to adventure, connect and leave transformed.**

---

## **REASONS TO BELIEVE**

The compelling evidence with meaningful proof points supporting the brand foundation, especially the brand positioning statement.

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### **Pure Colorado: epic, awe-inspiring natural beauty that inspires self-reflection.**

- Natural, rugged, unaltered landscape
- Breathtaking San Juan mountains with grand 12,000 to 13,000-foot high peaks
- Stunning mountain views and vistas (2,000 cliffs)
- “The 3 Ws”: wildlife, wildflowers, and waterfalls
- Uncompahgre Gorge, deep mountain canyon
- Box Canyon Falls, an 85-foot mostly-hidden waterfall
- Relaxing Ouray Hot Springs, natural geothermal heated mineral pools

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### **Authentic community: engaged, mindful, and welcoming to all.**

- True to their roots and passionate people who value and are galvanized by the town’s mining history
- Sustainably-minded and environmentally responsible
- Embrace diversity and differences among their community and visitors
- Small town charm: approachable, inviting and kind

---

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### **Alluring, wide range of activities both outdoors and in the town.**

- Year-round, diverse outdoor recreation: hiking, rock climbing, ice climbing, Jeep tours, ATVs, skiing, snowshoeing, biking, swimming, camping, hot springs, geology and eco-tourism.
- Hiking trails for all experience levels, 300 routes within 5 minutes of town
- Town is accessible, convenient and casual.
  - Easy to navigate, walkable
  - More affordable/ budget-friendly (compared to other mountain towns)
  - Convenient location (45 min from Montrose)

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## **BRAND VALUES**

The set of guiding principles that shape every aspect of your brand both internally and externally. It should be what the City of Ouray tourism is committed to—and loved for being.

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## **AUTHENTICITY**

Ouray is the real deal—true to its origins with unaltered beauty and an uncompromised community—unparalleled overall.

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The people of Ouray have always adapted to nature—seeking to preserve it in its true form for people today and generations to come.

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### **STEWARDS OF NATURE**

The people of Ouray have always adapted to nature—seeking to preserve it in its true form for people today and generations to come.

### **SIMPLICITY**

There's an ease to Ouray. Unlike the hustle and bustle of big cities and suburbia that can feel hectic and aimless, the pace of life is slower and life is lived intentionally. It's about finding beauty and peace in the stillness and purity of nature.

# BRAND FOUNDATION: CITY OF OURAY TOURISM

## BRAND ESSENCE

Colorado in its purest form.

## BRAND PURPOSE

To be a catalyst for meaningful self-discovery.

## BRAND POSITIONING

For genuine outdoor lovers seeking an awe-inspiring, authentic Colorado experience, City of Ouray is a high mountain town where visitors can escape to adventure, connect and leave transformed.

## REASONS TO BELIEVE

Pure Colorado: epic, awe-inspiring natural beauty that inspires self-reflection.  
Authentic community: engaged, mindful, and welcoming to all.  
Alluring, wide range of activities both outdoors and in the town.

## BRAND VALUES

Authenticity   Community   Stewards of Nature   Simplicity



# KARSH · HAGAN

## CREATIVE BRIEF – (OURAY JOB #016249)

<p><b>TARGET</b></p>	
<p>BE SPECIFIC. NO DEMOGRAPHICS. GIVE THEM A PERSONALITY THAT REFLECTS THEIR ATTITUDE TOWARDS OUR ASSIGNMENT.</p>	<p><b>Genuine outdoor lovers</b> who find both adventure and solace in nature.</p>
<p><b>REAL WORLD PROBLEM</b></p>	
<p>FROM THE CONSUMER'S POV, WHAT IS THEIR PSYCHOLOGICAL, CULTURAL OR CATEGORICAL BEEF ABOUT THE SITUATION? WHY DO THEY CARE?</p>	<p>Today's fast-pace, "always connected" <b>lifestyle often lacks the meaning I need to truly feel alive.</b></p>
<p><b>ONE THING</b></p>	
<p>IN ONE (AND NOT A RUN-ON) SENTENCE, WHAT IS OUR GOAL? WRITE IT IN THE MOST POSITIVE, BOLD AND TRUTHFUL WAY.</p>	<p>To position Ouray in a way that <b>unites community members and invites like-minded tourists.</b></p>
<p><b>STRATEGY</b></p>	
<p>HOW DO WE CONNECT OUR SOLUTION WITH OUR AUDIENCE'S PROBLEM? HOW DO WE CHANGE THEIR THINKING, PERCEPTIONS, OR ACTIONS?</p>	<p><b>Ouray is the real deal</b> for those seeking the ultimate, quintessential Colorado experience—a place to explore epic untouched nature and get back in touch with themselves.</p>
<p><b>GOT THOUGHTS</b></p>	
<p>JAM OUT ANY IDEAS, PHILOSOPHIES, HALF-BAKED THOUGHTS OR HELPFUL INFORMATION. USE YOUR BRAIN TO HELP GET OTHER BRAINS GOING.</p>	<p>Unaltered nature to alter your senses.          Discover <i>the real</i> Colorado.          Escape your usual, experience Ouray.          Mountains to match the memories.          A real experience for an aware soul.</p> <p><i>"My hope is that visitors will come to Ouray and connect authentically to nature, the community and themselves"</i>          – Stakeholder in Brand Accelerator</p> <p>Also see brand foundation deliverable.</p>



# KARSH · HAGAN

DELIVERABLES			
BRAND ALIGNMENT		BRAND EXTENSION	BRAND LAUNCH
1. Logo refinement 2. Color palette 3. Tagline exploration 4. Logo usage guidelines		+ 5. Visual identity and graphic elements 6. Wayfinding signage design direction (2-3 templates)	+ 7. Brand campaign concepts 8. Media strategy and plan
~\$25,000		~\$40,000	~\$60,000

# Visit Ouray Reimagine Destinations Program

CORE TEAM MEETING #1



AUGUST 25, 2022



COLORADO  
TOURISM OFFICE

# Agenda

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- 3:00 | Welcome & Introductions
- 3:10 | Overview of Reimagine Destinations Program
- 3:20 | Restart & Reimagine Destinations in Ouray
- 3:30 | Core Team survey results & discussion
- 3:45 | Tourism Stakeholder survey
- 3:55 | Wrap up & next steps

# Reimagine Destinations Program

- Supported by a \$2.4M CARES Act Recovery Assistance grant
- Assist Colorado tourism destinations to advance projects that foster the long-term industry resilience



# Program Components

- Participating destinations will receive:
  - destination assessment
  - full-day community visioning and action planning workshop
  - 100 hours of free consulting
  - \$20,000 creative asset production shoot



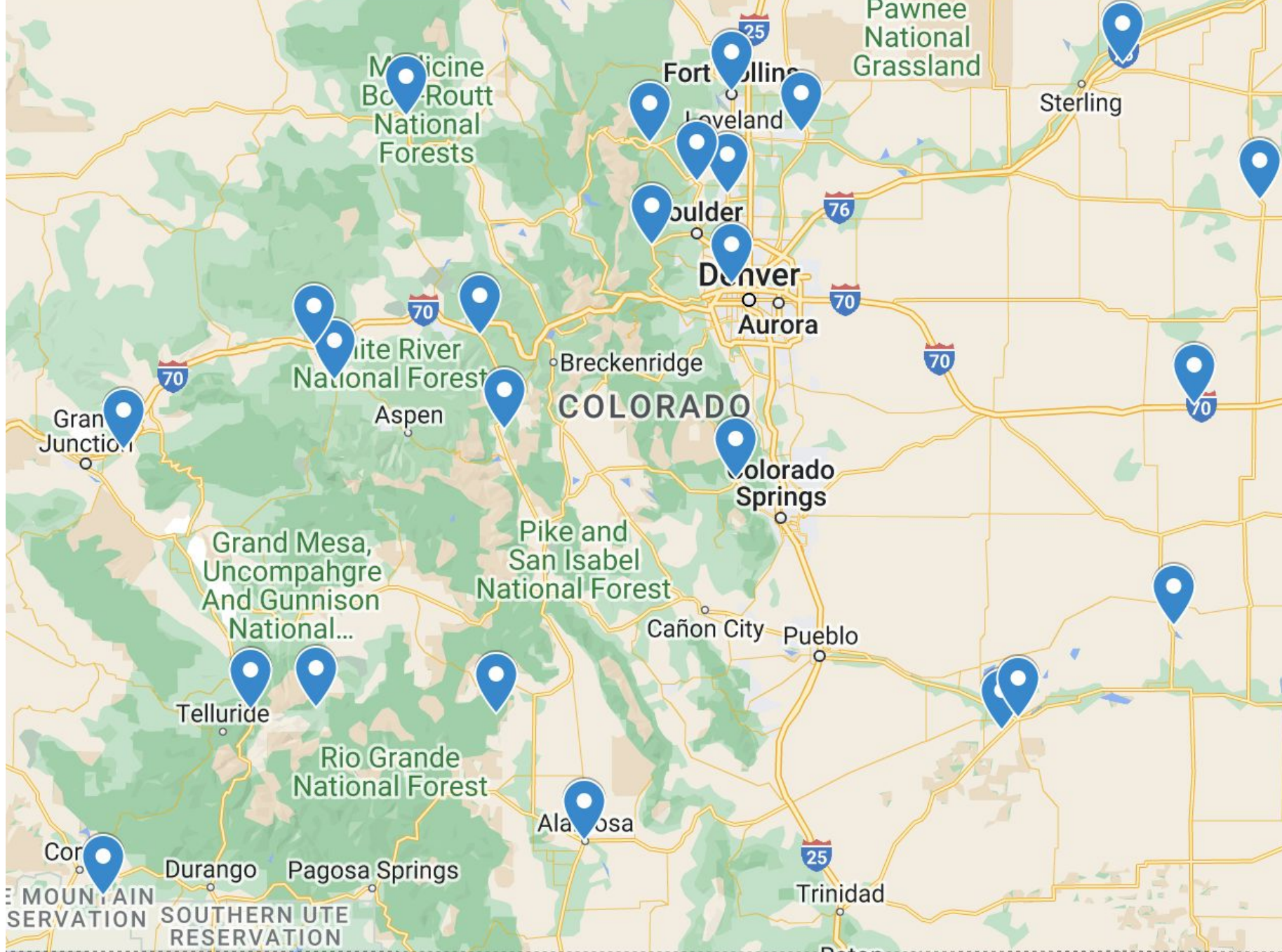
# Destination Assessment

- Core team meetings
- Background research
- Visitor profile study
- Resident sentiment survey
- Tourism stakeholder survey
- Other opportunities as appropriate



# Reimagine Destination Partners

1. Alamosa Convention and Visitors Bureau
2. Arvada Visitors Center
3. Logan County (Northeast Colorado Travel Region)
4. Prairie Development Corporation (Colorado's Central Plains)
5. Saguache County Tourism Council
6. Steamboat Springs Chamber
7. Town of Nederland
8. Visit Greeley
9. Visit Longmont
10. Yuma County Economic Development Corporation
11. Canyons & Plains
12. City of Woodland Park
13. Lake City/Hinsdale County Marketing Committee
14. Lake County Tourism Panel
15. Mesa Verde Country Visitor Information Bureau
16. Roaring Fork Valley Destination Alliance
17. Town of Lyons
18. Towns of Fruita and Palisade
19. Towns of Minturn & Red Cliff
20. Visit Estes Park
21. Visit Fort Collins
22. Visit Glenwood Springs
23. Visit La Junta
24. Visit Ouray



# Restart Destinations in Ouray

- Transition in leadership mid-program
- Shifted focus to developing and approving a structure for Tourism & Destination Marketing Director position within the City
- Create a plan for tourism marketing with broad stakeholder input and support



# Reimagine Destinations in Ouray

- Destination Assessment
  - Tourism Stakeholder survey
  - Core Team meetings
  - Visitor Profile study
  - Additional background research
- Visioning and action planning workshop
- 100 hours of technical support
- Creative visual assets



# Core Team Survey

- Reasons for Visit
  - Scenic beauty, outdoor recreation and adventure, shopping, historic mining town
- Top Attractions
  - Ouray Perimeter Trail
  - Ouray Ice Park
  - Hot Springs Pool
  - Hiking/Jeeping trails
  - Via Ferrata



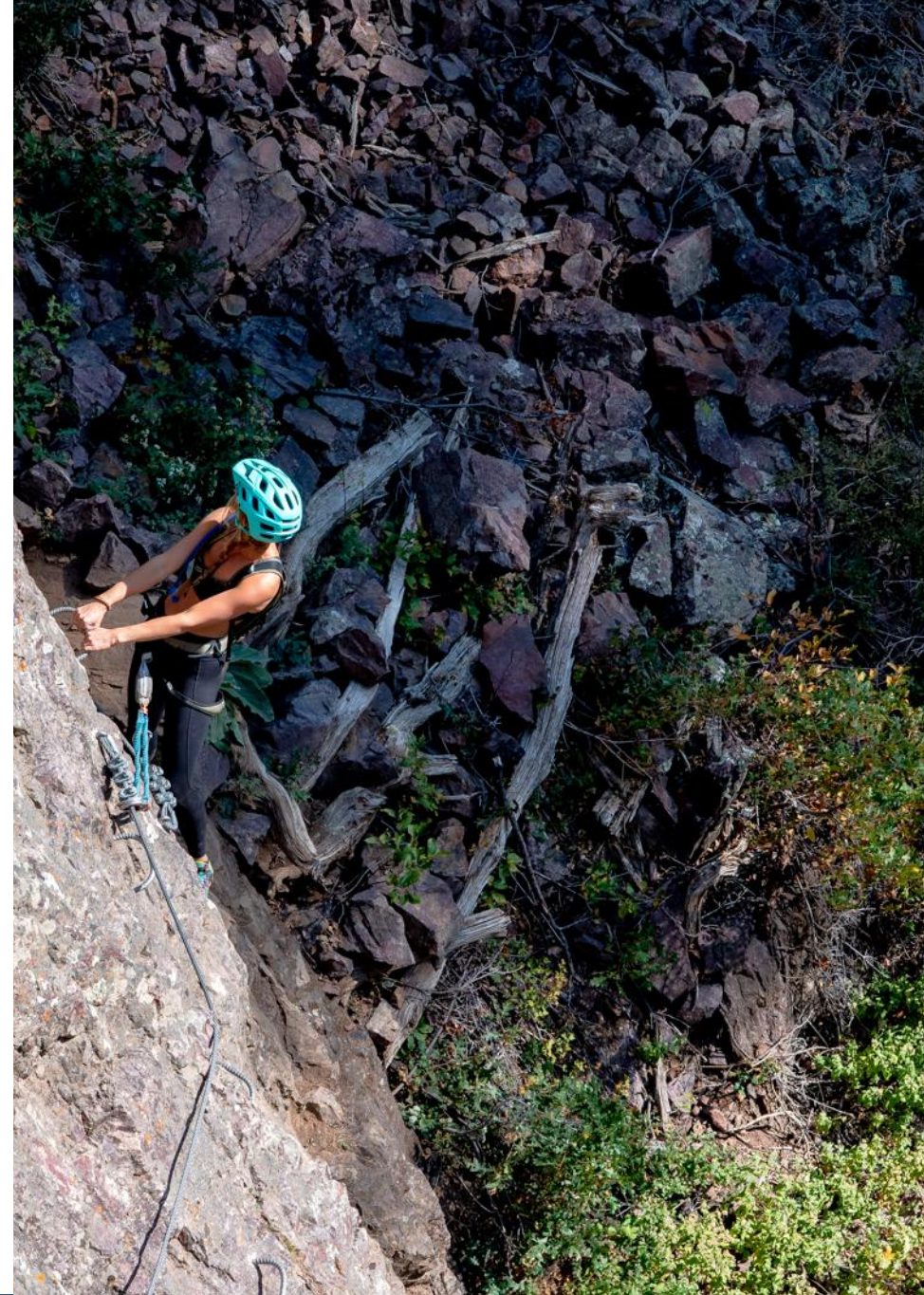
# Core Team Survey

- Covid Impacts - Positive
  - Economic boost
  - Increased revenue and sales tax
  - New first-time visitors
  - Pandemic funding provided spending money for visitors
  - Grants for infrastructure and other projects
- Covid Impacts - Negative
  - Overuse / resource fatigue
  - Bad behaviors by visitors
  - Staffing issues



# Core Team Survey

- Top Priorities
  - Encourage responsible visitation (80%)
  - Develop & enhance visitor experience (60%)
  - Advance off-peak tourism opportunities (60%)
  - Advance tourism workforce (40%)



# Core Team Survey

- Tourism Product Development
  - Improved online presence
  - Signage (wayfinding, kiosks, etc.)
  - Off-season event
  - Educate visitors and residents
  - Year-round human powered activities
- Legacy Project
  - Branding - emotional connection
  - Eco-tourism
  - Riverwalk and bike path to Ridgway
  - Ouray Parks Master Plan
  - Year-round destination



# Tourism Stakeholder Survey

- Who?
  - Anyone who directly contributes to the tourism industry
- What?
  - Establish 2-way communication to understand outlooks, barriers, priorities
- Why?
  - Provide input on decisions
  - Identify opportunities
  - Foster shared sense of ownership



# Next Steps

- Support Tourism Stakeholder survey distribution and participation
- Schedule next Core Team meeting
- Workshop
  - October 25 | 10-4
  - Visioning
  - Action Planning



# Ouray Resident Sentiment on Tourism Survey

Monday, December 27, 2021



COLORADO  
TOURISM OFFICE

# 203

**Total Responses**

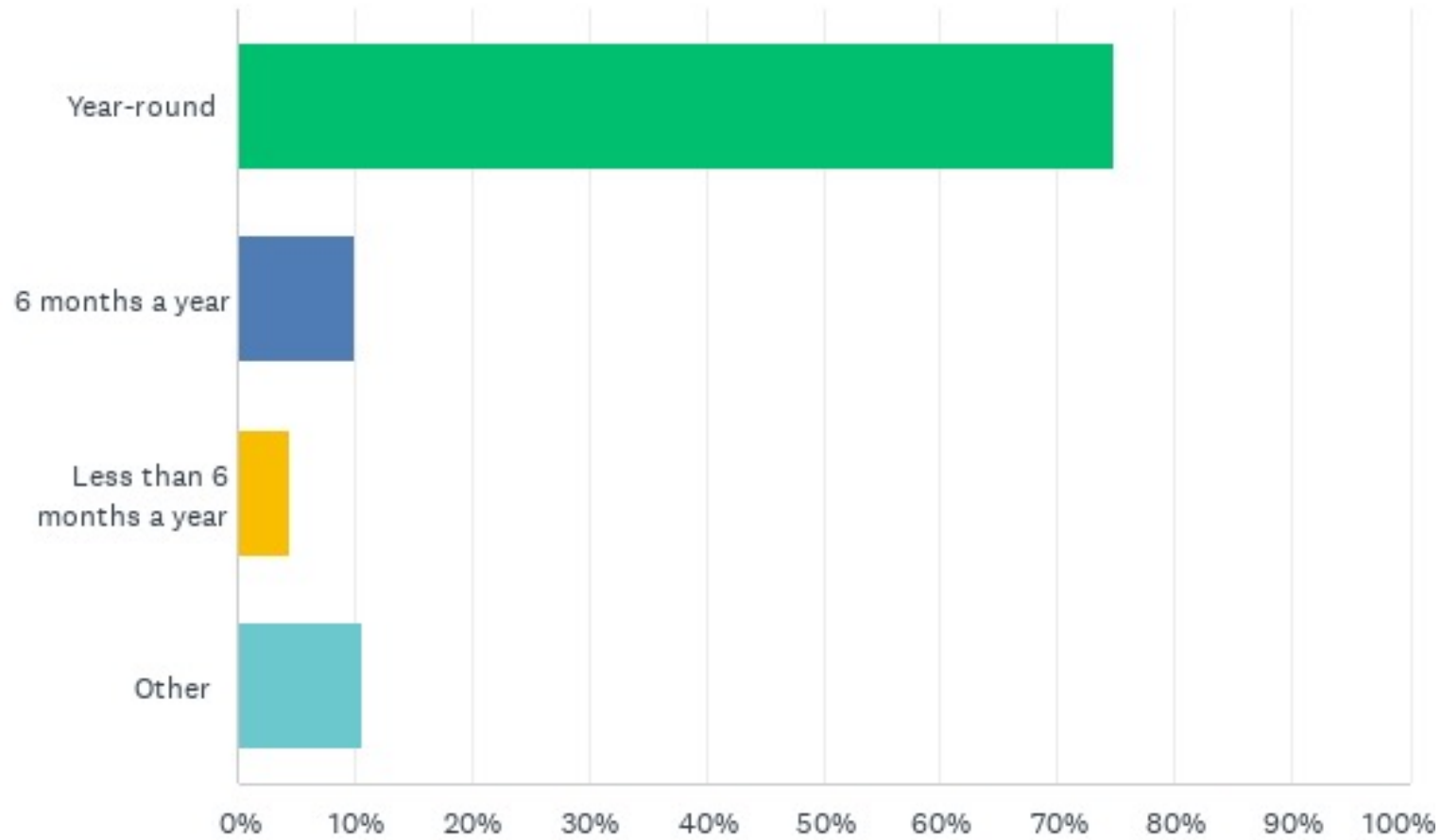
Date Created: Friday, October 08, 2021

Complete Responses: 203

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## Q3: I live in Ouray:

Answered: 198 Skipped: 5



### Q3: I live in Ouray:

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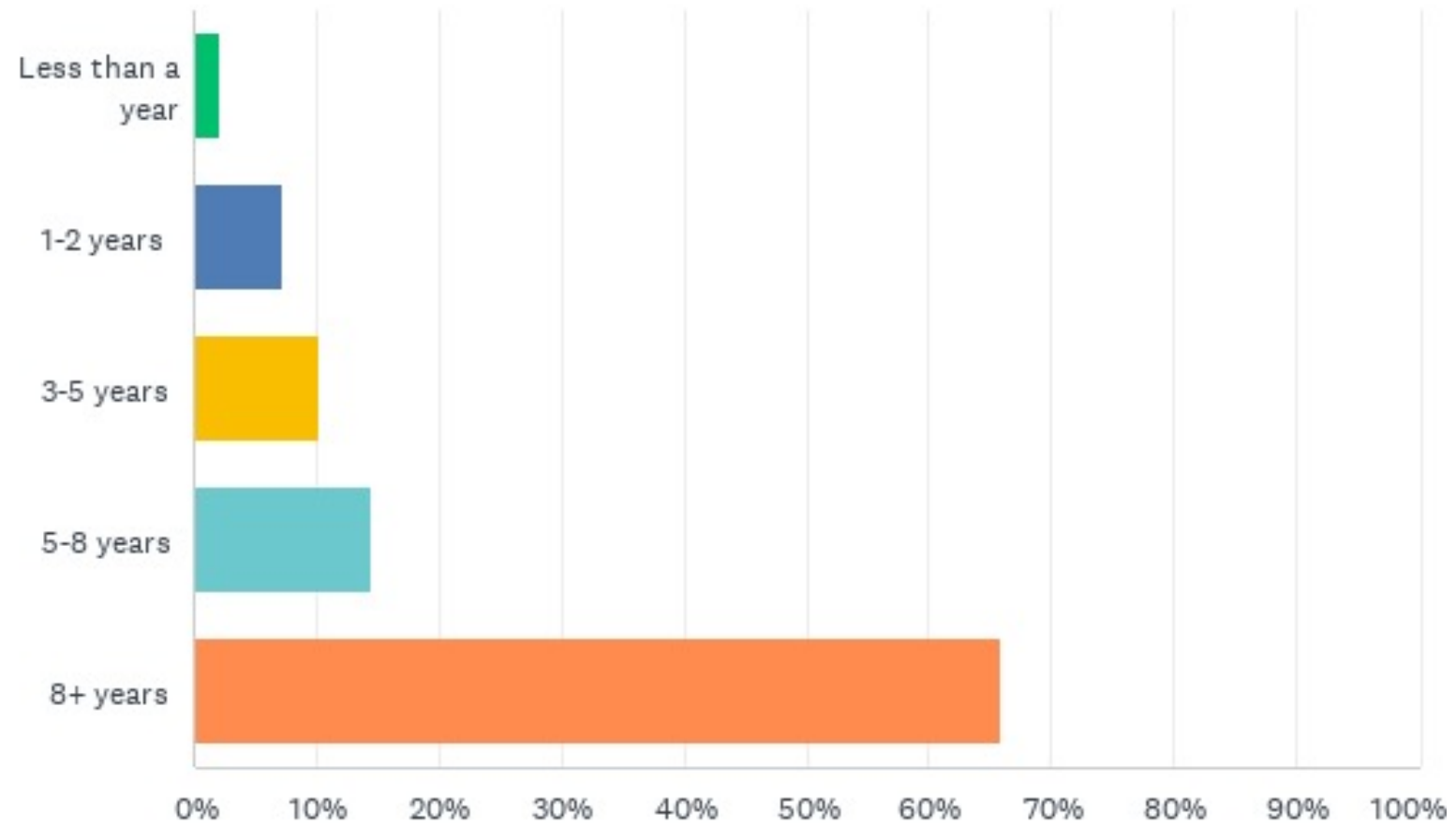
Answered: 198 Skipped: 5

ANSWER CHOICES	RESPONSES	
Year-round	74.75%	148
6 months a year	10.10%	20
Less than 6 months a year	4.55%	9
Other	10.61%	21
<b>TOTAL</b>		<b>198</b>

---

## Q4: I've lived in Ouray (either full-time or part-time)

Answered: 194 Skipped: 9



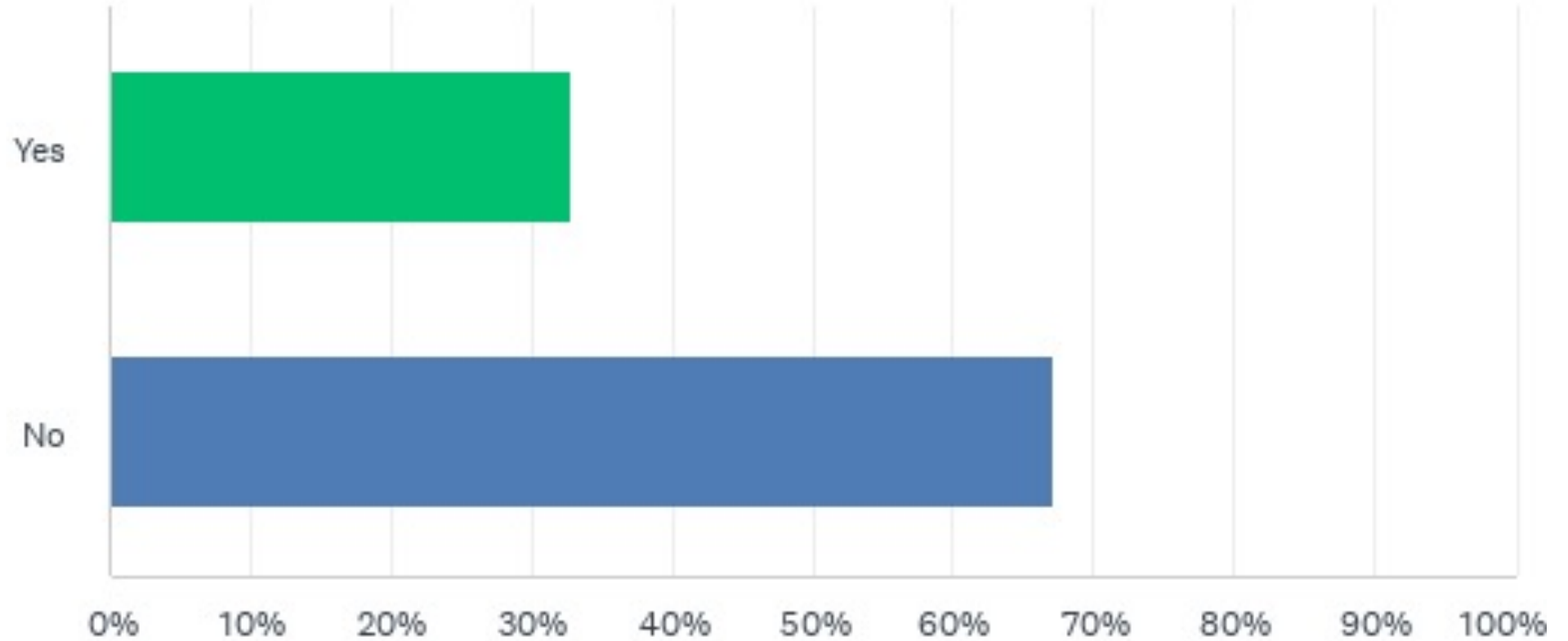
## Q4: I've lived in Ouray (either full-time or part-time)

Answered: 194 Skipped: 9

ANSWER CHOICES	RESPONSES	
Less than a year	2.06%	4
1-2 years	7.22%	14
3-5 years	10.31%	20
5-8 years	14.43%	28
8+ years	65.98%	128
TOTAL		194

## Q5: Are you employed in the tourism industry?

Answered: 201 Skipped: 2



## Q5: Are you employed in the tourism industry?

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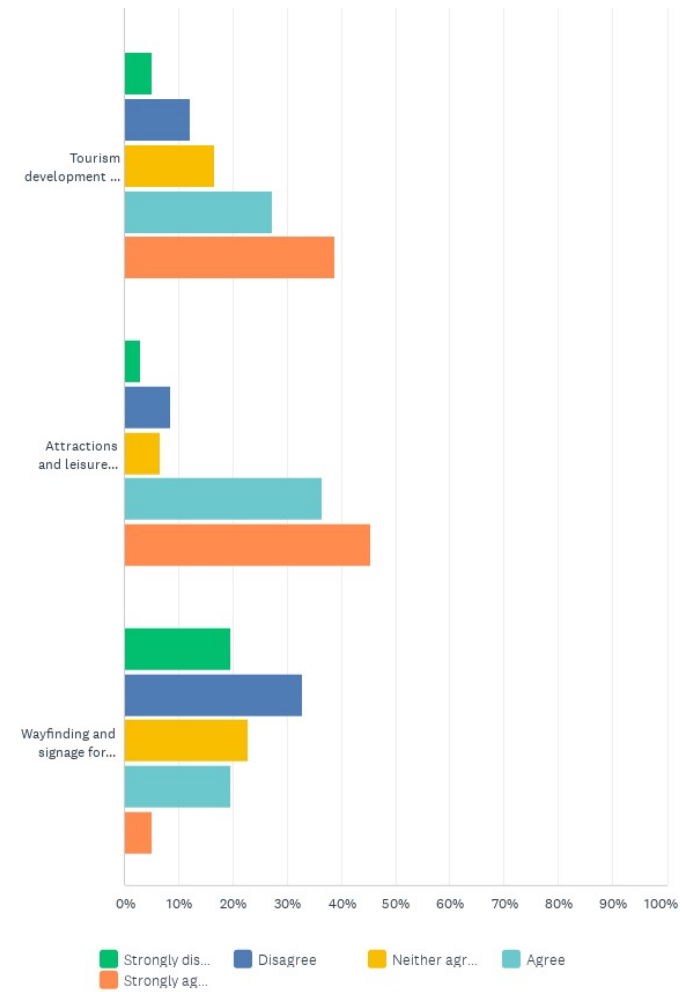
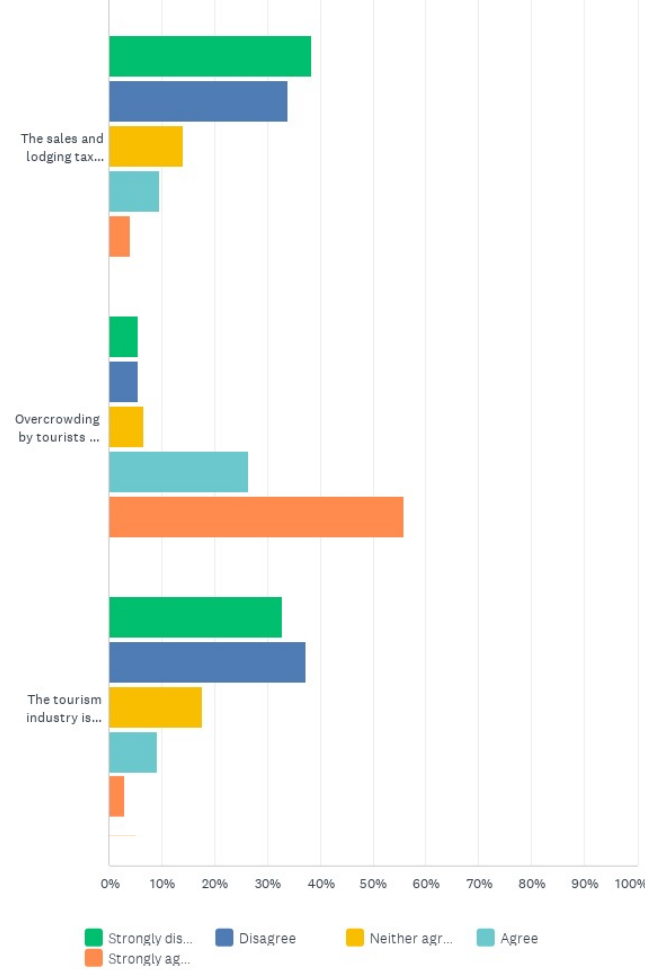
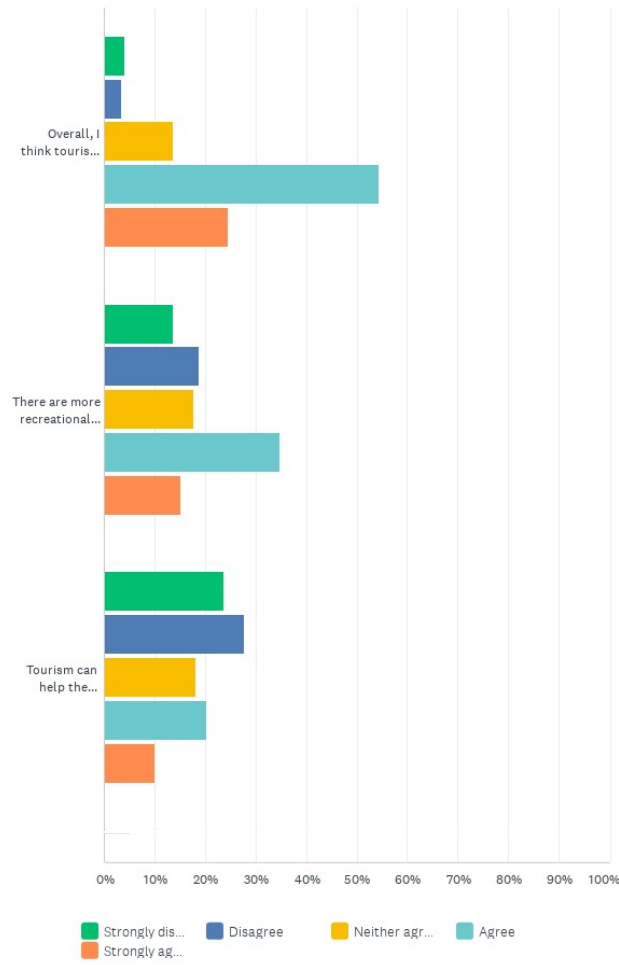
Answered: 201 Skipped: 2

ANSWER CHOICES	RESPONSES	
Yes	32.84%	66
No	67.16%	135
TOTAL		201

---

# Q6: Please describe your level of agreement with the following statements regarding the tourism industry in Ouray

Answered: 199 Skipped: 4



# Q6: Please describe your level of agreement with the following statements regarding the tourism industry in Ouray

Answered: 199 Skipped: 4

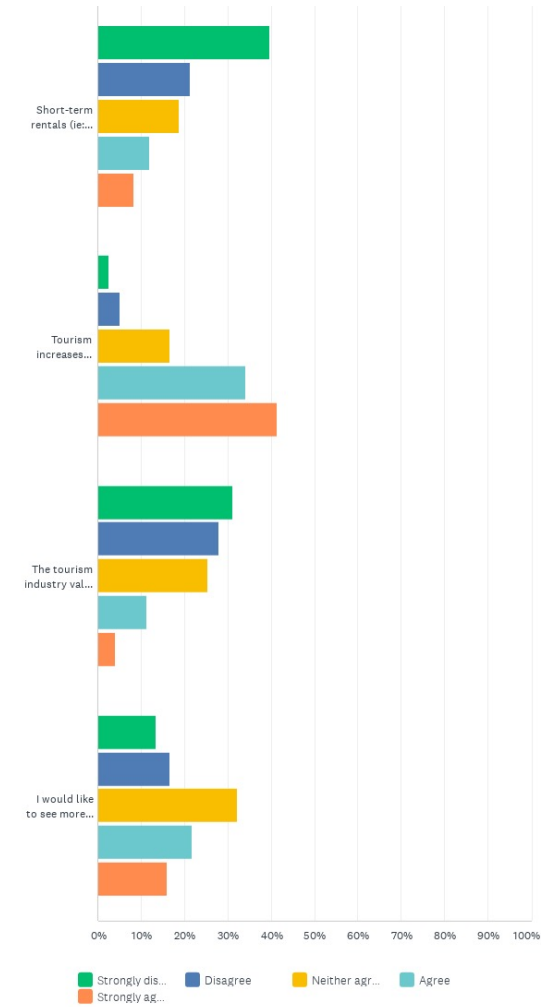
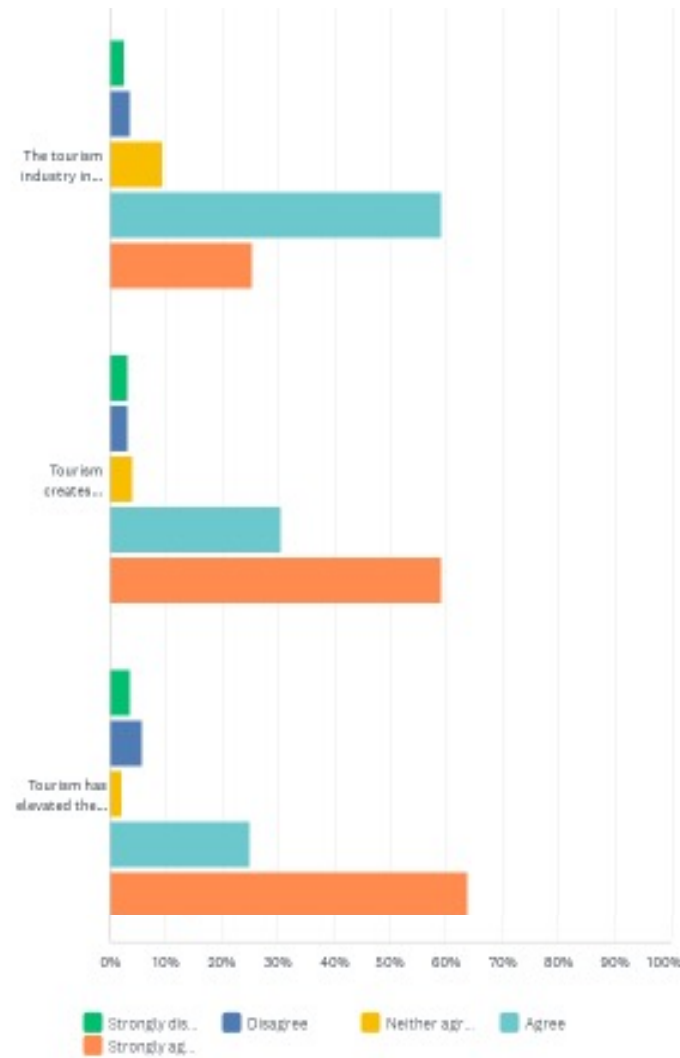
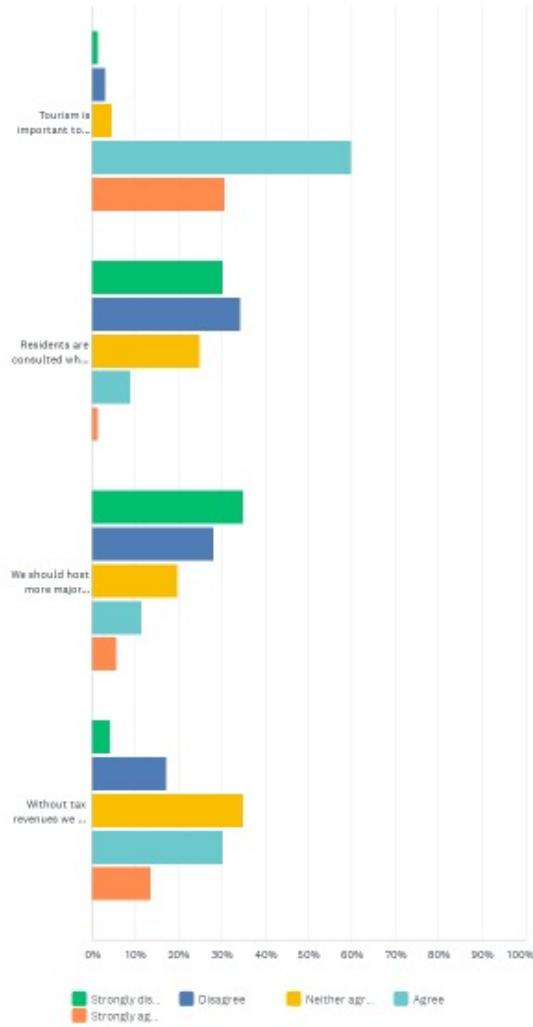
	STRONGLY DISAGREE	DISAGREE	NEITHER AGREE NOR DISAGREE	AGREE	STRONGLY AGREE	TOTAL
Overall, I think tourism is good for Ouray.	4.02% 8	3.52% 7	13.57% 27	54.27% 108	24.62% 49	199
There are more recreational opportunities (places to go and things to do) because of tourism in Ouray.	13.64% 27	18.69% 37	17.68% 35	34.85% 69	15.15% 30	198
Tourism can help the environment as local governments and people seek to protect sensitive and scenic areas.	23.74% 47	27.78% 55	18.18% 36	20.20% 40	10.10% 20	198

	STRONGLY DISAGREE	DISAGREE	NEITHER AGREE NOR DISAGREE	AGREE	STRONGLY AGREE	TOTAL
The sales and lodging tax that tourists pay on their purchases adequately compensates for the wear and tear they create on our infrastructure and outdoor recreation areas.	38.38% 76	33.84% 67	14.14% 28	9.60% 19	4.04% 8	198
Overcrowding by tourists is spoiling our natural areas.	5.58% 11	5.58% 11	6.60% 13	26.40% 52	55.84% 110	197
The tourism industry is doing a good job of educating visitors on how to be responsible travelers.	32.83% 65	37.37% 74	17.68% 35	9.09% 18	3.03% 6	198

	STRONGLY DISAGREE	DISAGREE	NEITHER AGREE NOR DISAGREE	AGREE	STRONGLY AGREE	TOTAL
Tourism development is happening too fast in Ouray.	5.05% 10	12.12% 24	16.67% 33	27.27% 54	38.89% 77	198
Attractions and leisure facilities are becoming overcrowded because of more tourists.	3.03% 6	8.59% 17	6.57% 13	36.36% 72	45.45% 90	198
Wayfinding and signage for visitors is adequate in Ouray.	19.70% 39	32.83% 65	22.73% 45	19.70% 39	5.05% 10	198

# Q8: Please describe your level of agreement with the following statements regarding the tourism industry in Ouray

Answered: 193 Skipped: 10



# Q8: Please describe your level of agreement with the following statements regarding the tourism industry in Ouray

Answered: 193 Skipped: 10

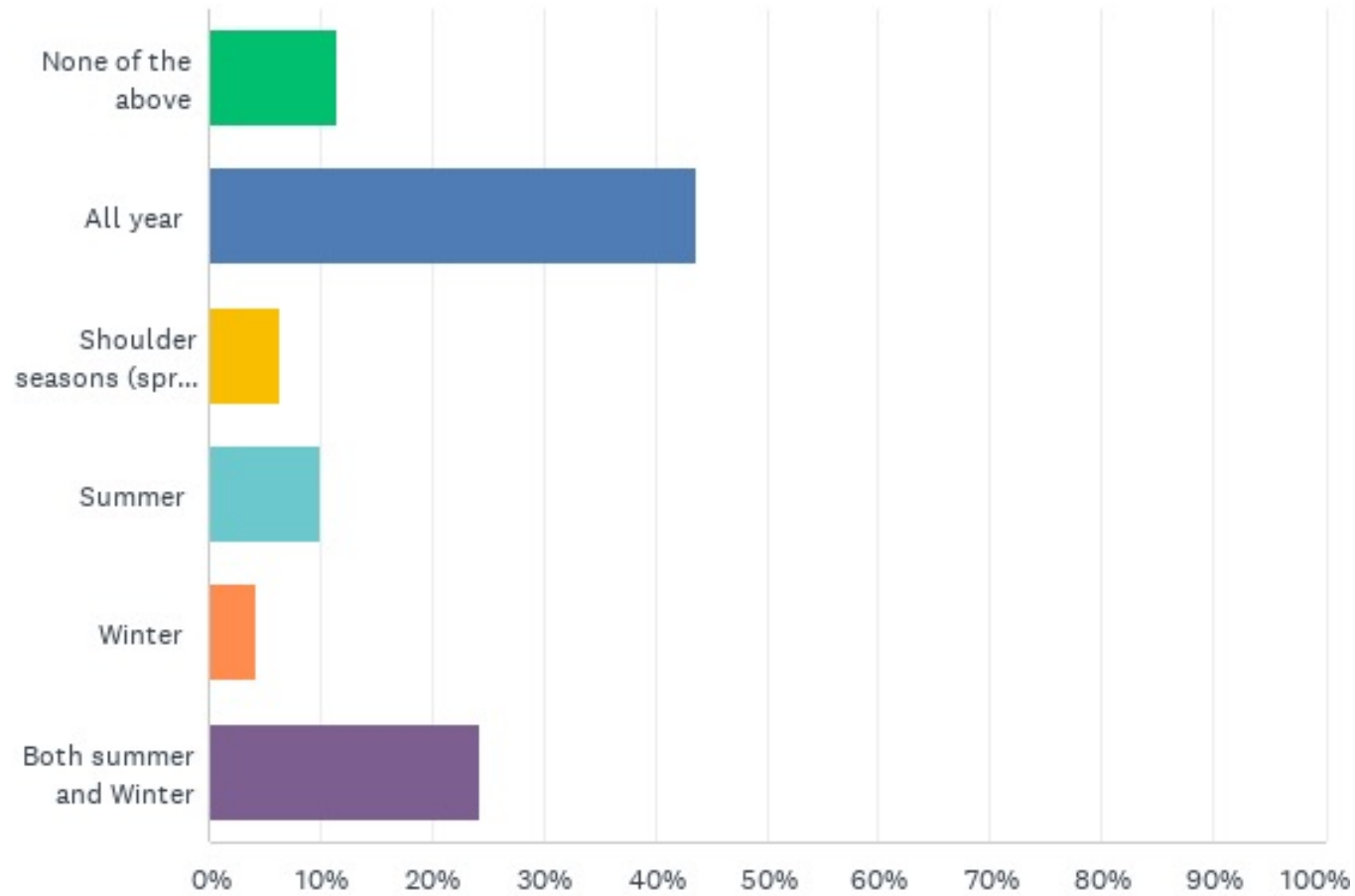
	STRONGLY DISAGREE	DISAGREE	NEITHER AGREE NOR DISAGREE	AGREE	STRONGLY AGREE	TOTAL
Tourism is important to the local economy of Ouray.	1.56% 3	3.13% 6	4.69% 9	59.90% 115	30.73% 59	192
Residents are consulted when major tourism development takes place in Ouray.	30.21% 58	34.38% 66	25.00% 48	8.85% 17	1.56% 3	192
We should host more major events that attract tourists to Ouray.	34.90% 67	28.13% 54	19.79% 38	11.46% 22	5.73% 11	192
Without tax revenues we get from tourism, we would have to pay higher state and local taxes for government programs and services.	4.17% 8	17.19% 33	34.90% 67	30.21% 58	13.54% 26	192

	STRONGLY DISAGREE	DISAGREE	NEITHER AGREE NOR DISAGREE	AGREE	STRONGLY AGREE	TOTAL
The tourism industry in Ouray has a positive impact on local businesses.	2.59% 5	3.63% 7	9.33% 18	59.07% 114	25.39% 49	193
Tourism creates parking/traffic problems.	3.11% 6	3.11% 6	4.15% 8	90.57% 59	59.07% 114	193
Tourism has elevated the price of housing in Ouray.	3.63% 7	5.70% 11	2.07% 4	24.87% 48	63.73% 123	193

	STRONGLY DISAGREE	DISAGREE	NEITHER AGREE NOR DISAGREE	AGREE	STRONGLY AGREE	TOTAL
Short-term rentals (ie: AirBnB, VRBO, Homeaway) have been a positive addition to Ouray.	39.58% 76	21.35% 41	18.75% 36	11.98% 23	8.33% 16	192
Tourism increases wildfire danger in and around Ouray.	2.59% 5	5.18% 10	16.58% 32	34.20% 66	41.45% 80	193
The tourism industry values sustainability and the state's natural resources.	31.09% 60	27.98% 54	25.39% 49	11.40% 22	4.15% 8	193
I would like to see more reservation systems become available for outdoor experiences in Colorado.	13.47% 26	16.58% 32	32.12% 62	21.76% 42	16.00% 31	193

## Q9: When would you like to see tourists coming to Ouray?

Answered: 190 Skipped: 13



## Q9: When would you like to see tourists coming to Ouray?

---

Answered: 190 Skipped: 13

ANSWER CHOICES	RESPONSES	
None of the above	11.58%	22
All year	43.68%	83
Shoulder seasons (spring and fall)	6.32%	12
Summer	10.00%	19
Winter	4.21%	8
Both summer and Winter	24.21%	46
<b>TOTAL</b>		<b>190</b>

---

Submit to Local Licensing Authority

**OURAY LIQUORS LLC**  
**PO BOX 1175**  
**Ouray CO 81427**

Fees Due	
Renewal Fee	277.50
Storage Permit \$100 X _____	\$
Sidewalk Service Area \$75.00	\$
Additional Optional Premise Hotel & Restaurant \$100 X _____	\$
Related Facility - Campus Liquor Complex \$160.00 per facility	\$
<b>Amount Due/Paid</b>	<b>\$277.50</b>

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

## Retail Liquor or Fermented Malt Beverage License Renewal Application

Please verify & update all information below

Return to city or county licensing authority by due date

Licensee Name OURAY LIQUORS LLC		Doing Business As Name (DBA) OURAY LIQUORS LLC	
Liquor License # 28-16914-0000	License Type Liquor Store (city)		
Sales Tax License Number 028169140000	Expiration Date 10/24/2022	Due Date 09/09/2022	
Business Address 611 MAIN STREET Ouray CO 81427			Phone Number 9703250784
Mailing Address PO BOX 1175 Ouray CO 81427		Email OURAYLIQUORSE@HOTMAIL.COM	
Operating Manager MATTHEW GIBSON	Date of Birth	Home Address	Phone Number
1. Do you have legal possession of the premises at the street address above? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Are the premises owned or rented? <input type="checkbox"/> Owned <input checked="" type="checkbox"/> Rented* *If rented, expiration date of lease <u>08/31/2030</u>			
2. Are you renewing a storage permit, additional optional premises, sidewalk service area, or related facility? If yes, please see the table in upper right hand corner and include all fees due. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
3a. Are you renewing a takeout and/or delivery permit? (Note: must hold a qualifying license type and be authorized for takeout and/or delivery license privileges) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
3b. If so, which are you renewing? <input type="checkbox"/> Delivery <input type="checkbox"/> Takeout <input type="checkbox"/> Both Takeout and Delivery			
4a. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
4b. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
5. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
6. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

Application for Colorado Liquor Sales Room

Fax (303) 205-2341  
Phone (303) 205-2300

Regulation 47-428, 1 C.C.R. 203-2

<input type="checkbox"/> Malt Liquor <input checked="" type="checkbox"/> Limited Winery <input type="checkbox"/> Winery <input type="checkbox"/> Distillery		<input type="checkbox"/> Temporary (3 days or less)		<input checked="" type="checkbox"/> Permanent	
1. Name of Applicant exactly as it appears on your current Colorado Liquor License.					
MVW- Mountain View Winery Inc.					
2. Trade Name of Applicant					
Mountain View Winery					
3. State Sales Tax No.			Applicant Liquor License No.		
18-1959-0000-1			03-11326		
4. Business Address of Applicant (Number and Street)			City	State	ZIP
5859 5825 Rd			Olathe	CO	81425
5. Mailing Address (Number and Street)			City	State	ZIP
6. Phone Number			7. Email Address		
970-209-9223			mountainviewwinery@gmail.com		
8. Sales Room Location (Full Address)			9. Dates of Events: From Date: <u>8/1/22</u> Time: <u>1100</u> <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM		
539 main St. Ouray CO 81427			To Date: <u>1/31</u> Time: <u>9</u> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM		
10. Rights to Premises Granted by: (attach a copy of the Premises Use Authorization letter or lease if not previously submitted)					
Amber Cunningham - Ouray Wine Garden					
11. Renting/Leasing % Basis		12. If Yes, List % and Interested Party. Use Additional Sheet if Necessary.			
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
13. Alcohol will be sold (check all that apply)					
<input checked="" type="checkbox"/> For on-premises consumption (if selected, please file this application with the Local Licensing Authority and the State Licensing Authority)					
<input checked="" type="checkbox"/> For off-premises consumption					
14. The Sales Room Applicant affirms they have complied with local zoning restrictions?					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
15. Additional Required Documents					
<input checked="" type="checkbox"/> Attach an outlined diagram of proposed premises					
<input checked="" type="checkbox"/> Attach a copy of the premises control plan describing how the premises will be controlled to ensure compliance with liquor code and rules. It must include restricting sales to minors and visibly intoxicated persons and insuring that customers cannot leave the premises with an open container of alcohol.					
<input checked="" type="checkbox"/> Attach a copy of any contracts and/or operating agreements pertaining to the sales room.					
Local Licensing Authority Name			Date Application Copy Submitted to Local Licensing Authority		
City of Ouray			7/27/22		
Oath of Applicant: I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor, Beer Code and Liquor Rules which affects my permit.					
Applicant Signature			Title	Date	
			Secretary	7/27/22	
<b>Notice to Local Licensing Authority</b>					
This application for a Sales Room will be granted to the above name applicant unless any of the below listed conditions apply. If any of these conditions apply please contact the State Licensing Authority immediately.					
<input type="checkbox"/> Issuance of this permit would impact traffic, noise, or other neighborhood concerns in a manner that is inconsistent with local regulations or ordinances.					
<input type="checkbox"/> If granted this permit would result in violations of the Colorado liquor code or the laws of the local government. (specify)					
<input type="checkbox"/> Issuance of this permit would violate local zoning laws.					
For events lasting <u>three consecutive days or less</u> , the Local Licensing Authority has <b>ten (10) business days</b> to submit its determination to the State Licensing Authority.					
For events lasting <u>four or more consecutive days</u> , the Local Licensing Authority has <b>forty-five (45) days</b> to submit its determination to the State Licensing Authority.					
Local Licensing Authorities can send the approval via mail or email to dor_led@state.co.us					
If the Local Licensing Authority does not submit a response or determination within the time specified, the State Licensing Authority shall deem that the Local Licensing Authority has determined that the proposed sales room will not impact traffic, noise, or other neighborhood concerns in a manner that is inconsistent with local regulations or ordinances or that the applicant will sufficiently mitigate any impacts identified by the Local Licensing Authority.					
Licensing Authority Signature			Local Licensing Authority Contact Name		Phone Number
<input type="checkbox"/> Object <input type="checkbox"/> Do Not Object					

If the Local Licensing Authority objects to the sales room, provide a separate page with details of the objection.

## Alcohol Beverage Festival Permit Application

This permit is only available for the following license types:

- Beer and Wine license;
- Distillery Pub license;
- Hotel and Restaurant license;
- Manufacturer's license (beer, wine, or spirits);
- Tavern license;
- Wholesaler's license; or
- Brew Pub license;
- Limited Wineries
- Vintner's Restaurant license;

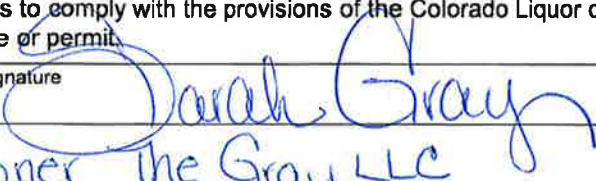
<input checked="" type="checkbox"/> Initial Application – \$25.00 Annual Fee <input type="checkbox"/> Subsequent Festival Application (9 total allowed per 12 month period, per participating licensee)			
Legal Business Name <b>The Gray LLC</b>			
Trade Name/DBA Name <b>The Gray</b>			
License Number <b>03-11908</b>	License Type <b>Tavern</b>	Sales Tax Number <b>95087907</b>	
Business Phone Number <b>402 510 6215</b>	Email Address <del>thegrayllc@grayllc.com</del> <b>thegrayllc@grayllc.com</b>		
Premises Address <b>929 main st Unit B</b>			
City <b>Duray Co</b>		State <b>CO</b>	ZIP Code <b>81427</b>
Mailing Address <b>PO Box 1394</b>			
City <b>Duray</b>		State <b>CO</b>	ZIP Code <b>81427</b>
Festival Location <b>Fellin Park</b>			
Festival Dates (Limit 3 days) <b>Sat Sept 04, 2022</b>			
<b>Attach a copy of Premises Use Authorization Letter or Lease</b>			
<b>Notification to Local Authority</b>			
Local Licensing Authority Name		Date Application Copy provided to Local Licensing Authority	
During this festival alcohol will only be sold by the participating alcohol beverage holders (Check All that apply)			
<input checked="" type="checkbox"/> In open containers for on-premises consumption <input type="checkbox"/> In sealed containers for off-premises consumption			
<b>Notice To Local Licensing Authority</b>			
This application for a festival permit will be granted to the above named applicant unless any of the below listed conditions apply. If any of these conditions apply please contact the state licensing authority immediately.			
<input type="checkbox"/> The applicant has not provided you with at least 10 business days notice of the proposed festival			
<input type="checkbox"/> Past wine festivals have had a history of violation of the Colorado liquor code or liquor rules or violations of local ordinances			
<input type="checkbox"/> If granted, this permit would result in violations of the Colorado liquor code, Colorado liquor rules, or the laws of the local government			
<b>Diagram and control of FESTIVAL PREMISES</b>			
<input type="checkbox"/> Attach a diagram of proposed premises			
<input type="checkbox"/> Attach a copy of premises control plan outlining how the premises will be controlled to ensure compliance with liquor code provisions including restricting sales to minors and intoxicated persons and ensuring that festival participants cannot leave the premises with open containers of alcohol beverages.			

**List of participating businesses (Attach a separate sheet if needed)**

Name <b>Silver Eagle Saloon</b>		
License Number <b>03-07850</b>	License Type <b>Tavern</b>	
Person Responsible <b>Trisha Newman</b>	Phone Number <b>509.540.5751</b>	
Name		
License Number	License Type	
Person Responsible	Phone Number	
Name		
License Number	License Type	
Person Responsible	Phone Number	
Name		
License Number	License Type	
Person Responsible	Phone Number	
Name		
License Number	License Type	
Person Responsible	Phone Number	
Name		
License Number	License Type	
Person Responsible	Phone Number	

**Oath Of Applicant**

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also know that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code and Colorado Liquor Rules which affect my license or permit.

Authorized Signature 		
Title <b>Owner The Gray LLC</b>	Date <b>8/30/22</b>	

**RESOLUTION NO. 16 (SERIES 2022)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OURAY, COLORADO ALLOWING AN EXEMPTION FROM THE OURAY MUNICIPAL CODE, SECTION 13-3-F-19 CONCERNING UNDERGROUNDING REQUIREMENTS FOR UTILITY WIRES INCLUDING FIBER OPTICE CABLES FOR SMALL PROVIDERS FOR ONE YEAR.**

**WHEREAS**, the City of Ouray requires undergrounding of all new electric, CATV, or communications facilities pursuant to Ouray Municipal Code (OMC) Section 13-3-F-19.

**WHEREAS**, more than one small local provider was allowed through Ordinance No. 5, 2020 to install fiber optic cable above ground on existing poles to provide high-speed internet access to the City of Ouray because the costs to underground the fiber optic cables is cost prohibitive for these small providers.

**WHEREAS** the COVID-19 pandemic delayed the installation of fiber optic cable on existing poles and the small provides desire a one-year extension to complete its fiber install.

**WHEREAS** City Council desires to allow small local providers a one-year extension to install fiber optic cable above ground through a resolution which would exempt them from the underground requirement of the Ouray Municipal Code.

**WHEREAS** City Council also desires to make clear that of any poles are damaged, moved or replaced for any reason, then all equipment installed on that pole must be installed underground at the expense of the pole owner, including any fiber installed during the pendency of this resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OURAY, COLORADO** as follows:

1. The COVID-19 pandemic delays are good cause to extend the exemption provided in Ordinance No. 5, 2020 for an additional year.
2. For a period of one year any small provide may install fiber optic cables on existing poles so long as an encroachment permit and written permission from the pole owner is procured prior to starting any work.
3. This resolution shall expire one year from the date of adoption.

ADOPTED this 6th day of September 2022, by the Ouray City Council.

CITY OF OURAY, COLORADO

\_\_\_\_\_  
Ethan Funk, Mayor

ATTEST:

\_\_\_\_\_  
Melissa M. Drake, City Clerk

**CITY OF OURAY**

**ORDINANCE NO. 08 (Series 2022)**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OURAY, COLORADO AMENDING OURAY LAND USE CODE SECTION 13-3-F-19 TO ADDRESS UNDERGROUNDING UTILITIES.**

**WHEREAS**, the City of Ouray requires undergrounding of all new electric, CATV, or communications facilities pursuant to Ouray Municipal Code (OMC) Section 13-3-F-19-a;

**WHEREAS**, currently there are existing cable lines installed on poles throughout the City which are unusable because the lines have fallen into disrepair;

**WHEREAS**, more than one small local provider was allowed under Ordinance No. 5, 2020 to install fiber optic cable above ground on existing poles to provide high-speed internet access to the City of Ouray because the costs to underground the fiber optic cables is cost prohibitive for these small providers;

**WHEREAS**, the COVID-19 pandemic delayed the installation of fiber optic cable on existing poles and the small provides desire a one-year extension to complete its fiber install.

**WHEREAS**, City Council desires to allow small local providers a one-year extension to install fiber optic cable above ground through a resolution which would exempt them from the underground requirement of the Ouray Municipal Code.

**WHEREAS**, City Council also desires to make clear that if any poles are damaged, removed or replaced for any reason, then all equipment installed on that pole must be undergrounded.

**WHEREAS**, pursuant C.R.S.§ 31-15-702(1)(a)(VI), the City may regulate communication poles in its right-of-way.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OURAY, COLORADO as follows:**

**SECTION 1: INCORPORATION OF RECITALS**

The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the City Council.

**SECTION 2: AMENDMENTS TO THE CODE**

Section 13-3-F-19-d is hereby repealed and replaced as follows:

d. Whenever a pole is substantially damaged such that replacement is necessary or the pole must be moved for any reason, that pole may not be placed above ground and all equipment located on the pole shall be undergrounded at the expense of the pole owner.

**SECTION 3: EFFECTIVE DATE**

The provisions of this Ordinance shall become effective thirty days after publication in accordance with City of Ouray Charter 3.5(G).

**SECTION 4: SAVINGS CLAUSE**

The amendment of various provisions of the Ouray Municipal Code by this ordinance shall not affect any offense or act committed, any penalty incurred, any contract, right or duty established or accruing before the effective date of this ordinance.

**SECTION 5: SEVERABILITY**

If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

**INTRODUCED, READ, APPROVED AS INTRODUCED, AND ORDERED PUBLISHED on first reading by \_\_\_\_\_ vote of the Ouray City Council this 6<sup>th</sup> day of September 2022.**

CITY OF OURAY, COLORADO

By \_\_\_\_\_  
Ethan Funk, Mayor

ATTEST:

\_\_\_\_\_  
Melissa M. Drake, City Clerk

INTRODUCED, READ, AND ADOPTED on second reading by \_\_\_\_\_ vote of the Ouray City Council this \_\_\_\_ day of September 2022.

CITY OF OURAY, COLORADO

By \_\_\_\_\_  
Ethan Funk, Mayor

ATTEST:

\_\_\_\_\_  
Melissa M. Drake, City Clerk

**CERTIFICATE OF ATTESTATION**

I, Melissa M. Drake, Ouray City Clerk, hereby certify that Ordinance No. \_\_\_\_\_ (Series No. \_\_\_\_\_), was introduced, read, and passed by the Ouray City Council on first reading on September 1, 2022. The Ordinance was published, in summary, in the *Ouray County Plaindealer* on \_\_\_\_\_, 2022, and thereafter introduced, read, and adopted by the Ouray City Council on \_\_\_\_\_, 2022, and thereafter published in the *Ouray County Plaindealer*, as required by law.

\_\_\_\_\_  
Melissa M. Drake, City Clerk

**ORDINANCE NO. 09 (Series 2022)**

**AN ORDINANCE OF THE CITY OF OURAY, COLORADO, REPEALING AND REPLACING SECTION 10-2-BB-2-a-iv AND 10-2-BB-4 OF THE OURAY MUNICIPAL CODE TO ALLOW FOR THE CONSUMPTION OF ALCOHOL BEVERAGES WITHIN FELLIN, ROTARY, LEE'S SKI HILL AT THE BOTTOM, AND WOMAN'S CLUB CITY PARKS.**

**WHEREAS**, persons at least twenty-one years of age may consume any alcohol beverages in any public place, other than a public right of way, where consumption of alcohol beverages has been specifically authorized by ordinance, resolution, or rule adopted by a municipality pursuant to C.R.S. § 44-3-901(1)(i)(VII).

**WHEREAS**, in the past the use of alcohol within certain City parks was prohibited except by special permit.

**WHEREAS**, the COVID-19 pandemic caused City Council to revisit City prohibitions and the City allowed alcohol consumption within certain City parks to achieve public policy considerations regarding social distancing and gathering outdoors.

**WHEREAS**, allowing alcohol consumption in City parks during the pandemic resulted in no violations, no law enforcement investigations of a violation, and no adverse impact to the public.

**WHEREAS**, City Council determines it is necessary preserve the public health, safety, and welfare of the community to allow continued consumption of alcohol in certain City parks and regulate the same.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OURAY, COLORADO, as follows:**

**SECTION 1:**

Section 10-2-BB-2-a-iv is repealed and replaced to read as follows:

- iv. Ouray Hot Springs Pool, Box Cañon Park, and Cascade Falls Park.

**SECTION 2:**

Section 10-2-BB-4 is repealed and replaced to read as follows:

**4. Exceptions for Certain Parks and Special Event Permits**

- a. Alcohol beverages may be consumed or possessed within the City parks known as: Rotary, Fellin, Lee's Ski Hill at the bottom, and Woman's Club, by persons so long as such beverages are not consumed from glass or other breakable containers, the beverage arrives to the park in a sealed container, and no alcohol beverage is consumed in the parking areas.

- b. Private parties, special event permits, and festival permits which reserve a portion of any City property may consume any alcoholic beverages with approval of the City.
- c. Hours for permitted possession and consumption of alcoholic beverages shall be limited from 11:00 a.m. until 8:00 pm daily and extended on July 4<sup>th</sup> and New Year's Eve/Day until the conclusion of official festivities.

**SECTION 3: EFFECTIVE DATE**

The provisions of this Ordinance shall become effective on the thirty-first day following publication pursuant to C.R.S. § 31-16-105.

**SECTION 4: SEVERABILITY**

If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

**INTRODUCED, READ, APPROVED AS INTRODUCED, AND ORDERED PUBLISHED on first reading by \_\_\_\_\_ vote of the Ouray City Council this 6<sup>th</sup> day of September 2022.**

CITY OF OURAY, COLORADO

By \_\_\_\_\_  
Ethan Funk, Mayor

ATTEST:

\_\_\_\_\_  
Melissa M. Drake, City Clerk

INTRODUCED, READ, AND ADOPTED on second reading by \_\_\_\_\_ vote of the Ouray City Council this \_\_\_\_ day of September 2022.

CITY OF OURAY, COLORADO

By \_\_\_\_\_  
Ethan Funk, Mayor

ATTEST:

\_\_\_\_\_  
Melissa M. Drake, City Clerk

**CERTIFICATE OF ATTESTATION**

I, Melissa M. Drake, Ouray City Clerk, hereby certify that Ordinance No. \_\_\_\_\_ (Series No. \_\_\_\_\_), was introduced, read, and passed by the Ouray City Council on first reading on September 1, 2022. The Ordinance was published, in summary, in the *Ouray County Plaindealer* on \_\_\_\_\_, 2022, and thereafter introduced, read, and adopted by the Ouray City Council on \_\_\_\_\_, 2022, and thereafter published in the *Ouray County Plaindealer*, as required by law.

\_\_\_\_\_  
Melissa M. Drake, City Clerk

## Ouray Water Treatment Plant

# Color Selection Narrative

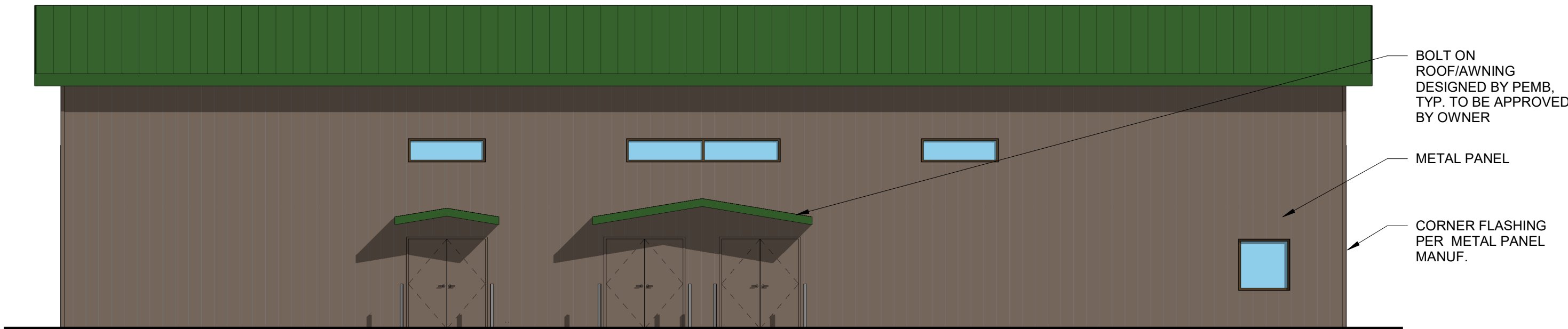
The design team has reviewed the natural colors present at the site and the surrounding area, during multiple seasons. There is variation in the hues of green of the trees and shrubs during various seasons, but the most common hue is a dark green with a slight olive tint. Rock outcroppings at the site tend to have a greyish brown hue with some red tones, generally a darker shade.

In general, to blend a building with a site an exact hue is not as critical as the proper shade (lightness or darkness) of the finish, when viewed from a distance. In addition, avoiding contrast along the edges of rectilinear forms is also desirable because high contrast will accentuate the unnaturally straight lines of the structure and make it stand out from its surroundings. Short of painting a custom camouflage scheme, the best option is matching hues and shades that will not contrast with the environment at the site.

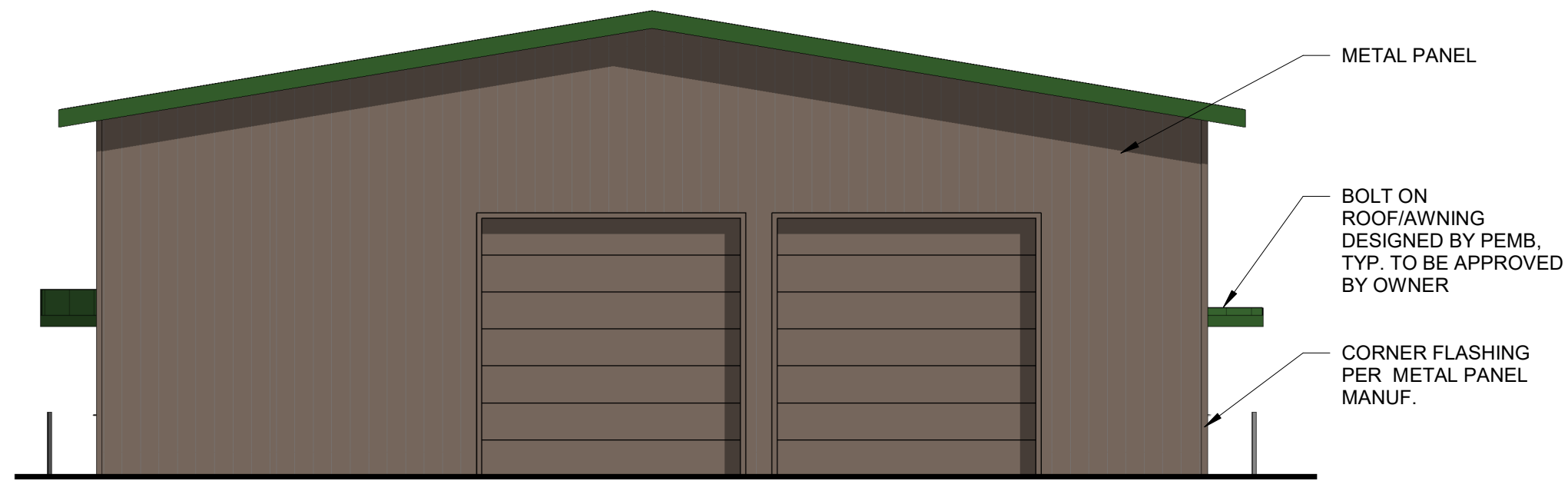
Although the roofing and siding of the building can be painted a custom color to try and blend with the spectrum of colors present at the site in the vegetation and geology, no specific color will exactly match. The most durable and cost-effective finish is a factory standard color, so the design team reviewed the colors available from the metal building manufacturer. The Chief metal building standard colors offer a green (Emerald Green) and grey-brown (Antique Bronze) that are suitably effective in matching the hue and shade of the colors of the site. For simplicity the roof is shown in green and the vertical siding in the grey-brown color. Wainscoting or striping has been avoided in the vertical siding because it would introduce another long, straight line in each elevation which would accentuate the building's difference from its surroundings.

Doors (overhead and swing), door frames, vents, etc. shall be custom painted to match the grey-brown siding color to avoid any contrast. Window frames shall be provided in a color from the selected window manufacturer that most closely matches the siding color. For the Pella windows shown on the drawings this color is a dark brown.

It is anticipated that this overall approach to the color selections will provide a building that blends sufficiently enough with its surroundings to not call attention to itself.



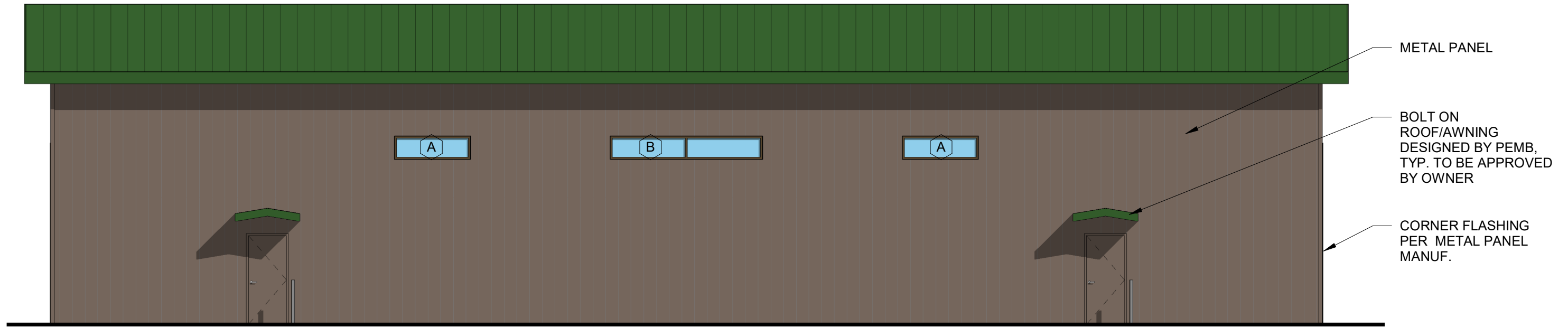
**2 SOUTH ELEVATION**  
1/8" = 1'-0"



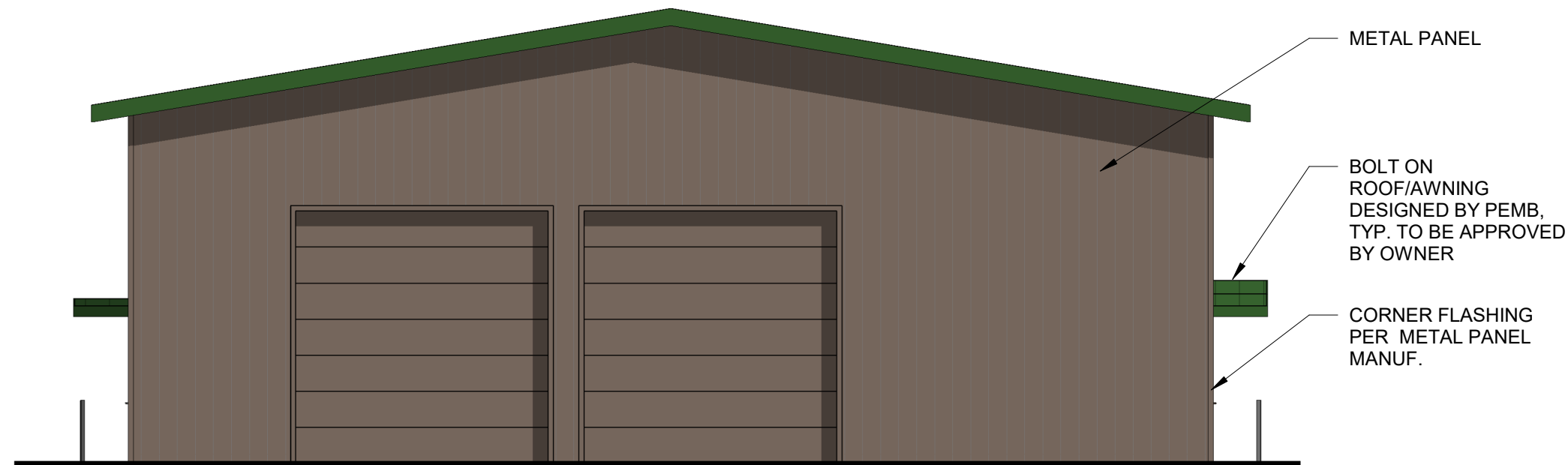
**1 EAST ELEVATION**  
1/8" = 1'-0"

FINISH LEGEND	
	MVF - STANDING SEAM ROOF SYSTEM
	CS PANEL - RIBBED EXTERIOR WALL PANEL
	FIBERGLASS WINDOW

NOT FOR CONSTRUCTION



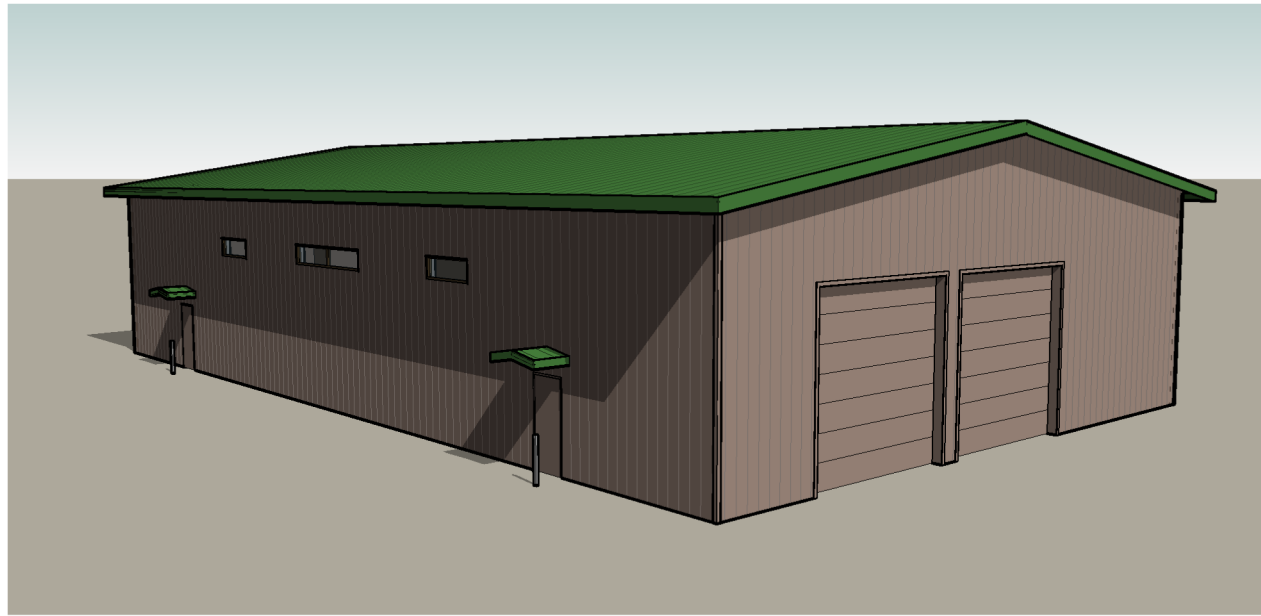
**2** NORTH ELEVATION  
1/8" = 1'-0"



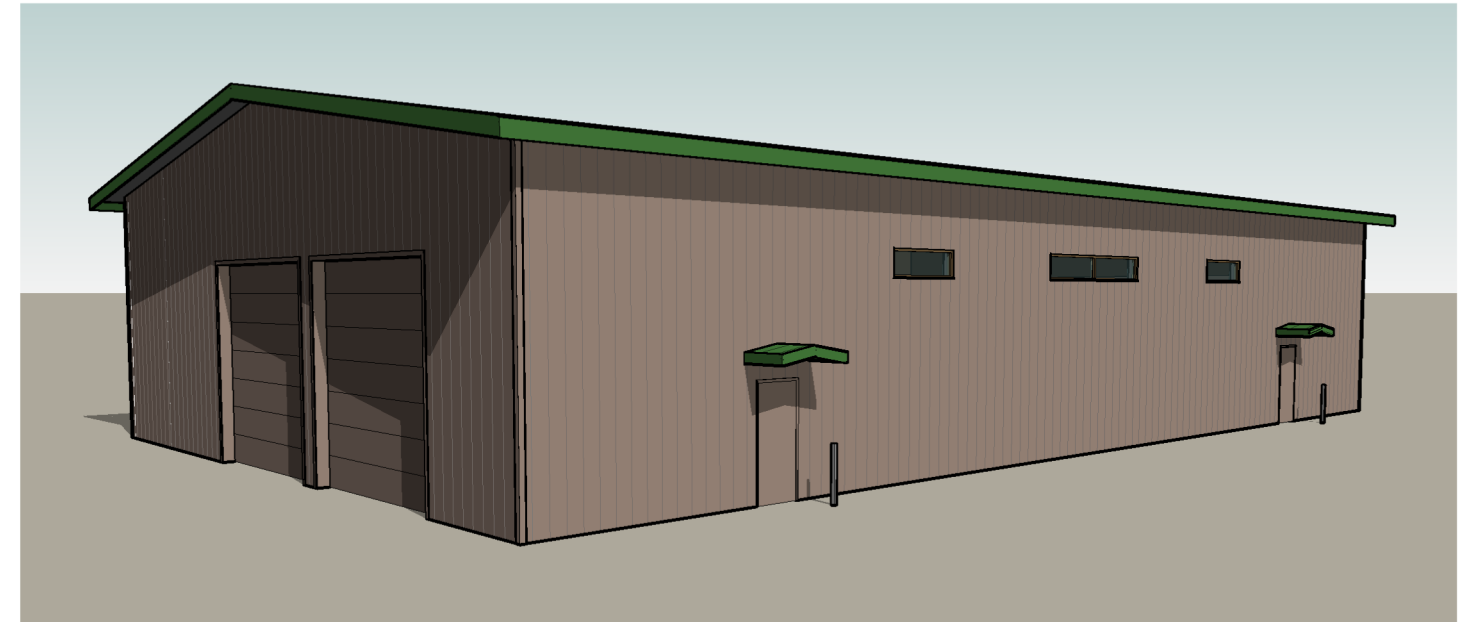
**1** WEST ELEVATION  
1/8" = 1'-0"

FINISH LEGEND	
	MVF - STANDING SEAM ROOF SYSTEM
	CS PANEL - RIBBED EXTERIOR WALL PANEL
	FIBERGLASS WINDOW

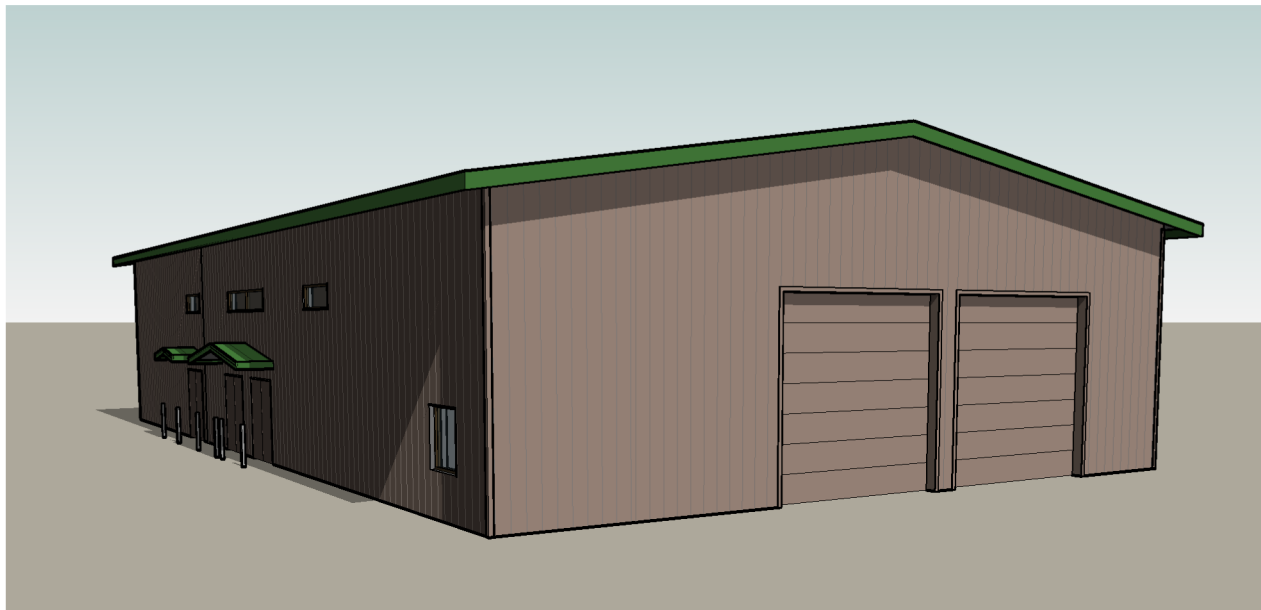
NOT FOR CONSTRUCTION



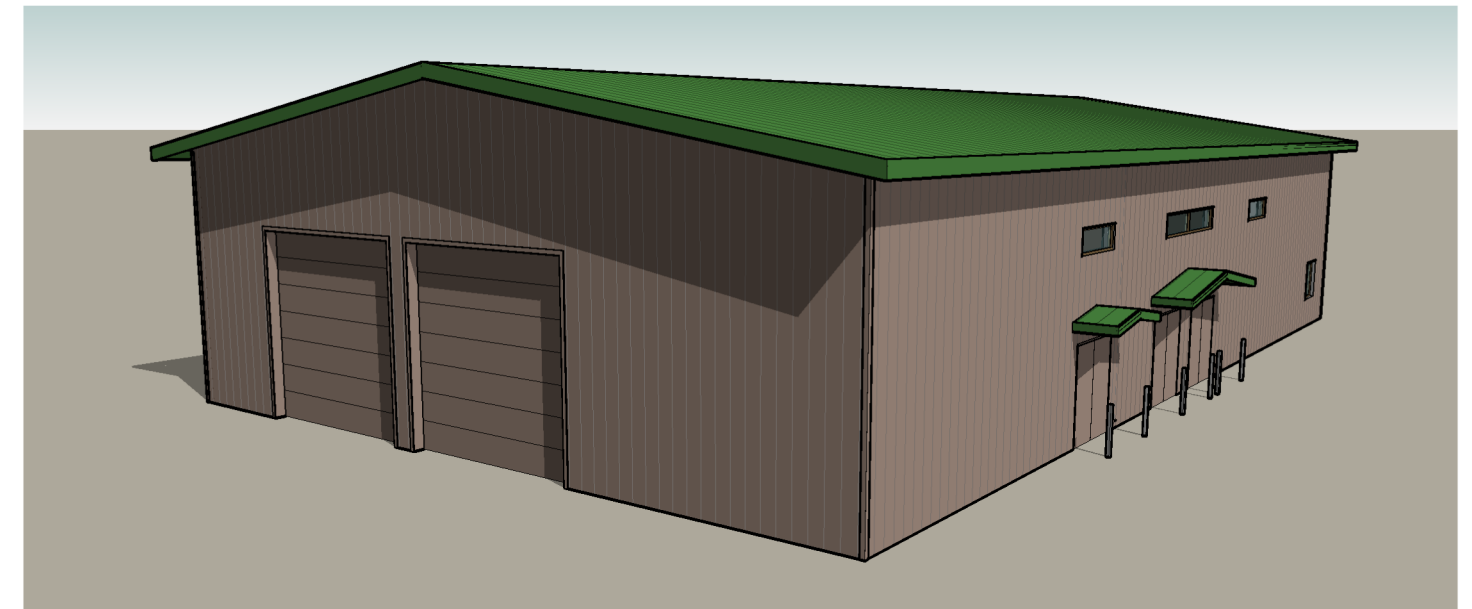
4 SOUTHEAST VIEW



3 SOUTHWEST VIEW

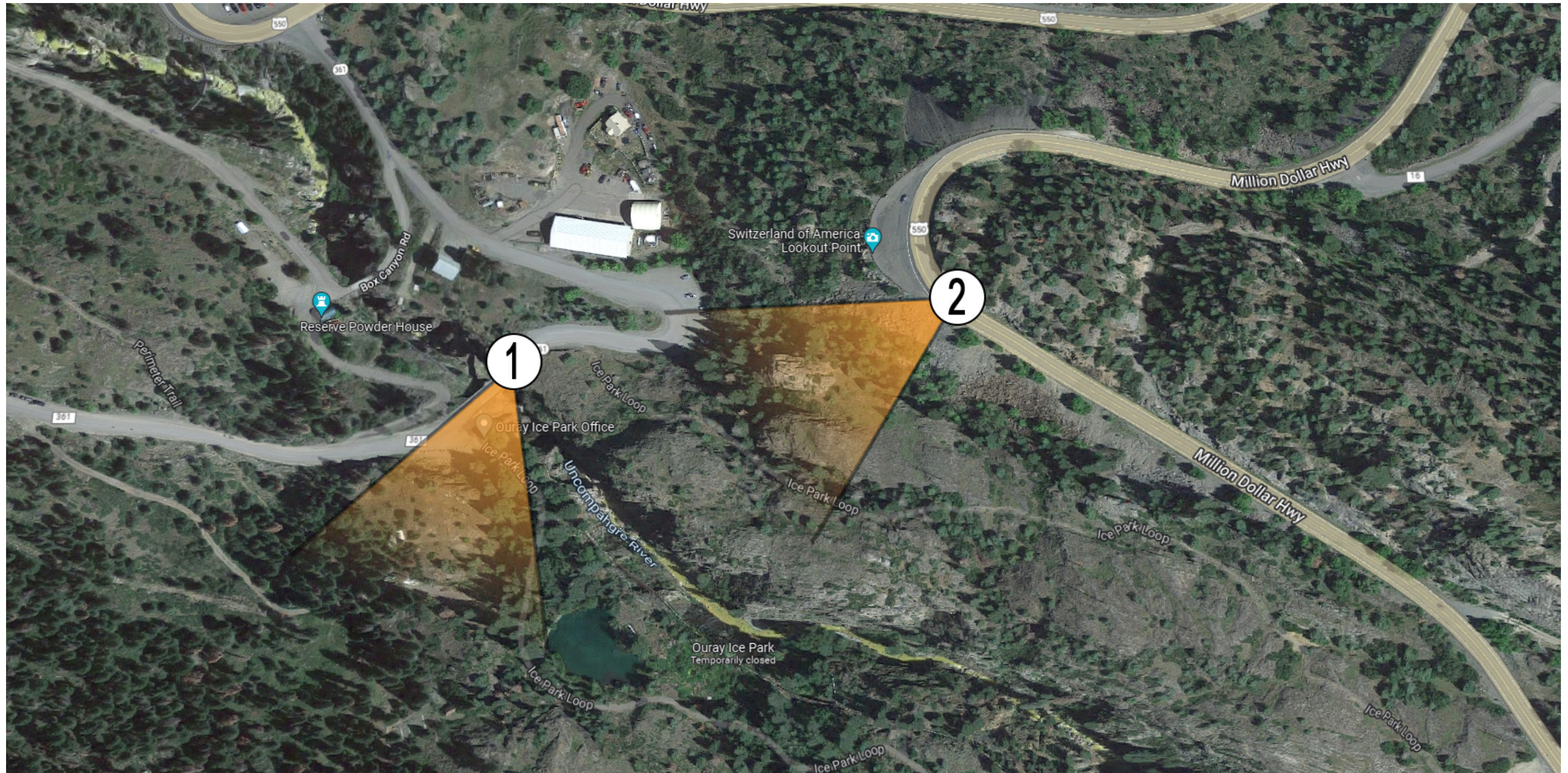


2 NORTHWEST VIEW



1 NORTHEAST VIEW

NOT FOR CONSTRUCTION



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21257

IMAGE KEY

**WATER TREATMENT PLANT**

7/13/2022

CITY OF OURAY  
320 6TH AVE., OURAY, CO 81427



004



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CONTEXTUAL VIEWS

### WATER TREATMENT PLANT

7/13/2022

CITY OF OURAY  
320 6TH AVE., OURAY, CO 81427



005



Google

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CONTEXTUAL VIEWS

### WATER TREATMENT PLANT

7/13/2022

CITY OF OURAY  
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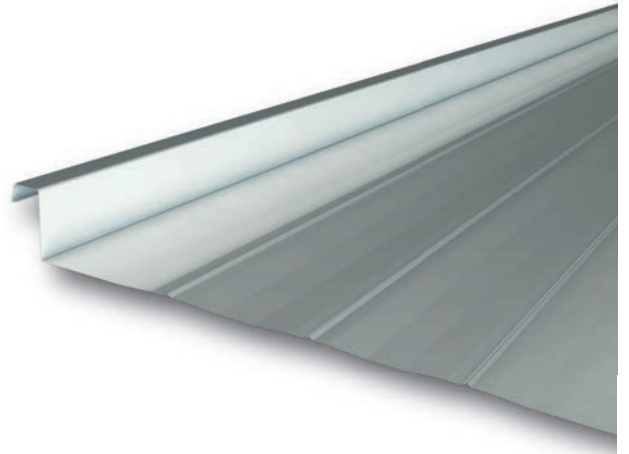
# MVF & MVP PANELS

Specifications and Color Options

## Strength and Versatility

Both the new MVF (Mechanically seamed Vertical leg Flat) and the MVP (Mechanically seamed Vertical leg Pencil-rib) have been engineered for higher uplift capacity, improved performance and erectability. To help reduce the effects of oil canning, the pan of both panels includes striations, while the MVP panel also incorporates pencil ribs into the design.

The MVF and MVP are 24 gauge, mechanically seamed, 50ksi steel roof panels that are ideal for retail stores, dealerships, offices, churches, schools and any building where architectural appearance is desirable. The versatile MVF/MVP panels do not require a structural underlayment, but can be installed over one if desired. With the MVF and MVP panels, Chief Buildings has created a higher performance standard for an industry favorite.



Antique Bronze (AQ)



Ash Gray (AG)



Charcoal Gray (CG)



Cherokee (CK)



Emerald Green (EG)



Fieldstone (FS)



Parchment (PA)



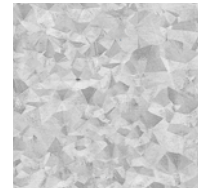
Polar White (PW)



Royale Blue (RB)



Sierra Madre (SM)



Galvalume (GM)

\*All colors 24 ga.

\*\*Chief maintains stock inventory of polar white and Galvalume®. All other colors shown are available as Chief standard colors and may not be in stock.

## Ultra-Kote Premium (UKP) Finish

Chief's Ultra-Kote Premium finish is made with polyvinylidene fluoride resin, where a minimum of 70% of the resin is PVDF (Kynar 500® or Hylar 5000®). This unique chemistry is combined with acrylic resin, as well as ceramic and select inorganic pigmentation. The result is Ultra-Kote Premium's proven ability to resist ultraviolet radiation in sunlight for maximum protection against general weathering effects, chalking and fading.

Since all color chips are affected by age, lighting conditions, heat and mechanical coating processes, the chips on this page may vary slightly in color or finish from the actual product. Oil canning in the flat areas of panels is inherent of coil steel products and shall not be a cause for product refusal. Chief reserves the right to change designs, prices and specifications at any time without notice.

## Acrylic Coated Galvalume® (GM)

Chief's exterior roof, wall and trim material is available in an industry standard ASTM A792 Acrylic Coated Galvalume® finish. Galvalume® is a unique coating of 55% aluminum and 45% zinc that resists corrosion. The Galvalume® sheet is coated with a thin, clear acrylic coating applied to both sides.

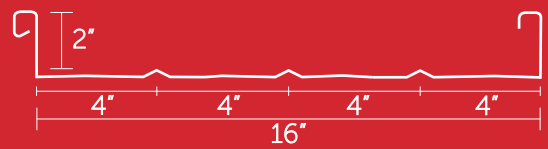
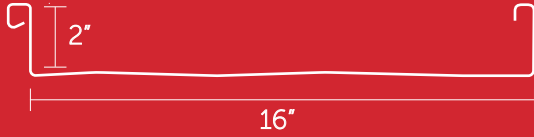


### Chief's Finish Warranties:

Ultra-Kote Premium Roof Panel Finish Limited Warranty - 35 year | Galvalume® Panel Limited Warranty - 25 year



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Note: Dimensions are nominal.

## MVF

### Standing Seam Roof System

- Roll-formed profile shall be MVF (Mechanically seamed Vertical leg Flat panel) as manufactured by Chief Buildings. Panels shall have an interlocking 2" deep vertical leg spaced at 16" center. Each panel shall provide a net coverage width of 16".
- Side laps shall be sealed with factory-applied non-skinning, non-hardening mastic. The side laps shall be field seamed using a mechanical seaming device provided by the manufacturer.
- Panels shall be manufactured from 24 gauge, 50,000 PSI material.
- The MVF roof system shall have concealed clips. Clips shall be floating (sliding) to allow for thermal movement.
- Panels shall be one piece for slope lengths less than 51'-4". The panel endlap, if required, shall have butyl sealant sandwiched between the top and bottom panel with a heavy gage factory applied metal backer plate.
- Roof panel assemblies shall have a UL Class 90 uplift rating in accordance with UL 580 "Tests for Uplift Resistance of Roof Assemblies".
- Roof system shall have been tested in accordance with the procedures in ASTM E1592 (Structural Performance by Uniform Static Air Pressure Differential).
- Roof panel assemblies shall have permanent resistance to air leakage through assembly of not more than 0.0026 cfm/sf of fixed roof area when tested according to ASTM E1680 at a static pressure differential of 6.25 psf.
- Roof panel assemblies shall have no water penetration as defined in the test method when tested according to ASTM E1646 at a static pressure differential of 12.0 psf.
- No field notching of panels shall be required.
- Panel finish shall be acrylic coated Galvalume® AZ55 coating in accordance with ASTM A792.

#### OR

Substrate shall be Galvalume® AZ50 coating in accordance with ASTM A792. Sheets shall be coated with a fluoropolymer topcoat containing not less than 70% polyvinylidene fluoride (PVDF) over primer with total DFT of 0.8 - 1.0. The reverse side shall be coated with pigmented polyester. Exterior color to be selected from Chief standard color choices.

## MVP

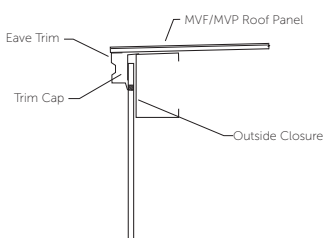
### Standing Seam Roof System

- Roll-formed profile shall be MVP (Mechanically seamed Vertical leg Pencil-rib panel) as manufactured by Chief Buildings. Panels shall have an interlocking 2" deep vertical leg spaced at 16" center, with 3 minor pencil ribs evenly spaced between the vertical legs. Each panel shall provide a net coverage width of 16".
- Side laps shall be sealed with factory-applied non-skinning, non-hardening mastic. The side laps shall be field seamed using a mechanical seaming device provided by the manufacturer.
- Panels shall be manufactured from 24 gauge, 50,000 PSI material.
- The MVP roof system shall have concealed clips. Clips shall be floating (sliding) to allow for thermal movement.
- Panels shall be one piece for slope lengths less than 52'-0". The panel endlap, if required, shall have butyl sealant sandwiched between the top and bottom panel with a heavy gage factory applied metal backer plate.
- Roof panel assemblies shall have a UL Class 90 uplift rating in accordance with UL 580 "Tests for Uplift Resistance of Roof Assemblies".
- Roof system shall have been tested in accordance with the procedures in ASTM E1592 (Structural Performance by Uniform Static Air Pressure Differential).
- Roof panel assemblies shall have no air leakage through assembly of not more than 0.0026 cfm/sf of fixed roof area when tested according to ASTM E1680 at a static pressure differential of 6.25 psf.
- Roof panel assemblies shall have no water penetration as defined in the test method when tested according to ASTM E1646 at a static pressure differential of 12.0 psf.
- No field notching of panels shall be required.
- Panel finish shall be acrylic coated Galvalume® AZ55 coating in accordance with ASTM A792.

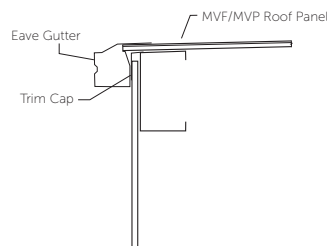
#### OR

Substrate shall be Galvalume® AZ50 coating in accordance with ASTM A792. Sheets shall be coated with a fluoropolymer topcoat containing not less than 70% polyvinylidene fluoride (PVDF) over primer with total DFT of 0.8 - 1.0. The reverse side shall be coated with pigmented polyester. Exterior color to be selected from Chief standard color choices.

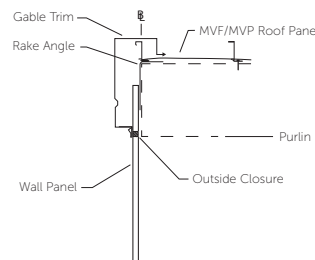
### Eave Trim



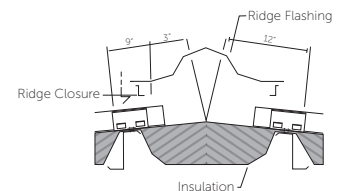
### Eave Gutter



### Gable Trim



### Eave to Ridge



Galvalume® is a registered trademark of BIEC International, Inc. | Kynar 500® is a registered trademark of Arkema, Inc. | Hylar 5000® is a registered trademark of Solvay Solexis, Inc.



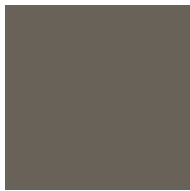
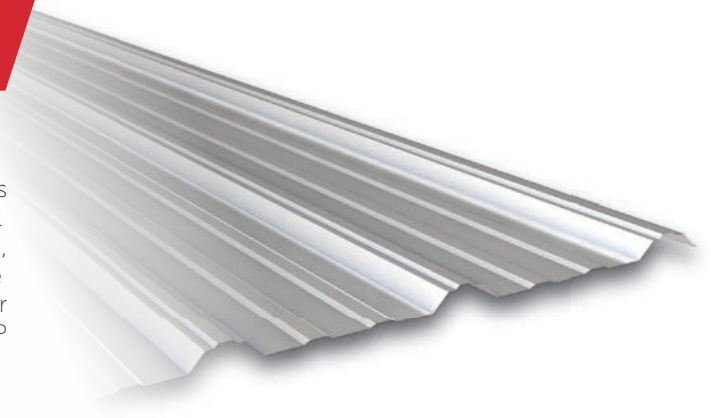
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# CS/AP PANELS

Specifications and Color Options

## Superior materials make the difference...

Premium finishes and design give Chief's Standard Panels (CS) and Chief's Architectural Panels (AP) the edge when it comes to quality steel roof and wall panels. They're ideal for a variety of other applications as well. Interior liners, fascias, canopies, and soffits are just some of the many uses for this versatile panel. With a 1 1/8" deep corrugation for added strength, 36" panel widths for quicker erection and availability in many different colors, Chief's CS and AP ribbed panels are the perfect choice for your construction project.



Antique Bronze (AQ)



Ash Gray (AG)



Charcoal Gray (CG)



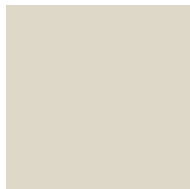
Cherokee (CK)



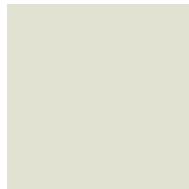
Emerald Green (EG)



Fieldstone (FS)



Parchment (PA)



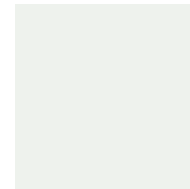
Polar White (PW)



Royale Blue (RB)



Sierra Madre (SM)



White Polyester (WP)

### White Polyester

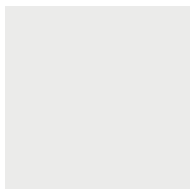
Chief's White Polyester is an economical finish intended for interior applications only and is a non-warranty product. Available in 29 ga. only.

## Ultra-Kote Premium (UKP) Finish

Chief's Ultra-Kote Premium finish is made with polyvinylidene fluoride resin, where a minimum of 70% of the resin is PVDF (Kynar 500® or Hylar 5000®). This unique chemistry is combined with acrylic resin, as well as ceramic and select inorganic pigmentation. The result is Ultra-Kote Premium's proven ability to resist ultraviolet radiation in sunlight for maximum protection against general weathering effects, chalking and fading. Choose from the full selection of colors above.

\*All colors 26 & 24 ga. except White Polyester (29 ga.)

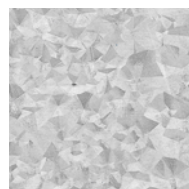
\*\*Chief maintains stock inventory of Polar White and Galvalume®. All other colors shown are available as Chief standard colors but my not be in stock.



Frost White (FW)

### Ultra-Kote (UK) Finish

Chief's Ultra-Kote finish is made with CERAM-A-STAR®, which sets the standard in the metal bulking industry for silicone polyester coatings. This tried-and-true coating allows metal buildings to maintain color and integrity over decades of harsh weather conditions. Its unique chemistry provides superior color stability, chalk resistance, fade resistance, and gloss retention.



Galvalume (GM)

### Acrylic Coated Galvalume® (GM)

Chief's exterior roof, wall and trim material is available in an industry standard ASTM A792 Acrylic Coated Galvalume® finish. Galvalume® is a unique coating of 55% aluminum and 45% zinc that resists corrosion. The Galvalume® sheet is coated with a thin, clear acrylic coating applied to both sides.

Since all color chips are affected by age, lighting conditions, heat and mechanical coating processes, the chips on this page may vary slightly in color or finish from the actual product. Oil canning in the flat areas of panels is inherent of coil steel products and shall not be a cause for product refusal. Chief reserves the right to change designs, prices and specifications at any time without notice.

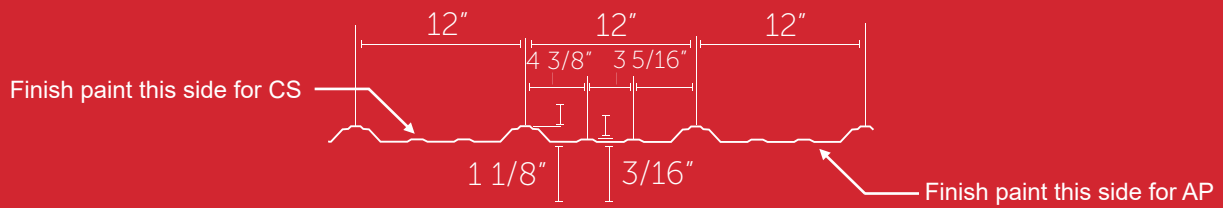


#### Chief's Finish Warranties:

Ultra-Kote Premium Panel Finish Limited Warranty - 35 year | Ultra-Kote Panel Finish Limited Warranty - 25 year | Galvalume® Panel Limited Warranty - 25 year



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Note: Dimensions are nominal.

### Ribbed Roof Panel

- a. Roll-formed profile shall be CS (Chief Standard) configuration as manufactured by Chief Buildings. Panels shall have 1 1/8" deep major ribs spaced at 12" on center, with minor ribs between major ribs. Each panel shall provide a net coverage width of 36".
- b. Panels shall be manufactured from 26 gauge or 24 gauge, 80,000 PSI material.
- c. Provide roof panel assemblies with permanent resistance to air leakage through assembly of not more than 0.005 cfm/sf of fixed roof area when tested according to ASTM E1680 at a static pressure differential of 6.24 psf.
- d. Provide roof panel assemblies with no water penetration as defined in the test method when tested according to ASTM E1646 at a static pressure differential of 12.0 psf.
- e. Provide roof panel assemblies with UL Class 30, 60, or 90 uplift rating in accordance with UL 580 "Tests for Uplift Resistance of Roof Assemblies".
- f. Provide roof panel assemblies with UL Class A Fire Rating in accordance with UL 790 "Test Methods for Fire Tests of Roof Coverings".
- g. Provide roof panel assemblies with UL Class 4 Impact Rating in accordance with UL 2218 "Impact Resistance of Prepared Roof Covering Material".
- h. Panels shall be one piece for slope lengths less than 39'-6". Endlaps, if required, shall be 8" and occur at a purlin.
- i. Panel finish shall be acrylic coated Galvalume® AZ55 coating in accordance with ASTM A792.

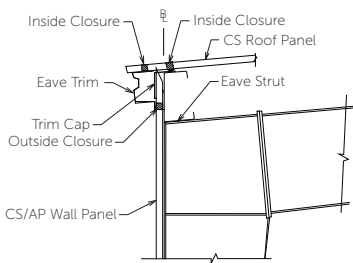
#### OR

Substrate shall be Galvalume® AZ50 coating in accordance with ASTM A792. Sheets shall be coated with a fluoropolymer topcoat containing not less than 70% polyvinylidene fluoride (PVDF) over primer with total DFT of 0.8-1.0. The reverse side shall be coated with pigmented polyester. Exterior color to be selected from Chief standard color choices.

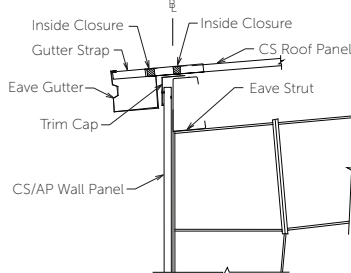
### Exterior Wall Panel

- a. Roll-formed profile shall be CS (Chief Standard) or AP (Architectural Panel) configuration as manufactured by Chief Buildings. Panels shall have 1 1/8" deep major ribs spaced at 12" on center, with minor ribs between major ribs. Each panel shall provide a net coverage width of 36".
- b. Manufactured from 26 gauge or 24 gauge, 50,000 PSI or 80,000 PSI material.
- c. Provide wall panel assemblies (when installed with mastic in the walls) with permanent resistance to air leakage through assembly of not more than 0.006 cfm/sf of fixed wall area when tested according to ASTM E283 at a static pressure differential of 6.24 psf.
- d. Provide wall panel assemblies (when installed with mastic in the walls) with no water penetration as defined in the test method when tested according to ASTM E331 at a static pressure differential of 12.0 psf.
- e. Substrate shall be Galvalume® AZ50 coating in accordance with ASTM A792.
- f. Sheets shall be coated with a fluoropolymer topcoat containing not less than 70% polyvinylidene fluoride (PVDF) over primer with total DFT of 0.8-1.0. The reverse side shall be coated with pigmented polyester. Exterior color to be selected from Chief standard color choices.

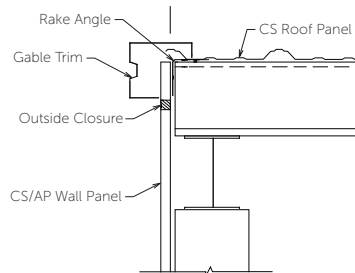
#### Eave Trim



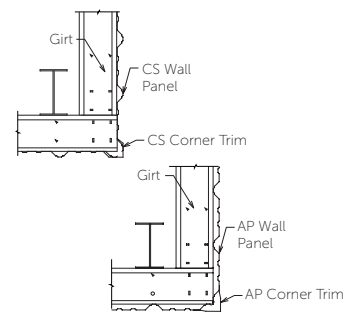
#### Eave Gutter



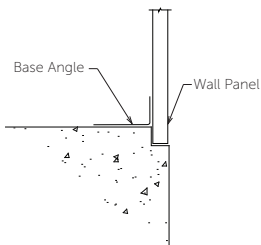
#### Gable Trim



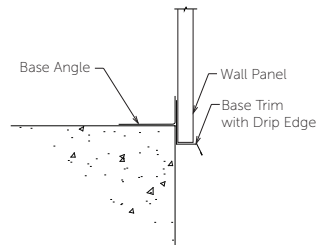
#### Outside Corner



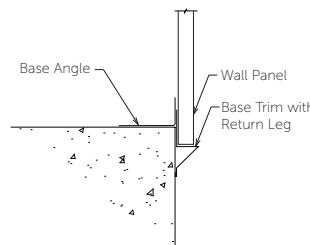
#### Notch in Concrete



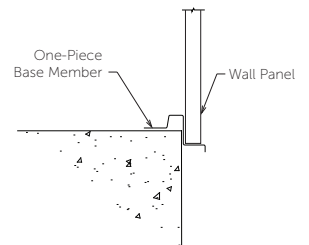
#### Base Trim with Drip Edge



#### Base Trim with Return Leg



#### One Piece Base Member



Galvalume® is a registered trademark of BIEC International, Inc. | Kynar 500® is a registered trademark of Arkema, Inc. | Hylar 5000® is a registered trademark of Solvay Solexis, Inc. CERAM-A-STAR® is a registered trademark of AkzoNobel



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## Unmatched strength and lasting durability

Achieve commercial-grade strength and lasting durability for your customers' long-term return on investment. Pella Impervia products are made from our proprietary fiberglass material, the strongest material for windows and patio doors, engineered for lasting durability.<sup>1</sup>

## Revolutionary hardware

Introducing a revolutionary way to operate casement and awning windows. This patent-pending, Easy-Slide Operator simply slides to open, without the effort of cranking.

- **100x more impact resistant<sup>2</sup>**

Pella's fiberglass is 100x more impact-resistant than Andersen's Fibrex windows. You can trust our fiberglass products to be better equipped to stand up to a hammer misfire and other jobsite conditions.

- **Proven performance**

Engineered for the rigorous performance requirements of a commercial building, Pella Impervia products provide outstanding resistance to water, wind and outside noise.<sup>3</sup>

- **Installation solutions and expertise**

With nearly 100 years in business, we've got you covered with products and installation solutions for your exact situation.

- **Exceptional mulling capabilities**

With both interior and exterior accessory grooves on all Pella fiberglass products, you can create larger, unique combinations specifically for your remodel or new construction project. Our extensive factory-mulled options will come preassembled, saving you time on the jobsite.

# Pella<sup>®</sup> Impervia<sup>®</sup>

Fiberglass windows and patio doors

## Sleek profiles and more glass

Create bold designs from sleek profiles and more glass with our intentionally-designed products made from our exceptionally strong proprietary fiberglass.

- **Up-to-date color palette**

Achieve your design style with up-to-date frame color options, including Black.

- **Tested beyond requirements**

Tested beyond industry standards and to extremes from -40°F to 180°F, our proprietary fiberglass can handle the most extreme heat and sub-zero cold.<sup>4</sup> Our products are tested beyond industry standards to help ensure less maintenance with fewer callbacks.

- **Durable three-way corner joints**

For added strength, durability and reliable water performance, Pella Impervia products feature corner locks and sashes injected with sealant and fastened with screws.

- **The confidence of a strong warranty<sup>5</sup>**

We know your reputation matters, so we have one of the strongest warranties in the business.

### Available in these window and patio door styles:



Special shape windows also available.

<sup>1,2,3,4,5</sup> See back cover for disclosures.



# Delivering **unmatched strength**, engineered for **lasting durability**.<sup>1</sup>

Pella's Proprietary Fiberglass vs. Andersen Fibrex<sup>2,6,7</sup>  
 Pella Impervia products won't dent, bend or break as much as the competition.

**Won't dent.**  
**100x**  
 more impact-resistant

**Won't bend.**  
**10x**  
 stronger

**Won't break.**  
**20x**  
 the tensile strength

## Product Specifications

Window & Patio Door Styles	Min. Width	Min. Height	Max. Width	Max. Height	Performance Class & Grade	Performance Values			Frame/Install
						U-Factor	SHGC	STC	
Vent Awning	20"	17-1/2"	59-1/2"	59-1/2"	LC30-LC50	0.18-0.48	0.16-0.55	29-37	Block Frame, Standard Fin, Off-set Fin, Integral Fin
Fixed Awning	13-1/2"	11-1/2"	71-1/2"	79-1/2"	LC45-LC50	0.16-0.49	0.18-0.63	28-36	
Vent Casement	17-1/2"	20"	37-1/2"	79-1/2"	LC45-LC50	0.26-0.45	0.18-0.55	25-32	
Fixed Casement	13-1/2"	11-1/2"	71-1/2"	79-1/2"	LC45-LC50	0.22-0.48	0.20-0.62	27-33	
Vent Double-Hung	17-1/2"	29-1/2"	47-1/2"	77-1/2"	LC30-LC50	0.25-0.49	0.19-0.58	26-29	
Vent Single-Hung	17-1/2"	23-1/2"	47-1/2"	77-1/2"	LC40-LC50	0.24-0.51	0.19-0.59	26-32	Block Frame, Standard Fin, Off-Set Fin, Integral Fin, Flush Frame
Sliding Window (OX, XO)	23-1/2"	11-1/2"	71-1/2"	71-1/2"	LC30-LC50	0.25-0.50	0.19-0.59	26-33	
Sliding Window (XOX)	47-1/2"	17-1/2"	107-1/2"	71-1/2"	LC30-LC50	0.25-0.50	0.19-0.59	26-32	
Fixed Sash and Frame	13-1/2"	13-1/2"	71-1/2"	71-1/2"	CW35-CW50	0.22-0.50	0.20-0.62	27-33	
Fixed Frame Direct Set	11-1/2"	11-1/2"	143-1/2"	143-1/2"	CW50	0.14-0.46	0.18-0.69	28-36	Block Frame, Standard Fin, Off-Set Fin
Sliding Patio Door (One Panel)	27"	71-1/2"	50-5/8"	119-1/2"	LC30-LC50	0.17-0.48	0.19-0.59	29-33	Block Frame, Standard Fin, Off-Set Fin
Sliding Patio Door (Two Panel)	59-1/4"	71-1/2"	95-1/4"	119-1/2"	LC30-LC50	0.17-0.48	0.19-0.59	29-33	
Sliding Patio Door (Three Panel)	91-7/8"	71-1/2"	145-7/8"	119-1/2"	LC35-LC50	0.17-0.48	0.19-0.59	29-33	

Window sizes available in 1/8" increments

Maximum square footage rules apply. Maximum width and height cannot exceed the maximum square footage. Special shapes available.  
 Two and three-panel sliding patio door configurations that are greater than or equal to 95.5" in height will come knock-down and require field assembly.  
 Knock-down will be optional for two and three-panel configurations until 95.5" in height.

## Glass & Additional Energy Efficiency Upgrades

### InsulShield® Low-E Glass<sup>8</sup>

Pella Impervia products offer energy-efficient options that will meet or exceed ENERGY STAR guidelines in all 50 states.<sup>10</sup>



**Advanced Low-E insulating dual- or triple-pane glass with argon**



**Advanced Comfort Low-E insulating dual-pane glass with argon**

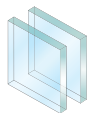


**Natural Sun Low-E insulating dual- or triple-pane glass with argon**

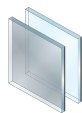


**SunDefense™ Low-E insulating dual- or triple-pane glass with argon**

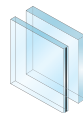
### Additional Glass Options



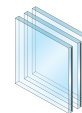
**Tempered glass**



**Laminated (non-impact-resistant)<sup>10</sup>, tinted<sup>11</sup> or obscure glass also available on select products**



**STC (Sound Transmission Class)-improved dual-pane sound control glass<sup>12</sup>**



**Triple Pane<sup>13</sup>**

### Foam Insulation Options

Optional foam-insulated frame and sash are available to increase energy efficiency.

## Color & Finishes

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### Frame Colors

Our long-lasting powder-coat finish resists chipping and fading and meets AAMA 624, which is a highly-rated fiberglass finish that will never need to be repainted or refinished.

#### Solid-Color:



White



Brown



Black

## Window Hardware

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### Casement & Awning

The patent-pending Easy-Slide Operator is a revolutionary way to operate casement and awning windows. Simply slide to open, without the effort of cranking. With precision venting technology, the window will open to an exact location. Or select the fold-away crank, that folds neatly away, against the window frame. Neither solution will interfere with roomside window treatments.



Easy-Slide Operator



Fold-Away Crank

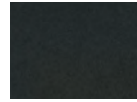
#### Color-Matched Finishes:



White



Brown



Matte Black

#### Additional Finish<sup>14</sup>:



Satin Nickel

### Sliding, Single & Double-Hung

Pella's cam-action lock pulls the sashes against the weatherstripping on single-hung, double-hung and sliding windows for a tighter seal.



Cam-Action Lock

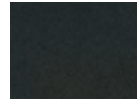
#### Color-Matched Finishes:



White



Brown



Matte Black

#### Additional Finish:



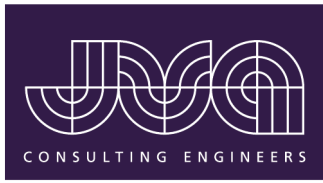
Satin Nickel



Bright Brass



Oil-Rubbed Bronze



JVA, Incorporated  
817 Colorado Avenue  
Suite 301  
Glenwood Springs,  
CO 81601  
970.404.3100  
info@jvajva.com

September 1, 2022

Mr. Silas Clarke, City Administrator  
City of Ouray  
320 6th Avenue  
Ouray, CO 81427

[www.jvajva.com](http://www.jvajva.com)

Reference: City of Ouray Wastewater Treatment Facility Expansion Construction Phase Services - Letter Agreement for Engineering Services

Dear Silas:

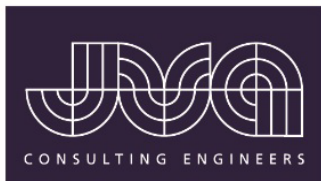
JVA, Inc. is pleased to present this letter agreement to the City of Ouray (Ouray) for engineering services to complete construction administration for the Wastewater Treatment Facility (WWTF) Expansion. JVA recently completed the 90 percent Design Phase of the project, extensive value engineering and contractor Guaranteed Maximum Price (GMP) analysis and comparison. A GMP is expected to be accepted by the City on September 6, 2022 and construction will soon commence.

### **SCOPE OF SERVICES**

Based on JVA's previous efforts and our knowledge of the project, the engineering services anticipated for the remainder project include the following detailed tasks for each phase:

#### **TASK 1 – Construction Administration**

1. JVA will coordinate and attend a pre-construction meeting with the City and CMAR Contractor. We will prepare an agenda and distribute minutes following the meeting.
2. JVA will review equipment, product, and material submittals transmitted by the CMAR for conformance with the construction documents. Submittals will be received, reviewed and returned to the CMAR electronically with an electronic submittal review stamp. JVA will maintain and update the submittal review log accordingly.
3. At a minimum, JVA will attend weekly construction meetings and coordinated site visits to observe the construction progress. JVA will attend frequent site visits over the course of 20 months of active construction.
4. JVA will perform construction observation for concrete reinforcement, concrete placement, excavation, pipe bedding, pipe placement, and backfill. The City will be responsible for retaining a qualified third-party laboratory for special inspections (concrete and soils testing). Third party services will be paid for by the City and coordinated by the CMAR.
5. JVA will review monthly pay applications submitted by the CMAR. JVA will review the construction progress and materials stored on-site to the amount of the scheduled value requested in the pay application. If the construction progress and materials stored on site do not generally match the requested scheduled values the pay application will be amended by the CMAR. Once reviewed and accepted, JVA will submit the pay application to the recommending payment.
6. JVA will assist the City with the State Revolving Loan and compliance with the loan requirements. We will review submittals for compliance with American-Iron and Steel (AIS), review pay applications for compliance with Davis-Bacon and subcontractors for Debarment. JVA will also perform Davis Bacon wage interviews with general contractors and subcontractors.



7. JVA will prepare responses to Request for Information (RFI) from the CMAR. The intent of the RFI is to provide clarification and detail to facilitate construction progress. RFI are not meant for changing the construction cost or construction schedule.
8. JVA will attend major unit operations and treatment process start-ups. JVA will assist in coordination and documentation of the start-up and training sessions with the CMAR and City. JVA will video tape the start-up and training sessions and provide to the City. All start-up forms and testing checklists will be included in applicable O&M manuals.
9. JVA will prepare construction punch lists for substantial and final completion. Once the CMAR completes the substantial completion punch list items to JVA's and City's satisfaction, JVA will recommend final payment (including retainage) to the CMAR for project closeout.
10. JVA will document the start of warranty for each major piece of equipment and material which will be included in applicable O&M manuals. During the warranty period, JVA will assist the City in coordination with the CMAR and equipment manufacturer/s to correct the problem or deficiency.
11. JVA will review and assemble two hard copy O&M manuals for all the process equipment, electrical, mechanical and miscellaneous items provided by the CMAR. An electronic copy will also be produced and provided to the City.
12. Following project completion, JVA will prepare record drawings of the "as-built conditions". Two 11" by 17" hard copies and one 24" by 36" hard copy along with electronic pdf and AutoCAD drawings will be submitted to the City.
13. Immediately following project closeout, JVA will produce a certification letter to CDPHE documenting that the project was constructed in accordance with the approved contract documents.

## **BASIS OF PAYMENT**

The basis of payment for the scope of work described above will be monthly billings based on a percentage of Lump Sum completed to date with a Not-to-Exceed amount of \$1,080,000 as shown below. Expenses including express delivery, mileage, car rentals, meals, lodging, printing, copying, and shipping are included in the fee and estimated to be \$87,000. Subconsultant fees for electrical and controls, mechanical and architectural are included in the fee. JVA's fees are based upon a 20 month active construction duration for the project.

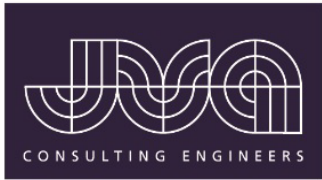
### **Basic Engineering Services**

Task 1 – Construction Administration	\$ 998,000
Reimbursable Expenses	<u>\$ 92,000</u>
<b>TOTAL LUMP SUM FEE</b>	<b>\$ 1,090,000</b>

These fees are based upon the above assumptions and discussions to date. Services resulting from significant changes to the project scope will be considered additional services and may require extension of the time schedule for JVA's work. This proposed fee does not include special inspection for concrete and soils.


## **SCHEDULE**

A Notice of Award for the CMAR Contractor is expected soon and we anticipate a Notice to proceed in September with Construction beginning by the end of September 2022.



We appreciate the opportunity to continue to serve the City in your consulting engineering needs and look forward to a successful project. If you have any questions about this letter or the scope described herein, please do not hesitate to contact me.

Sincerely,  
JVA, INCORPORATED

By:   
Cooper Best, P.E.  
Regional Manager



JVA, Incorporated  
817 Colorado Avenue  
Suite 301  
Glenwood Springs,  
CO 81601  
970.404.3100  
info@jvajva.com

September 1, 2022

Mr. Silas Clarke, City Administrator  
City of Ouray  
320 6th Avenue  
Ouray, CO 81427

[www.jvajva.com](http://www.jvajva.com)

Reference: City of Ouray Wastewater Treatment Facility Expansion Project – GMP  
Recommendation of Award

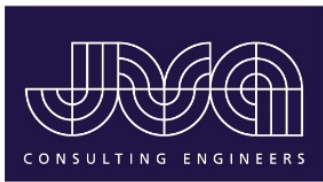
Dear Silas:

On July 29, 2022, a Guaranteed Maximum Price (GMP) was received from Moltz Construction for the City of Ouray Wastewater Treatment Facility (WWTF) Expansion Project in the amount of \$19,524,101. The GMP was based upon the 90 percent drawings and project manual prepared by JVA. The GMP included a list of assumptions, exclusions, clarifications as well as contractor and owner contingencies.

JVA, City staff and Moltz conducted a review and discussion of the GMP recognizing that the amount exceeded the City's loan amount for the project. Moltz Construction proceeded to conduct a detailed value engineering exercise of their GMP to propose additional ideas to reduce the overall GMP for the project and uncover any errors or oversights. JVA conducted a brief review of the proposed value engineering ideas and Moltz committed to revising and resubmitting their GMP to incorporate several of the proposed ideas.


Recognizing that the GMP from Moltz exceeded the loan amount, JVA and City staff requested a second GMP from Aslan Construction based on the 90 percent drawings and project manual for comparison. Aslan Construction proposed and interviewed for the CMAR Construction Services phase of the project and ranked second place to Moltz Construction. A revised GMP from Moltz Construction was received on August 31, 2022, in the amount of \$18,778,956 based upon the 90 percent drawings and project manual and the proposed value engineering ideas. The GMP included owner and contractor contingencies.

On Tuesday, August 31, 2022, a GMP was received Aslan Construction in the amount of \$16,884,000. The GMP was based upon the 90 percent drawings and project manual and included a list of assumptions and exclusions. It's important to note that the value engineering ideas proposed by Moltz Construction were not included in the Aslan GMP. The GMP from Aslan Construction included contractor contingency but did not include owner contingency. JVA recommends an owner contingency in the amount of \$450,000 which equates to a total GMP of \$17,334,000.



Based on the comprehensive GMP evaluation, JVA, Inc. recommends that the project be awarded to Aslan Construction for the amount of \$17,334,000 as outlined in the attached GMP package. JVA understands the City will review and vote on the Recommendation of Award at the City Council meeting on Tuesday, September 6, 2022. If you have any questions, do not hesitate to contact me and our JVA team looks forward to moving this project into the construction phase.

Sincerely,  
JVA, Incorporated

By:   
Cooper Best, P.E.  
Regional Manager



## ASLAN CONSTRUCTION

August 30, 2022

City of Ouray  
320 6<sup>th</sup> Avenue  
Ouray, CO 81427

Attn: City Council

Re: WWTF Expansion

Dear Council Members,

Aslan Construction offers to provide labor and materials for modifications to the Wastewater Treatment Facility Expansion project as shown in the 90% Specifications and Drawing provided by JVA for a GMP of \$16,884,000.00 with the following assumptions:

1. Proposal assumes sludge removal process by Denali.
2. Veolia Proposal Conditions:
  - Our proposal does not allow for MBBR and DAF pre-construction phase services.
  - Our proposal includes the \$23,000.00 deduct for providing ABS Mixers in lieu of Flygt Mixers.
3. Electrical Conditions:
  - Canopy heat trace is not included. ADD \$ 6,400.00 if required.
4. The following equivalent equipment is incorporated in our proposal:
  - Division 11115 (In-Line Grinders) (Vogelsang IQ112-144 Grinder)
  - Division 11332 (Fine Screen & Vertical Screw) (SAVECO) (GCP500XLH SPEC0 Water-Master)\_
  - Division11460(Chemical\_Metering\_Pumps)PoMinent GMXA1009PVT2Q000DC1300EN
5. Division 09960 (High Performance Coating)
  - No System 29 is included in our proposal.
6. Specification 07400 & 07531 (Standing Seam & EPDM Roofing): The special warranty for 32 hours per year is excluded.
7. Specification Section 01010, Paragraph 1.5.H.1:
  - Our proposal is contingent on existing lagoon process fluids being pumped to the proposed wastewater treatment plant at a minimum rate of 75,000 gallons per day.



## ASLAN CONSTRUCTION

8. Wetland Removal:  
-Our proposal is contingent on wetland earth and rock materials staying on site and being utilized to fill the existing lagoons.
9. Our proposal is based on a balanced earthwork project with no import or export.
10. Drawing P6.3: The detailed dumpster is not included in our proposal.
11. Specification 06610, Paragraph 1.1.A: No FRP Parshall Flume is included in our proposal.

### GMP Breakdown By Division

Division 1	\$980,000.00
Division 2	\$1,958,000.00
Division 3	\$1,905,000.00
Division 4	\$895,000.00
Division 5	\$413,000.00
Division 6	\$50,000.00
Division 7	\$598,000.00
Division 8	\$147,000.00
Division 9	\$400,000.00
Division 10	\$18,000.00
Division 11	\$4,955,000.00
Division 12	\$60,000.00
Division 14	\$40,000.00
Division 15	\$1,985,000.00
Division 16	\$2,480,000.00

GMP: **\$16,884,000.00**

Please be in touch if I can be of further assistance.

Sincerely,

  
Michael Pelphey

# AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **City of Ouray (City)** (“Owner”) and **Aslan Construction** (“Contractor”). Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

## ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

All necessary labor, supervision, equipment, tools, and materials for improvements of the wastewater treatment facility (WWTF), includes but is not limited to the construction of a new mechanical WWTF and decommissioning the existing lagoons. The new mechanical facility is inside a building that includes screening and vortex grit removal, a moving bed bioreactor (MBBR) secondary treatment system, dissolved air flotation (DAF) clarification, ultraviolet (UV) disinfection, a non-potable water pumping system, aerobic digestion and dewatering, and chemical addition. There will also be an operations building with offices/workspace, operations room, and an electrical room within the building. Work also includes installation of the following equipment: laser flow meter in manhole; mechanical fine screen; vortex grit removal with pump and classifier; blowers; pumps; mixers; diffused air systems; MBBR media retention screens; dissolved air flotation (DAF) tanks and thickener system; air compressors; chemical feed and storage systems; dewatering press and polymer blending system; digester mixing/aeration system; UV disinfection system; v-notch weir; and all ancillary equipment, site piping, process piping, and appurtenances. Work to include all associated site work related to the project including but not limited to grading, storm drainage, paving and seeding. In addition, work consists of installation of all electrical conduit and wiring, new electrical service, power panel, motor control centers, programmable logic controllers, and controls and integration.

## ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

The Work will include all necessary labor, supervision, equipment, tools, and materials to furnish, install, and construct improvements and buildings associated with the WWTF Expansion at the City of Ouray WWTF site. Work includes, but is not limited, to the following:

All necessary labor, supervision, equipment, tools, and materials for improvements of the wastewater treatment facility (WWTF), includes but is not limited to the construction of a new mechanical WWTF and decommissioning the existing lagoons. The new mechanical facility is inside a building that includes screening and vortex grit removal, a moving bed bioreactor (MBBR) secondary treatment system, dissolved air flotation (DAF)

clarification, ultraviolet (UV) disinfection, a non-potable water pumping system, aerobic digestion and dewatering, and chemical addition. There will also be an operations building with offices/workspace, operations room, and an electrical room within the building. Work also includes installation of the following equipment: laser flow meter in manhole; mechanical fine screen; vortex grit removal with pump and classifier; blowers; pumps; mixers; diffused air systems; MBBR media retention screens; dissolved air flotation (DAF) tanks and thickener system; air compressors; chemical feed and storage systems; dewatering press and polymer blending system; digester mixing/aeration system; UV disinfection system; v-notch weir; and all ancillary equipment, site piping, process piping, and appurtenances. Work to include all associated site work related to the project including but not limited to grading, storm drainage, paving and seeding. In addition, work consists of installation of all electrical conduit and wiring, new electrical service, power panel, motor control centers, programmable logic controllers, and controls and integration.

### **ARTICLE 3—ENGINEER**

3.01 The Owner has retained **JVA, Incorporated** (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by Engineer.

### **ARTICLE 4—CONTRACT TIMES**

4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Days*

A. The Work will be substantially complete within **600 Calendar Days** after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **700 Calendar Days** after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion:* Contractor shall pay Owner \$1,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
  2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1,000 for each day that expires after such time until the Work is completed and ready for final payment.
  4. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently. Liquidated damages shall be deducted from the final payment.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

#### 4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

## **ARTICLE 5—CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

## ARTICLE 6—PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

- A. Contractor shall submit each payment application by the first of every month. Engineer shall have 10 days to review the payment application. Owner shall review payment applications at the City Council meeting on the third Monday of each month and make progress payments on the basis of Contractor's Applications for payment on or about **the first of the month following the third Monday** of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

- 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

- a. **95** percent of the value of the Work completed (with the balance being retainage).
- b. **95** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **95** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions which includes liquidated damages, and less **200** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

### 6.04 *Consent of Surety*

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

### 6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of **1.5** percent per annum.

## ARTICLE 7—CONTRACT DOCUMENTS

### 7.01 *Contents*

- A. The Contract Documents consist of all of the following:
1. This Agreement.
  2. Bonds:
    - a. Performance bond (together with power of attorney).
    - b. Payment bond (together with power of attorney).
  3. General Conditions.
  4. Supplementary Conditions.
  5. Specifications as listed in the table of contents of the Project Manual (not attached but incorporated by reference).
  6. Drawings (not attached but incorporated by reference) dated June of 2022 with PDF specification and modifications dated August 5, 2022 with each sheet bearing the following general title: **City of Ouray WWTF Expansion**. The Drawings incorporate the revisions summarized in the Contractor's GMP Proposal and Assumptions Letter, dated August 30, 2022.
  7. Exhibits to this Agreement (enumerated as follows):

**Contractor's GMP Proposal and Assumptions Letter, including the GMP Cost Estimate and said listed GMP shall include an additional \$450,000 in owner contingency that is not currently shown on the letter for a total of \$17,334,000.**
  8. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

### 8.01 *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents, including Addenda, if applicable.
2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## 8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

## 8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on September 6, 2022 (which is the Effective Date of the Contract).

Owner:

Contractor:

**City of Ouray**

*(typed or printed name of organization)*

**Aslan Construction**

*(typed or printed name of organization)*

By:

\_\_\_\_\_

*(individual's signature)*

By:

\_\_\_\_\_

*(individual's signature)*

Date:

\_\_\_\_\_

*(date signed)*

Date:

\_\_\_\_\_

*(date signed)*

Name:

\_\_\_\_\_

*(typed or printed)*

Name:

\_\_\_\_\_

*(typed or printed)*

Title:

\_\_\_\_\_

*(typed or printed)*

Title:

\_\_\_\_\_

*(typed or printed)*

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest:

\_\_\_\_\_

*(individual's signature)*

Attest:

\_\_\_\_\_

*(individual's signature)*

Title:

\_\_\_\_\_

*(typed or printed)*

Title:

\_\_\_\_\_

*(typed or printed)*

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name:

\_\_\_\_\_

*(typed or printed)*

Designated Representative:

Name:

\_\_\_\_\_

*(typed or printed)*

Title:

\_\_\_\_\_

*(typed or printed)*

Title:

\_\_\_\_\_

*(typed or printed)*

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone:

\_\_\_\_\_

Phone:

\_\_\_\_\_

Email:

\_\_\_\_\_

Email:

\_\_\_\_\_

*(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

License No.:

*(where applicable)*

State:

\_\_\_\_\_



## ASLAN CONSTRUCTION

August 30, 2022

City of Ouray  
320 6<sup>th</sup> Avenue  
Ouray, CO 81427

Attn: City Council

Re: WWTF Expansion

Dear Council Members,

Aslan Construction offers to provide labor and materials for modifications to the Wastewater Treatment Facility Expansion project as shown in the 90% Specifications and Drawing provided by JVA for a GMP of \$16,884,000.00 with the following assumptions:

1. Proposal assumes sludge removal process by Denali.
2. Veolia Proposal Conditions:
  - Our proposal does not allow for MBBR and DAF pre-construction phase services.
  - Our proposal includes the \$23,000.00 deduct for providing ABS Mixers in lieu of Flygt Mixers.
3. Electrical Conditions:
  - Canopy heat trace is not included. ADD \$ 6,400.00 if required.
4. The following equivalent equipment is incorporated in our proposal:
  - Division 11115 (In-Line Grinders) (Vogelsang IQ112-144 Grinder)
  - Division 11332 (Fine Screen & Vertical Screw) (SAVECO) (GCP500XLH SPECO Water-Master)\_
  - Division11460(Chemical\_Metering\_Pumps)PoMinent GMXA1009PVT2Q000DC1300EN
5. Division 09960 (High Performance Coating)
  - No System 29 is included in our proposal.
6. Specification 07400 & 07531 (Standing Seam & EPDM Roofing): The special warranty for 32 hours per year is excluded.
7. Specification Section 01010, Paragraph 1.5.H.1:
  - Our proposal is contingent on existing lagoon process fluids being pumped to the proposed wastewater treatment plant at a minimum rate of 75,000 gallons per day.



## ASLAN CONSTRUCTION

8. Wetland Removal:  
-Our proposal is contingent on wetland earth and rock materials staying on site and being utilized to fill the existing lagoons.
9. Our proposal is based on a balanced earthwork project with no import or export.
10. Drawing P6.3: The detailed dumpster is not included in our proposal.
11. Specification 06610, Paragraph 1.1.A: No FRP Parshall Flume is included in our proposal.

### GMP Breakdown By Division

Division 1	\$980,000.00
Division 2	\$1,958,000.00
Division 3	\$1,905,000.00
Division 4	\$895,000.00
Division 5	\$413,000.00
Division 6	\$50,000.00
Division 7	\$598,000.00
Division 8	\$147,000.00
Division 9	\$400,000.00
Division 10	\$18,000.00
Division 11	\$4,955,000.00
Division 12	\$60,000.00
Division 14	\$40,000.00
Division 15	\$1,985,000.00
Division 16	\$2,480,000.00

GMP: **\$16,884,000.00**

Please be in touch if I can be of further assistance.

Sincerely,

  
Michael Pelphey

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
  3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  5. *Bidder*—An individual or entity that submits a Bid to Owner.
  6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
  8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
  10. *Claim*
    - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

- requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
  - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
  13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
  14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
  15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
  16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
  17. *Cost of the Work*—See Paragraph 13.01 for definition.
  18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
  19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
  20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
  21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - 1. does not conform to the Contract Documents;
  - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
  - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
  - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2—PRELIMINARY MATTERS**

### **2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance***

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

### **2.02 *Copies of Documents***

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

### **2.03 *Before Starting Construction***

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  - 2. a preliminary Schedule of Submittals; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
  - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
  - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

## ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
  - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

### 3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
  - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

#### B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
  - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

## **ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

### 4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## 5.02 *Use of Site and Other Areas*

### A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
  - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
  2. is of such a nature as to require a change in the Drawings or Specifications;
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
  - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
  - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
- a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
  - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
  - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
  2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
  3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
  4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
  4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

#### 5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6—BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

#### 6.03 Contractor's Insurance

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
  - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

#### 6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
  2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

**ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

#### 7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  - 3) has a proven record of performance and availability of responsive service; and
  - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 *Substitutes*

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
  - a. will certify that the proposed substitute item will:
    - 1) perform adequately the functions and achieve the results called for by the general design;
    - 2) be similar in substance to the item specified; and
    - 3) be suited to the same use as the item specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 7.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

### 7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
  2. *Samples*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
  3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

*E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
  - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
  - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
  - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
  2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

**7.17 Contractor's General Warranty and Guarantee**

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
1. Observations by Engineer;
  2. Recommendation by Engineer or payment by Owner of any progress or final payment;
  3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. Use or occupancy of the Work or any part thereof by Owner;
  5. Any review and approval of a Shop Drawing or Sample submittal;
  6. The issuance of a notice of acceptability by Engineer;
  7. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

## **ARTICLE 8—OTHER WORK AT THE SITE**

### **8.01 *Other Work***

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

#### 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9—OWNER'S RESPONSIBILITIES**

### **9.01 *Communications to Contractor***

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### **9.02 *Replacement of Engineer***

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

### **9.03 *Furnish Data***

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### **9.04 *Pay When Due***

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

- 9.05 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
  - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
  - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 *Insurance*
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 *Change Orders*
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 *Limitations on Owner's Responsibilities*
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 9.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 *Evidence of Financial Arrangements*
- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).
- 9.12 *Safety Programs*
- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
  - B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

### 10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

### 10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

### 10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

## ARTICLE 11—CHANGES TO THE CONTRACT

### 11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

### 11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
  - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

### 11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
  - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

#### 11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
    - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
    - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
    - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

#### 11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 *Change Proposals*

A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

#### B. *Change Proposal Procedures*

1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### **ARTICLE 12—CLAIMS**

#### 12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
  1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
  4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
  - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
  - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
  - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## **ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **13.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
  4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
  5. Other costs consisting of the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
- 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 6. Expenses incurred in preparing and advancing Claims.
- 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
  - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
    - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
    - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:* Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance:* Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

**ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

**14.07 Owner May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

**ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

**15.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
  - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
  - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

**D. *Payment Becomes Due***

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

**E. *Reductions in Payment by Owner***

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
  - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
  3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 15.06 *Final Payment*

##### A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such adjacent areas;
  - 2. correct such defective Work;
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

#### 16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
  2. agree with the other party to submit the dispute to another dispute resolution process; or
  3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## **ARTICLE 18—MISCELLANEOUS**

### **18.01 *Giving Notice***

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### **18.02 *Computation of Times***

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such 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 release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

- SC-1.01A.22 Add the following sentence at the end of Paragraph 1.01.A.19:  
The title of Architect as used in the Contract Documents also refers to the Engineer.
- SC-1.01.A.30 Add the following sentence at the end of paragraph 1.01.A.29:  
The terms "Owner" or "City" as used in all of the Contract Documents shall refer to the City of Ouray
- SC-1.01A.34 Add the following sentence at the end of Paragraph 1.01.A.13:  
The Contract Documents includes the Project Manual which includes the Contract Forms, Conditions of the Contract, and Specifications.
- SC-1.01A.49 Add the following sentence at the end of Paragraph 1.01.A.50:  
Work shall also include the materials and equipment provided by Contractor or equipment as provided by Owner for installation by Contractor.

## ARTICLE 2—PRELIMINARY MATTERS

No Supplementary Conditions in this Article

## ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

No Supplementary Conditions in this Article

## ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

- SC-4.05 Add the following new paragraph immediately after Paragraph 4.05.G:
- H. Any and all claims for delay damages pursuant to this Article shall be made based on written notice submitted by party making the claim to the Engineer and the other party to the Contract in accordance with provisions of Article 11 and Article 12. Such claims shall be made as such delays are affecting Work and shall not be

deemed "cumulative." Failure to raise any such claims on a timely basis shall be construed as a waiver of such claims, individually

SC-4.05 Add the following new paragraph immediately after Paragraph 12.03.H:

- I. The Owner and Contractor are both aware that a portion of the construction may be conducted during winter weather conditions, and that extremely variable and severe weather conditions are typical for the site of the Work, including sustained high winds and severe wind gusts. The Contractor expressly agrees that the Contract Price is based on completion of the Work within the times specified in the Agreement and under weather conditions typically encountered during the contemplated construction period at the site of the Work. For purposes of evaluating requests for extensions of time due to unusually severe weather conditions, the following conditions, and no others, will be considered unusually severe:
  1. Precipitation exceeding the historical mean for the months of the construction period by more than one standard deviation;
  2. For winter construction, average temperature less than the historical mean for the months of the construction period by more than one standard deviation;
  3. For winter construction, number of days below freezing exceeding the historical mean for the months of the construction period by more than one standard deviation;
  4. Isolated abnormal weather occurrences of a severely destructive nature, which in fact, cause such destruction at the site of the Work.
  5. For the purpose of determining mean conditions, all available data contained in the records of the National Weather Service for reporting from, as well as data available from the State Climatologist for the same areas. The Contractor further agrees that should a request for time extension due to unusually severe weather conditions be made, the Contractor shall submit all necessary historical and detailed daily data during the construction period to support the claim.

#### **ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS**

SC-5.03.A.4 Add the following new subparagraph immediately after subparagraph 5.03.A.3:

4. Geotechnical reports are included in Section 01020-Geotechnical Report of the Project Manual.

SC-5.06 Delete Paragraphs 5.06.A and 5.06.B in their entirety and insert the following:

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.
- B. Not Used.

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
Geotechnical Engineering Report: City of Ouray Wastewater Treatment Facility 15137 State Highway 550, Ouray, CO	November 20, 2019	Technical data includes, but is not limited to, boring logs, swell consolidation tests, and grain size distribution

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data

5.06 *Hazardous Environmental Conditions*

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Date of Report	Technical Data
No such reports		

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
No such drawings		

**ARTICLE 6—BONDS AND INSURANCE**

6.01 *Performance, Payment, and Other Bonds*

- SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:
1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® C-610, Performance Bond (2010, 2013, or 2018 edition).
  2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® C-615, Payment Bond (2010, 2013, or 2018 edition).

- SC-6.01 Add the following new paragraph immediately after Paragraph 6.01.H:
- I. In addition to the performance bond specified in the General Conditions, Contractor shall furnish Labor and Material Payment Bonds and Insurance Certificates. Owner and Engineer reserve the right to reject surety providing performance and payment bonds or other bonds as specified in the Contract Documents. Contract Agreement will not be executed until surety is acceptable to Owner and Engineer.

6.02 *Insurance—General Provisions*

- SC-6.02 Delete Paragraph 6.02. B in its entirety and insert the following:
- B. All bonds and insurance required by the Contact Documents to be purchased and maintained by the Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Colorado and must be countersigned by an agent who is a resident of the State of Colorado and must be accompanied by a certified copy of the authority to act for the surety and authority to transact business in the State of Colorado.

6.03 *Contractor’s Insurance*

- SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:
- E. *Workers’ Compensation and Employer’s Liability:* Contractor shall purchase and maintain workers’ compensation and employer’s liability insurance, including, as applicable, United States Longshoreman and Harbor Workers’ Compensation Act, Jones Act, stop-gap employer’s liability coverage for monopolistic states, and foreign voluntary workers’ compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

<b>Workers’ Compensation and Related Policies</b>	<b>Policy limits of not less than:</b>
<b>Workers’ Compensation</b>	
State	Statutory
Applicable Federal (e.g., Longshoreman’s)	Statutory
<b>Employer’s Liability</b>	
Each accident	\$100,000
Disease, Policy Limit	\$500,000
Disease, Each employee	\$100,000

- F. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:

1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
  2. damages insured by reasonably available personal injury liability coverage, and
  3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
    - a. Such insurance must be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  4. Underground, explosion, and collapse coverage.
  5. Personal injury coverage.
  6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
  4. Any exclusion of coverage relating to earth subsidence or movement.
  5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).

6. Any limitation or exclusion based on the nature of Contractor’s work.
7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. *Commercial General Liability—Minimum Policy Limits*

<b>Commercial General Liability</b>	<b>Policy limits of not less than:</b>
General Aggregate	\$1,000,000
Products—Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$500,000
Bodily Injury and Property Damage—Each Occurrence	\$500,000
Property liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable	

- J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
<b>Combined Single Limit</b>	
Combined Single Limit (Bodily Injury and Property Damage)	\$2,000,000

- K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

<b>Excess or Umbrella Liability</b>	<b>Policy limits of not less than:</b>
Bodily Injury and Property Damage	\$2,000,000
Retention	\$10,000

6.04 *Builder’s Risk and Other Property Insurance*

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

- F. *Builder’s Risk Requirements:* The builder’s risk insurance must:
1. be written on a builder’s risk “all risk” policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition

occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).

- a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
  - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.
2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
  3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, engineers, and architects).
  4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
  5. extend to cover damage or loss to insured property while in transit.
  6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
  7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
  8. include performance/hot testing and start-up, if applicable.
  9. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued
  10. include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds."
- G. Contractor shall purchase and maintain equipment breakdown insurance and any other additional property insurance required by Laws and Regulations, which insurance will include the interest of Owner, Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each

and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

## **ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES**

SC-7.07 Add the following new paragraph immediately after Paragraph 7.07.M:

- N. Contractor shall certify that as of the date of the contract Contractor does not knowingly employ or contract with an illegal alien and contractor has participated in the basic pilot program of the State of Colorado to verify that no illegal aliens are employed.

### **7.10 Taxes**

SC-7.10 Delete paragraph 7.10.A in its entirety and insert the following in its place:

- A. Owner is exempt from Colorado State Sales and Use Taxes on materials and equipment to be incorporated in the Work (said taxes shall not be included in the Contract Price or modifications to the Contract Price). Prior to purchase of any materials to be incorporated in the Work, the Contractor and any Subcontractor shall apply to the Colorado Department of Revenue for an exemption to be used for all materials and work done under this Contract (Form DR-0172 (09/21/06)). All purchases for the Work shall use the exemption from Sales and Use Taxes.
  - 1. Owner’s exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

SC-7.16 Delete paragraphs 7.16.A, B, C, D,E, and F in their entirety and replace with the following:

- A. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing subsequent submittals of Shop Drawings, Samples, or other items requiring approval and Contractor shall reimburse Owner for Engineer's charges for such time.
- B. In the event that Contractor requests a change of a previously approved item, Contractor shall reimburse Owner for Engineer's charges for its review time unless the need for such change is beyond the control of Contractor.

SC-7.18.A Delete Paragraph 17.18.A in its entirety and replace with the following:

- A. The Contractor agrees to indemnify and hold harmless Owner, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this contract, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Contractor, any subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor

or of any subcontractor of the Contractor, or which arise out of any workmen's compensation claim of any employee of the Contractor or of any employee of any subcontractor of the Contractor. The Contractor agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Contractor. The Contractor also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent

SC-7.18.C Add the new paragraph immediately after Paragraph 17.18.B:

- C. The indemnification obligations of Contractor under Paragraph 17.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

SC-17.18.D Add the following new paragraph immediately after Paragraph 6.20.C:

- D. Governmental Immunities Act. The Owner is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any rights, immunities and protection provided by the Colorado Governmental Immunities Act (C.R.S. § 24-10-101 et seq.) as from time to time amended, or otherwise available to the Owner, its officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.

## **ARTICLE 8—OTHER WORK AT THE SITE**

No Supplementary Conditions in this Article

## **ARTICLE 9—OWNER'S RESPONSIBILITIES**

No Supplementary Conditions in this Article

## **ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION**

No Supplementary Conditions in this Article

## **ARTICLE 11—CHANGES TO THE CONTRACT**

SC-11.01.D Add the following new paragraph immediately after Paragraph 11.01.C:

- D. No changes or modifications to any document comprising this contract shall be recognized or enforceable by any action at law or in equity, unless written, and signed by an authorized representative for each party to this Contract and

submitted for approval to the Board of Directors of the Owner and otherwise in compliance with requirements of the Contract.

SC-11.02.A.5 Add the following new paragraph immediately after Paragraph 11.02.A.4:

5. At the time of execution of a Change Order or Written Agreement, Owner and Contractor expressly acknowledge that said Change Order or Written Agreement provides for a fair and equitable adjustment in Contract Price and/or Contract Time for the additions, deletions, or revisions in the Work as authorized by said Change Order or Written Agreement. Owner and Contractor further expressly acknowledge that later claims for adjustments to the Contract Price and/or Contract Time associated with said Change Order or Written Agreement are not valid.

SC-11.08.A Add the following language at the end of the last sentence of Paragraph 11.08.A:

Changes in the Contract Price or Contract Time, which are agreed to by the parties by an appropriate, duly executed Change Order or Written Amendment shall constitute a full and final change or amendment to the Contract for any and all changes of which the Contractor is, or should have been, aware as of the date of the executed Change Order.

Accordingly, execution of a Change Order or Written Amendment by the Contractor shall constitute a waiver on the part of the Contractor of any further claims for changes in the Contract Price or Contract Time, which occurred or may have occurred up through the date of any executed Change Order, whether such changes were expressly set forth in the executed change Order or not.

## **ARTICLE 12—CLAIMS**

SC-12.01.H Add the following new paragraph immediately after Paragraph 12.01.G:

No change order shall be enforceable at law or in equity, unless written, signed by authorized representatives for each party, and submitted to the Board of Directors of the Owner and otherwise in accordance with requirements of the Contract.

## **ARTICLE 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK**

No Supplementary Conditions in this Article.

## **ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

No Supplementary Conditions in this Article.

## **ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD**

### *15.01 Progress Payments*

SC-15.01.B.2 Add the following as the last sentence of subparagraph 15.01.B.2:

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EJCDC® C-800, Supplementary Conditions of the Construction Contract.  
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and American Society of Civil Engineers. All rights reserved.

Payment for materials and equipment not incorporated in the Work, but delivered and suitably stored, shall be based only upon the actual cost of such materials to Contractor, and shall not include any overhead or profit to Contractor.

SC-15.01.D.1 Delete Paragraph 15.01.D.1 in its entirety and replace with the following:

1. Thirty (30) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 15.01.E) become due, and when due will be paid by Owner to Contractor.

SC-15.01.E.3 Delete subparagraph 15.01.E.3 in its entirety and replace with the following:

3. Upon a subsequent determination that the Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.D.1, as amended, and subject to interest as provided in the Agreement from the date of said determination, to the date of payment.

### 15.03 *Substantial Completion*

SC-15.03 Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

SC-15.06.E. Delete subparagraph 15.06.E in its entirety.

SC-15.07 Delete paragraph 15.07 in its entirety.

SC15.08.A Delete Paragraph 15.08.A in its entirety and replace with the following:

- A. If within two years after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  1. correct the defective repairs to the Site or such adjacent areas;
  2. correct such defective Work;
  3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.

SC-15.08.G Add the following new paragraph immediately after Paragraph 15.08.F:

- G. Nothing in the General Conditions concerning the correction period shall establish a period of limitation with respect to any other obligation, which Contractor has under the Contract Documents. The establishment of a time period relates only to the specific obligations of the Contractor to correct the Work, and has no relationship to the time within which his obligations under the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish his liability with respect to his obligations other than to specifically correct the Work.

## **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

No suggested Supplementary Conditions in this Article.

## **ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES**

SC-17.01 Delete Paragraph 17.01 A and B in their entirety

### *17.02 Arbitration*

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

### *17.02 Arbitration*

- A. All matters subject to final resolution under this Article may be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of \$100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of the Ouray County Court.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.
- C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
- D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.

- E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.
- F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
  - 1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;
  - 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;
  - 3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and
  - 4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.
- H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

**ARTICLE 18—MISCELLANEOUS**

SC-18.11 Add the following new paragraphs immediately after Paragraph 18.10:

- A. Owner is the City of Ouray and their duly authorized agents. All notices, letters and communication directed to Owner shall be addressed and delivered to JVA Incorporated, who is designated representative (below).

JVA, Incorporated

Attn: Cooper D. Best, P.E.

817 Colorado Avenue, Suite 301

Glenwood Springs, CO 81601

- B. All duties and responsibilities assigned to Engineer in the Contract Documents, with the corresponding rights and authority will be assumed by JVA, Incorporated and their duly authorized agents. All notices, letters and communication directed to Engineer shall be addressed and delivered to JVA, Inc. 817 Colorado Avenue, Suite 301, Glenwood Springs, CO 81601, Attention: Cooper Best, P.E., with a copy to Owner.
- C The business addresses of Contractor given in contract for the work and Contractor's office at the site of the Work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered
- D. Either Owner, Engineer, or Contractor may change their address at any time by an instrument in writing delivered to the other parties.

SC-18.12 Add the following new paragraph immediately after Paragraph 18.12:

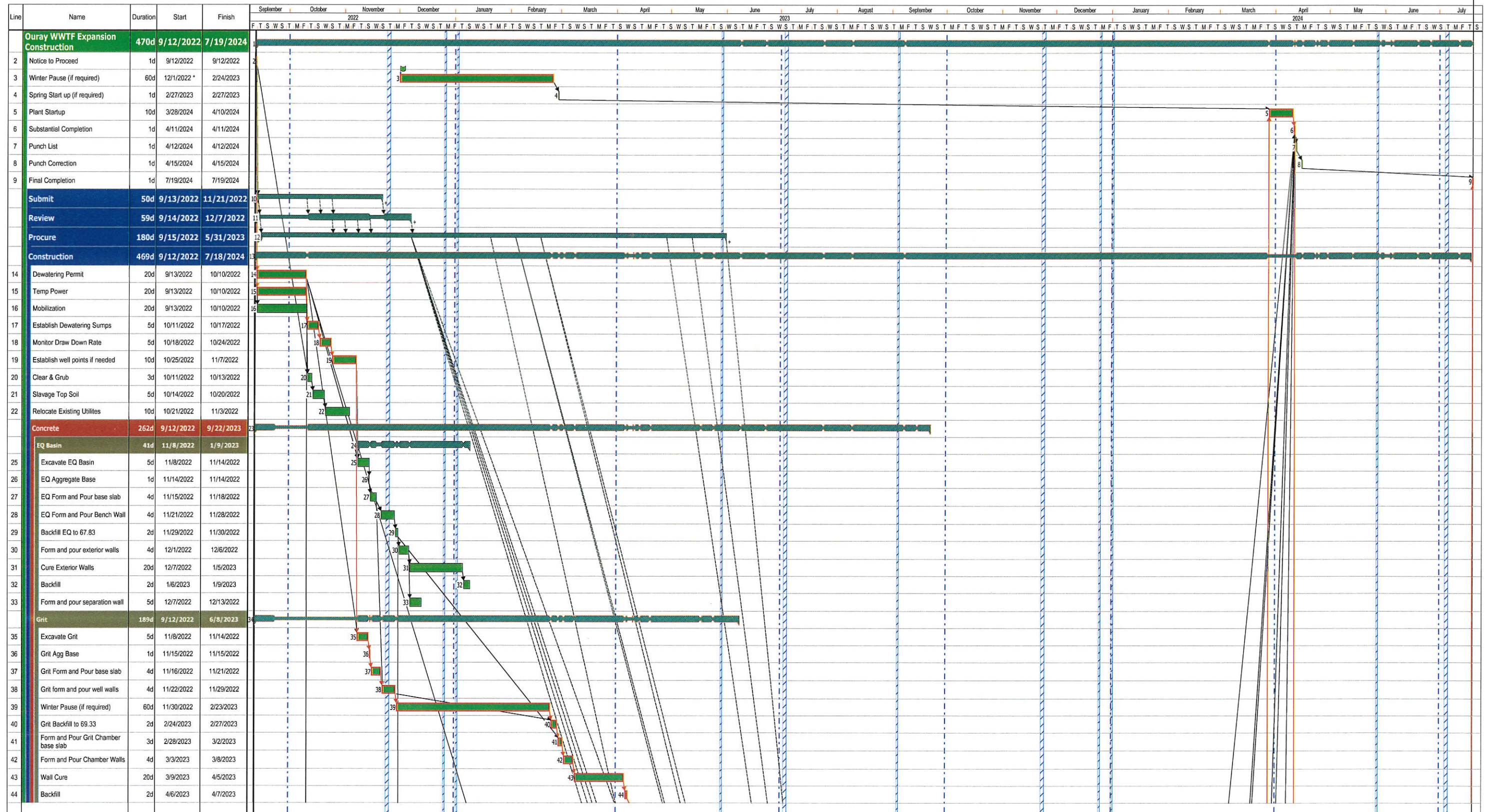
The cross-referencing or specification sections under the heading "Related Sections" and elsewhere within each specification section is intended as an aid to the Contractor and shall not relieve the Contractor from his responsibility to coordinate the Work under the Contract Documents. Listings of cross-references are not intended to be comprehensive. The omission of a cross-reference to an additional or related requirement shall not relieve the Contractor of his obligation to provide a complete Project.

# Ouray WWTF Expansion



**ASLAN  
CONSTRUCTION**

Engineer: JVA inc.

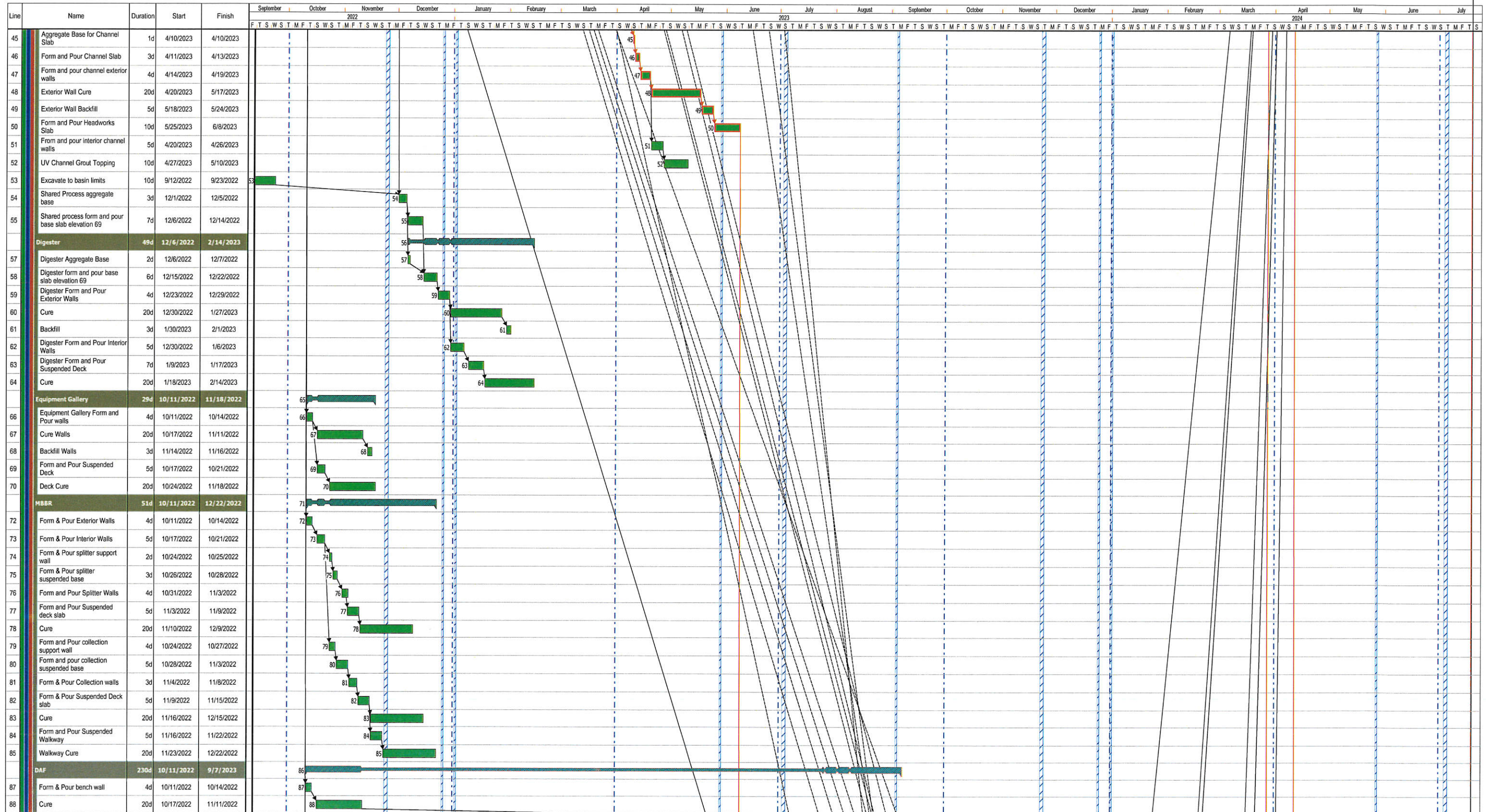


# Ouray WWTF Expansion



**ASLAN  
CONSTRUCTION**

Engineer: JVA inc.

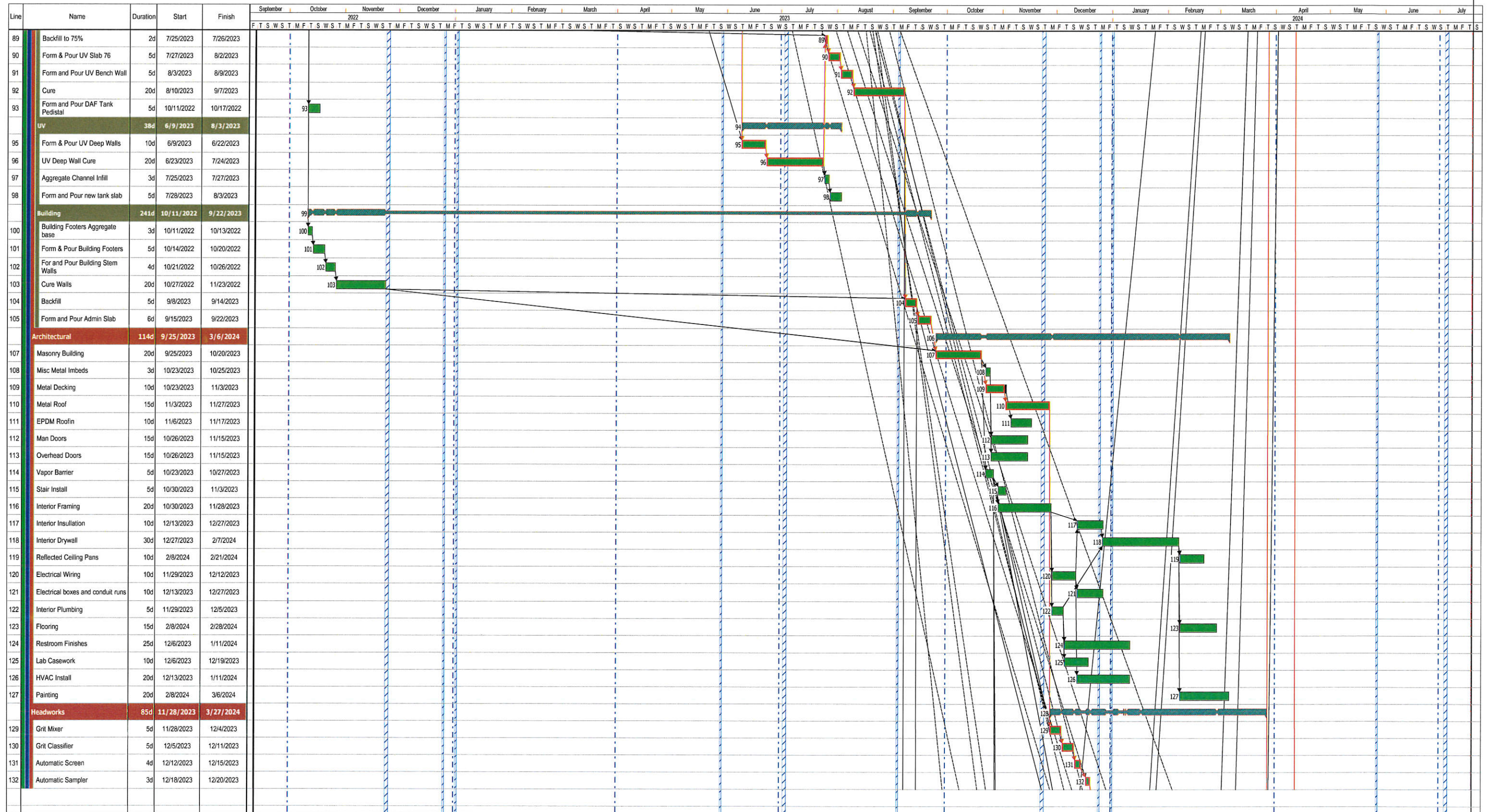


# Ouray WWTF Expansion



**ASLAN  
CONSTRUCTION**

Engineer: JVA inc.

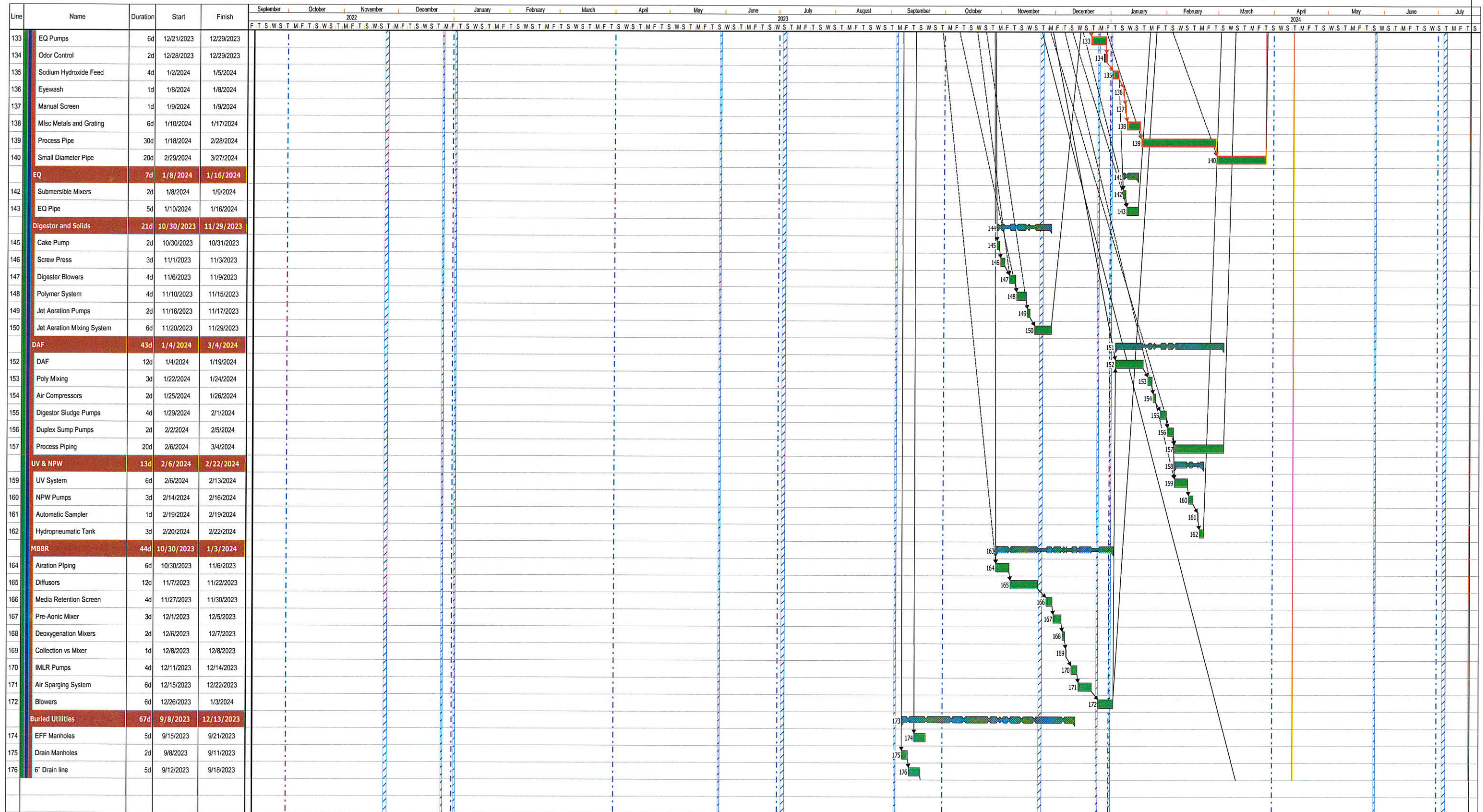


# Ouray WWTF Expansion



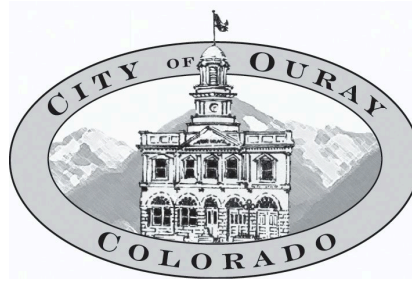
**ASLAN  
CONSTRUCTION**

Engineer: JVA inc.





320 6<sup>th</sup> Avenue  
PO Box 468  
Ouray, Colorado 81427



970.325.7211  
Fax 970.325.7212  
www.cityofouray.com

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**TO:** Ouray City Council  
**FROM:** Lily Oswald, Community Development Director  
**FOR:** September 6, 2022  
**SUBJECT:** 201 Queen Street Fixed Encroachment Application

**Attachments:**

**Exhibit A:** Encroachments Site Plan & Landscape Wall Plan  
**Exhibit B:** Ouray County Assessor Property Summary  
**Exhibit C:** Fixed Encroachment Application

**BACKGROUND**

201 Queen Street is a uniquely shaped parcel, owned by John Sullivan (Applicant). The Applicant has requested a forty-four and a half (44.5) square foot fixed encroachment in the Queen Street right-of-way (ROW) along the existing landscaped berm (see Exhibit C). The Applicant wishes to reinforce the existing landscaping along one edge of the property driveway with a fixed landscape wall (see Exhibit A). Fixed Encroachments, per section 13-3 of the Ouray Municipal Code (OMC), must be approved by the Ouray City Council. The proposed fixed encroachment includes the following elements:

1. 22-inch-tall and 1-foot wide landscape wall;
2. Stone steps to top of landscape wall (along eastern side); and,
3. Permanent landscaped areas with rebar reinforcement on the northern edge of the driveway

A Site Survey illustrating the specific Fixed Encroachment area and the correct property boundary was submitted to the City on August 9, 2022, to ensure the correct easement area is discussed and filed with the property. The total area of the proposed encroachment is approximately 44.5 sq. ft. According to the Ouray County Assessor, the current value of the land at the property is \$15.33/square foot (see Exhibit B). Based on this valuation (as adopted in Resolution No. 3, Series 2010), the fee for the 201 Queen Street encroachment is \$682, not including the \$25 application fee.

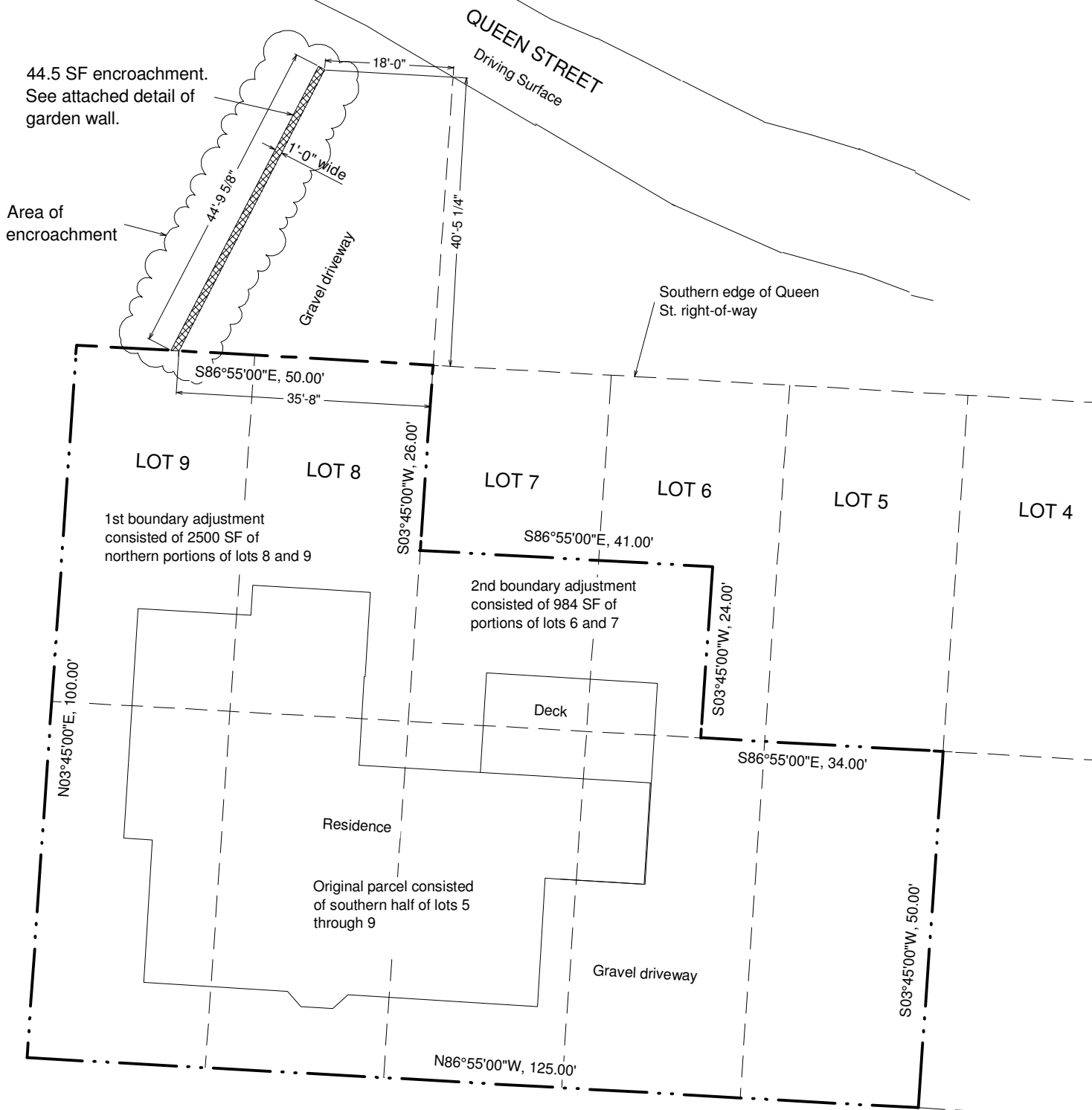
**RECOMMENDATION**

It appears the landscaped area(s) have been present since the development of the single-family dwelling unit on the property or shortly thereafter (approx. 2008-2009). Staff is recommending the City Council approve the Fixed Encroachment Permit based on the assessed value of the land at the property (\$15.33/sq.ft.) with the following condition and motion:

“I move to approve a Fixed Encroachment Permit for the proposed improvements in the Queen Street right-of-way, contingent on the Applicant submitting all required fees to the City and paying all required recording costs for the encroachment filing.”

*No supplemental application requirements (e.g. insurance or fees) are recommended to be waived.*

EXHIBIT A



SULLIVAN RIGHT-OF-WAY ENCROACHMENT  
201 Queen Street

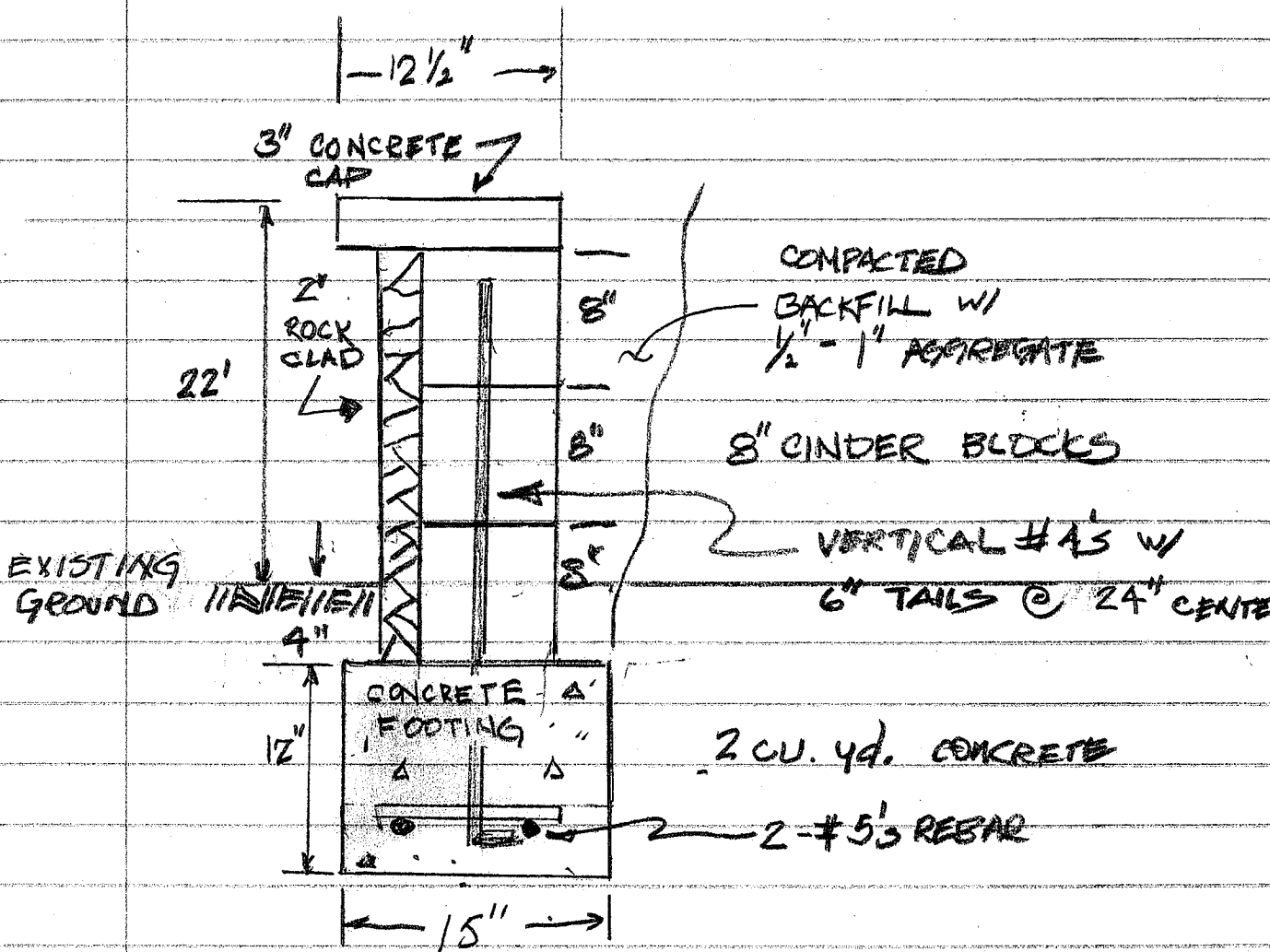


SCALE: 1" = 20' 0"

8-9-2022

6/10/22

JOHN SULLIVAN  
201 QUEEN STREET  
GARDEN WALL



**Account: R000700**

[<-Prev 3 of 9 Results](#) [Next->](#)

Location

**Situs Address** 201 QUEEN ST  
 City Ouray  
**Tax Area Id** 101 - 101  
**Parcel Number** 451531319002  
**Legal Summary** Subd: BEAUMONT  
 ADDITION Lot: 5 Block: 2 Subd:  
 BEAUMONT ADDITION Lot: 6 Block: 2  
 Subd: BEAUMONT ADDITION Lot: 7  
 Block: 2 Subd: BEAUMONT ADDITION  
 Lot: 8 Block: 2 Subd: BEAUMONT  
 ADDITION Lot: 9 Block: 2 S: 31 T: 44 R: 7  
 SOUTH 1/2 OF LOTS 5-7, ALL OF LOTS 8-  
 9

Owner Information

**Owner Name** SULLIVAN FAMILY TRUST  
**Owner Address** 4861 EDGEVIEW DRIVE  
 EL CAJON, CA 92020

Assessment History

**Actual (2021)** \$814,150  
**Assessed** \$58,220  
**Tax Area:** 101 **Mill Levy:** 62.021  

Type	Actual	Assessed	SQFT	Units
Improvements	\$664,150	\$47,490	2776.200	
Land	\$150,000	\$10,730	9786.000	0.000

**Mining District**

Transfers

Reception Number	Sale Date	Sale Price	Doc Description
<a href="#">Plat58961</a>			<a href="#">PLAT</a>
<a href="#">PLAT26814</a>			<a href="#">PLAT</a>
<a href="#">L0031</a>			<a href="#">SURVEY</a>
<a href="#">222896</a>		<a href="#">\$0</a>	<a href="#">BARGAIN &amp; SALE DEED</a>
<a href="#">218675</a>	<a href="#">06/06/2017</a>	<a href="#">\$14,800</a>	<a href="#">WARRANTY DEED JOINT TENANTS</a>
<a href="#">218643</a>		<a href="#">\$0</a>	<a href="#">PLAT</a>
<a href="#">183786</a>	<a href="#">01/21/2004</a>	<a href="#">\$25,500</a>	<a href="#">WARRANTY DEED</a>
<a href="#">183785</a>	<a href="#">02/03/2004</a>	<a href="#">\$0</a>	<a href="#">PLAT</a>
<a href="#">175005</a>	<a href="#">06/15/2001</a>	<a href="#">\$210,000</a>	<a href="#">WARRANTY DEED</a>
<a href="#">168732</a>	<a href="#">01/19/1999</a>	<a href="#">\$190,000</a>	<a href="#">WARRANTY DEED</a>
<a href="#">149496</a>	<a href="#">09/05/1991</a>	<a href="#">\$40,000</a>	<a href="#">WARRANTY DEED</a>
<a href="#">111698</a>	<a href="#">07/30/1966</a>	<a href="#">\$0</a>	<a href="#">MISCELLANEOUS</a>
	<a href="#">07/30/1943</a>		<a href="#">TREASURER'S DEED</a>
			<a href="#">PLAT</a>
			<a href="#">PLAT</a>

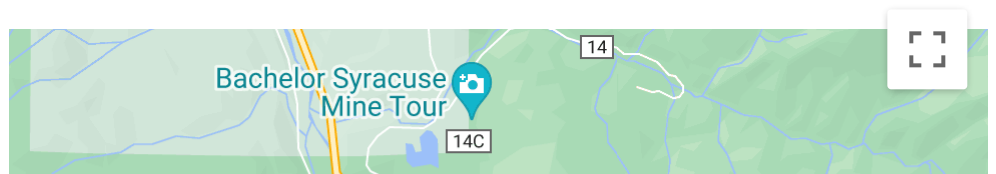
Tax History

Tax Year	Taxes
2021	\$3,610.86
2020	\$2,862.24

Images

- [Google Map \(May not be accurate\)](#)
- [Photo](#)
- [Sketch](#)
- [GIS](#)

Focusing On: 201 QUEEN ST Ouray 81427





320 6<sup>th</sup> Avenue  
PO Box 468  
Ouray, Colorado 81427

970.325.7211  
Fax 970.325.7212  
www.cityofouray.com

**FIXED ENCROACHMENT APPLICATION AND PERMIT**

**PERMITTEE INFORMATION**

Name: JOHN SULLIVAN Phone Number: 619-971-3136  
Mailing address PO BOX 222  
Email address: JOHN4861@HOTMAIL.COM

**ENCROACHMENT INFORMATION**

Location of encroachment: 201 QUEEN ST. OURAY CO 81427  
Brief description of encroachment: 22 INCH HIGH GARDEN WALL

**Permittee must supply the following documentation with the application:**

- Comprehensive drawn and written plan of proposed encroachment ✓
- If construction or work will be done to install the fixed encroachment, a Right-of Way Construction, Excavation, or Work Application and Permit is required
- Proof of liability insurance with minimum limits of \$350,000 for any one person and \$990,000 for any one accident TO BE PROVIDED BY CONTRACTORS
- Proof of public property damage insurance with a minimum limit of \$100,000 for any accident during the term of the Permit BY CONTRACTOR
- A certificate of insurance demonstrating the City, its officers, agents and employees are named as additional insured BY CONTRACTOR
- Pay required fees: \$25 application fee; fee per square foot of public property used  
a) ATTACHED b) \$536 ATTACHED

**TERMS AND CONDITIONS OF THE PERMIT**

Permittee shall be subject to the terms and conditions of Section 13-3 of the City Code, including:

- 1) The work associated with the encroachment may not begin until a Permit has been issued by the City.
- 2) All Permits and any revocations of Permits shall be recorded in the records of the Ouray County Clerk and Recorder at the Permittee's expense.
- 3) Permits are transferable upon the conveyance of the property and run with the land unless revoked by the City.
- 4) Any Permit may be revoked by the City after notice to the Permittee per Section 13-3-G-3 of the Code.
- 5) It shall be unlawful to maintain an encroachment once the Permit has been revoked by the City. Failure to remove an encroachment is declared to be a nuisance that may be abated by the City.
- 6) Permittee agrees to hold the City harmless on account of any damages suffered to the persons or property of the Permittee arising out of their operations hereunder or the installation and maintenance of their facilities, utilities or BY CONTRACTOR

EXHIBIT C

improvements upon City owned property. The Permittee agrees to defend and indemnify the City from any damages claimed or adjudged against the City arising out of Permittee's operations or installation and maintenance of Permittee's utilities, improvements, encroachment or facilities installed or maintained within City owned property by Permittee.

- 7) Permittee agrees to properly maintain Permittee's encroachment, utilities, improvements or installations in good and safe condition to create no safety hazards or unreasonable obstruction to pedestrian or vehicular traffic. Permittee shall be responsible to repair any damages to City property, street surfaces or improvements which result or are caused in any manner by the excavation, installation, operation or maintenance of Permittee's encroachment, pursuant to this Permit.
- 8) In the event it is necessary to relocate any utility, facility or improvement of the Permittee installed within City property, pursuant to this Permit, on account of the change of any street grade, relocation, realignment or expansion of any street or other improvements to City property, or installation, replacement, maintenance or operation of any City property, utility or facility, the Permittee shall be responsible to relocate such facilities to a location approved by the City at the Permittee's sole expense.
- 9) The individual signing on behalf of the Permittee is hereby designated as an agent for service of process on behalf of Permittee.
- 10) In the event the City incurs any costs, including reasonable attorney's fees, enforcing any provision of this Permit, the City may recover such costs from the Permittee.
- 11) All obligations, terms and conditions of this Permit upon the Permittee shall be the obligations of the Permittee.
- 12) The Permittee represents that he has read and understands the foregoing terms and conditions of this Permit, that he has read and understands the City requirements pertaining to this Permit, and that the undersigned has authority to sign for and bind the Permittee.
- 13) Any breach of the conditions set forth in this Permit, or of City standards, specification or requirements pertaining to this Permit may cause the revocation of the Permit.
- 14) By his signature, the Permittee agrees to comply with all terms and conditions of this Permit.
- 15) This Permit may be revoked by the Ouray City Council for any reason as deemed appropriate in the City's sole discretion. Upon revocation, any encroachment shall be removed and the surface restored at Permittee's expense.
- 16) The following additional conditions shall apply:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

PERMITTEE: JOHN SULLIVAN  
 By \_\_\_\_\_

COMPLETED BY CITY STAFF:

Permit Fee Amount: \$25.00 PAID Date Paid 6/16/2022  
⊕ \$536.00 PAID → (COUNTY ASSESSOR LAND VALUE = \$15.33/SQ. FT)  
x 35 # FOR FIXED ENCROACHMENT  
\$15.33 x 35 = \$536

Approved by the City of Ouray

\_\_\_\_\_  
 Mayor Date

## INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2022, by and between the City of Ouray, a Colorado home rule municipality (City) and Ouray Public Library District, a Colorado District (Library).

### RECITALS

WHEREAS, the City is a municipal corporation of the state of Colorado that is duly established and is operating pursuant to Colo. Const. Art. XIV and XV and Title 31, C.R.S.

WHEREAS, the Library is a Library District duly formed pursuant to C.R.S. 24-90-107.

WHEREAS, pursuant to Colo. Const. Art. XIV § 18 and § 29-1-203, C.R.S., the City and the Library are authorized to cooperate and contract with one another to provide any lawful function, service, or facility.

WHEREAS, the City operates an internal IT department and Library requires IT Services such that the parties desire to enter this IGA to share IT services.

### AGREEMENT

Therefore, in consideration of the mutual promises and covenants provided herein, which the parties acknowledge as being good and sufficient consideration for this Agreement, and acknowledge receipt of such consideration, the parties agree as follows:

1. City agrees to deliver IT services to Library and Library agrees to pay City for these services at an hourly rate of \$75.00 for Tier I Support which is technician services and \$100.00 for Tier II Support which is network and/or server services. All billing will be conducted in 15-minute increments.
2. The City shall invoice Library quarterly for services provided by the City. Payment is due upon receipt of the invoice. Any payment not received within 30 days of the date of the invoice shall bear interest at the rate of eight percent (8%) per annum.
3. The term shall be for one year which shall automatically renew for four (4) additional years unless either party terminates with or without cause upon thirty (30) days written notice.
4. Library agrees to discuss any future IT equipment purchases with City prior to purchasing such equipment to ensure that City can support such technology.
5. Library understands and agrees that City IT services take priority over Library IT services in the event there are competing requests for service.
6. This Agreement may only be revised in writing upon Agreement by the parties.
7. In the event of any disagreement between the parties as to any provision herein, or the implementation of this Agreement, they agree to first attempt to resolve the disagreement through negotiation and informal mediation. If no agreement can be reached after thirty (30)

days of such negotiation or mediation, then it is agreed that any action filed hereunder shall be in a court of competent jurisdiction of Ouray County, according to the laws of the state of Colorado.

8. Nothing in this Agreement is, or shall be construed to be a waiver, in whole or in part, by the County or the Town of the governmental immunity provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101. *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2671, *et seq.*, as now or hereafter amended.
9. The IT staff delivering services to Library shall be employee of the City, not Library. The City, at its sole cost and expense, shall procure and maintain workers' compensation insurance and unemployment compensation insurance for the IT staff, as required by Colorado law. The City shall be solely responsible for any employment taxes for IT Staff.
10. Should Library have any disciplinary concerns regarding a City employee performing IT services under this agreement shall address such concerns with the City Administrator and not directly with the employee.
11. Waiver of any breach under a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.
12. Neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party, including without limitation, war, embargoes, strikes, riots, floods, fires, earthquakes, or other acts of God.
13. Notices required by this Agreement shall be sent as follows:

Library:  
Attention: Director  
P.O. Box 625  
320 6<sup>th</sup> Ave  
Ouray, CO 81427

City:  
Attention: City Administrator  
PO Box 468  
320 6<sup>th</sup> Ave  
Ouray, CO 81427

City of Ouray:

Ouray Library District, Inc.

By: \_\_\_\_\_  
Ethan Funk, Mayor

By: \_\_\_\_\_  
Robert Stoufer, Chair

Attest: \_\_\_\_\_  
Melissa M. Drake, City Clerk

RATIFICATION AND RELEASE

Agreement made this date between the City of Ouray, a Colorado municipal corporation, hereinafter designated OURAY; Paul H. Boslaugh, G. R. Schey, Robert K. Williams and Robert W. Schey, hereinafter designated DEVELOPERS; and the Bachelor Switch Water Users Association, a Colorado corporation, hereinafter designated CORPORATION.

Ouray and Developers are parties to an agreement dated October 7, 1969, providing for supply of water by Ouray to users located north of the city limits of Ouray.

Ouray and Developers are parties to a subsequent agreement dated July 10, 1972, providing for conveyance by Developers of part of the subject water pipeline system to Ouray, and the remainder to the Corporation which has been formed pursuant to that agreement.

All conditions provided in the agreement of July 10, 1972 for release of Developers from their rights and obligations under that agreement, and the agreement of October 7, 1969, have been met.

1. The Corporation hereby ratifies the agreement of July 10, 1972, and assumes the rights and obligations conferred on the Corporation by that agreement.

The rights and obligations of Developers under the two agreements are hereby terminated.

The rights and obligations of Ouray under the agreement of October 7, 1969, between Ouray and Developers, are hereby terminated.

Done this 10 day of July, 1972.

DEVELOPERS

Robert H. Williams  
for Paul H. Boslaugh  
Paul H. Boslaugh

G. R. Schey  
G. R. Schey

Robert K. Williams  
Robert K. Williams

Robert W. Schey  
Robert W. Schey

OURAY

Frank L. Messard  
Mayor

Attest:

Richard G. Messard  
Clerk

CORPORATION

Richard G. Messard  
President

Attest:

Sharon R. Brown  
Secretary

## WATER SUPPLY AGREEMENT

Agreement made this date between the City of Ouray, a municipal corporation of the State of Colorado, hereinafter designated OURAY; and Robert K. Williams, G. R. Schey, Robert W. Schey and Paul H. Boslaugh, hereinafter designated DEVELOPERS.

On October 7, 1969, Ouray entered into an agreement with Robert K. Williams, G. R. Schey and Paul H. Boslaugh, providing that Ouray would sell domestic water to Williams, Schey and Boslaugh, and their successors in interest to certain real property lying north of the city limits of Ouray. Since that time G. R. Schey has conveyed part of his interest under that agreement to Robert W. Schey.

Incident to delivery of water under that agreement, Developers have installed a pipeline from the northern city limit of Ouray, running north approximately 7/10 of a mile along the right of way of U. S. Highway 550, and then branching off east and west to serve property owned by Developers.

The parties would find it mutually beneficial to revise the arrangement created by their agreement of October 7, 1969, and such revision is the purpose of this agreement.

Now, therefore, in consideration of the mutual promises contained herein, the parties agree as follows:

1. Conveyance to Ouray - Developers will convey to Ouray all their right title and interest in and to the subject water pipeline, from the northern city limits of Ouray to a point where it no longer lies in the right of way of U. S. Highway 550.
2. Easements and Rights of Way - This conveyance shall include all easements or rights of way owned by Developers and which pertain to the subject pipeline from its southernmost point to a point at which it is no longer in the right of way of U. S. Highway 550.
3. Highway Relocation - The conveyance described in paragraphs (1) and (2) shall take place only upon receipt of reasonable assurance by Ouray that the possible relocation of that part of the subject pipeline, incident to the proposed relocation of the right of way of U. S. Highway 550, shall be undertaken at no expense to Ouray. If the subject conveyances are effected, and it shall later develop that Ouray will be held liable for the cost of this pipeline relocation, then Ouray will convey back to Developers, or their successors

in interest hereunder, for the same consideration if any, which Developers were given by Ouray for the conveyance from Developers to Ouray.

Ouray shall have the right to install a pipeline larger than that presently in use, when relocation of the pipeline is necessary incident to the Highway 550 relocation. If Ouray is to be held liable for the increased cost of the larger pipeline, the corporation shall compensate Ouray for such liability.

4. Consideration - The consideration to be paid by Ouray to Developers in paragraphs (1) and (2) is One Dollar (\$1.00) in cash, payable at the time of closing.

5. Corporation - Developers shall form a corporation, tentatively named the Bachelor Switch Water Users Association, and offer membership or stockholder status to all parties presently obtaining their domestic water supply by virtue of the agreement of October 7, 1969 between Ouray and Developers. This entity shall be designated herein as the CORPORATION.

Upon due creation, authorization and registration of the corporation, Developers, Ouray and the Corporation shall execute a ratification of this agreement, acknowledging the release of Developers from their rights and obligations under the agreement of October 7, 1969 and this agreement, and effecting a designation of the Corporation as a party in interest under this agreement. A copy of the ratification agreement to be used is attached hereto as Exhibit A.

6. Conveyance to Corporation - Developers will convey to the Corporation all their right, title and interest in and to the subject pipeline, together with any easement, rights of way and personal property incident thereto.

7. Termination of Prior Agreement - Upon due creation, authorization and registration of the Corporation, and execution and delivery of the conveyances described in paragraphs (1), (2) and (6), the agreement of October 7, 1969 between Ouray and Developers shall be terminated and of no further effect.

8. Sale of Water - Upon due creation, authorization and registration of the Corporation, and execution and delivery of the conveyances described in paragraphs (1), (2) and (6), Ouray agrees to sell domestic water to the Corporation, in accordance with the terms and conditions set forth below.

9. Amount - Ouray shall convey and deliver to the Corporation's pipeline an amount of water equal to that presently passing through the existing connection between Ouray's three inch pipeline, through two three-fourths inch (3/4") corporation taps, to Developers' two inch pipeline. The number of domestice taps to be served shall not exceed seventy (70) in number.

The Corporation or Developers shall install and cause to be hooked onto the Corporation's pipeline a water storage facility of at least 5,000 gallons capacity, to alleviate possible water pressure problems in the Corporation pipeline. When such a water storage facility is installed, it shall be equipped with a time release device which will permit filling of the water storage facility only between the hours of 10:00 P.M. and 6:00 A.M. Authorized agents of employees of Ouray shall have a right to enter upon the premises of the water storage facility for the purpose of inspection.

10. Use - The members and stockholders shall be subject to the same rules governing water use which apply to users within the city limits of Ouray, to the extent that such rules are consistent with this agreement. No tap using water under this agreement shall be used to irrigate more than one-half acre of ground, and no tap shall be used for any but ordinary domestic purposes where such use would materially impair receipt of water by other members or stockholders of the Corporation. The articles of incorporation or bylaws of the Corporation shall positively provide for this rule as binding on all members or stockholders.

11. Shutoff of Supply - The obligation of Ouray described in paragraph (9) shall be excused only where the continued delivery of water would materially impair delivery of water to users within the city limits of Ouray. Except in case of an emergency, which does not permit more timely notice, Ouray shall give 10 days' notice to the Corporation that the supply of water shall be turned off or limited, whichever the case may be. Ouray shall effect only such turning off or limitation of supply as is necessary to insure delivery of water to all users inside the city limits of Ouray.

Ouray shall also have the right to shut off the water supply to the Corporation's pipeline in the following cases:

(a) Failure of the Corporation to pay the amount due hereunder for water use, within 45 days of the sending of the statement therefor by Ouray.

(b) Failure of the Corporation or its members to adhere to the other obligations imposed by this agreement, where such failure continues after reasonable warning has been given by Ouray.

Except in case of an emergency, which does not permit more timely notice, Ouray shall give 10 days notice to the Corporation that the supply of water is to be turned off. Such notice shall describe the reason for the proposed shutoff.

12. Fee for Water - Ouray shall be compensated by the Corporation as follows:

(a) For taps in use, twice the amount then charged to water users within the city limits of Ouray for the same type of water use;

(b) For taps connected to the Corporation's pipeline but not in use, twice the amount then charged for taps not in use within the city limits of Ouray.

13. Time Periods - For the purpose of computing the time period for determining the amount due Ouray hereunder, the following shall apply;

(a) Those taps already connected to the Corporation's pipeline shall be deemed to have been connected from July 1st, 1972;

(b) Where taps are added or deleted, or where the status of a tap changes from active to inactive, or inactive to active, on or before the 15th day of a month, that tap shall be deemed to have been added, deleted or had its status changed, on the first day of that month.

(c) Where taps are added or deleted, or where the status of a tap changes from active to inactive, or inactive to active, after the 15th day of a month, that tap shall be deemed to have been added, deleted or had its status changed, on the first day of the next month.

14. Credit for Prior Billing - If a member or stockholder of the Corporation is presently paying for water use under the agreement of October 7, 1969 between Ouray and Developers, and if the billing period for such member or stockholder goes beyond July 1st, 1972, then an appropriate pro-rata credit shall be made on the old account of such member or stockholder to avoid double billing for that period covered by the old billing period.

15. List of Users - Within 15 days of the execution of this agreement the Corporation shall deliver to Ouray a list of those parties who are to receive water as members or stockholders of the Corporation. This list shall give the full names of such members or stockholders, their mailing addresses, and a description of the real estate which is served by each tap. As members or stockholders are added or withdrawn, the Corporation shall promptly notify Ouray of such additions or withdrawals, giving in each case the same data which is required for the original members or stockholders of the Corporation.

16. Maintenance of Ouray Pipeline - The Corporation shall be responsible for effecting and paying for any repairs or maintenance required on the pipeline which is to be conveyed to Ouray pursuant to this agreement.

17. Succession in Interest - The rights and obligations conferred

herein shall bind the parties hereto and their respective heirs, executors, successors and assigns.

18. Damages - The failure of a party to perform the obligations imposed by this agreement shall entitle any other party to compensation for attorneys' fees incurred in any legal action arising out of such default.

19. Geographical Limitation - Water conveyed under this agreement shall be used only on or for the benefit of the tracts of land owned by the members of the proposed corporation. These tracts of land are all located in Ouray County, Colorado, and more particularly described as follows:

A tract of land in Ouray County, Colorado, described as follows:

Beginning at a point from whence the North Quarter Corner of Section 24, Township 44 North, Range 8 West, N.M.P.M. bears North 71° 05' West a distance of 540.46 feet, said point being Corner Number 1 of the Norfolk Placer, U.S. Survey No. 252; thence North 183.6 feet; thence West 843.0 feet; thence South 24° 11' East 767.2 feet; thence South 45° 41' West 159.0 feet; thence South 36° 41' East 702.83 feet; thence West 572.53 feet; thence South 421.0 feet; thence East 1190.80 feet; thence South 08° 23' East 298.4 feet; thence East 295.2 feet; thence North 06° 08' East 202.5 feet; thence South 84° 13' West 51.0 feet; thence North 08° 17' West 100.00 feet; thence North 19° 53' West 159.0 feet; thence North 43° 28' West 159.5 feet; thence North 62° 32' West 260.0 feet; thence North 55° 55' West 64.0 feet; thence South 84° 05' West 43.25 feet; thence South 89° 35' East 613.2 feet; thence South 21° 00' East 240.0 feet; thence South 74° 05' East 483.0 feet; thence South 10° 15' East 286.0 feet; thence South 28° 24' East 439.0 feet; thence South 24° 21' East 302.8 feet; thence North 1300.0 feet; thence West 17.0 feet; thence North 571.36 feet; thence West 399.99 feet; thence North 320.09 feet; thence South 86° 00' West 400.21 feet; thence North 1° 45' East 216.22 feet; thence West 260.84 feet; thence South 82° 00' West, 564.21 feet; thence North 47° 15' West, 279.7 feet to the place of beginning.

20. Publication Costs - Developers or Corporation shall pay the cost of the preparation and publishing the proposed ordinance authorizing entry into this agreement by Ouray.

Done this 10 day of July, 1972.

DEVELOPERS

OURAY

Robert K. Williams  
Robert K. Williams

Frank L. Mussard  
Mayor

G. R. Schey  
G. R. Schey

Attest:

Robert W. Schey  
Robert W. Schey

Paul H. Boslaugh  
Clerk

Paul H. Boslaugh  
Paul H. Boslaugh

STATE OF COLORADO )  
County of Ouray ) ss.

The foregoing was acknowledged before me this 10th day of July, 1972,  
by Frank L. Massard as Mayor of the City of Ouray, Colorado, LaVaughn E.  
Merling as Clerk of the City of Ouray, Colorado, G. R. Schey, Robert W. Schey  
and Robert K. Williams, for himself and as attorney in fact of Paul H. Boslaugh.

My Commission Expires 10/31/73

  
Notary Public

4

AN ADDENDUM TO  
THE "WATER SUPPLY AGREEMENT"  
DATED OCTOBER 2, 1993, BETWEEN  
THE CITY OF OURAY, COLORADO  
AND THE BATCHELOR SWITCH WATER USERS ASSOCIATION (BSWUA).

Both parties agree as follows:

1. The BSWUA will parallel the pipeline referred to in the above referenced Agreement, using 6" Class C-900 PVC Pipe, installed to City specifications.
2. The City of Ouray agrees to participate in this project by providing no more than \$14,000 to the BSWUA to pay for the cost of increasing the size of the new pipeline from 4" to 6".
3. The new pipeline is to be located in both the right-of-way of Highway 550 and on property owned by Dick and Gail Jossi. The BSWUA will obtain the permits necessary from the Colorado Department of Transportation and the easement necessary from the Jossis on a form acceptable to the City.
4. Upon satisfactory installation and testing, the new pipeline and easements lying between Rotary Park and the Y, serving the Panoramic Heights and Whispering Pines Subdivisions, shall be conveyed to the City, free and clear of liens or encumbrances and owned and maintained by the City thereafter.
5. All other requirements of the above referenced Contract shall remain in effect.

CITY OF OURAY

BATCHELOR SWITCH WATER  
USERS ASSOCIATION

By Claude B. Neuman  
Mayor

By R. Blackford

Date: 12-20-93

Date: 12-29-93

ATTEST: Colleen Bisler

**SECOND ADDENDUM TO  
WATER SUPPLY AGREEMENT DATED OCTOBER 2, 1972  
BETWEEN THE CITY OF OURAY  
AND BACHELOR SWITCH WATER USERS' ASSOCIATION**

This Second Addendum (“Addendum”) to the Water Supply Agreement by and between the City of Ouray and the Bachelor Switch Water Users Association dated October 2, 1972 (“1972 Agreement”) is entered into this 6th day of September 2022 by and between the City of Ouray (“City” or “Ouray”) and the Bachelor Switch Water Users Association (“BSWUA” or “Corporation”).

**WHEREAS**, the City has provided potable water to BSWUA which is located outside City limits under the 1972 Agreement and the 1993 Addendum, both of which are incorporated herein by reference, and which limited the number of taps to no more than 70 and identified the location for the taps, and within the 1972 Agreement due consideration was provided by BSWUA for these 70 taps.

**WHEREAS**, under the 1993 Addendum, BSWUA is solely responsible for its domestic water infrastructure and delivery system from the Y near Rotary Park and onto Panoramic Heights, Pine View, Bachelor Bluff, Whispering Pines, and Mill Valley Subdivisions, and other individual nearby lots.

**WHEREAS**, over the years and as land has been bought and sold, real properties not contemplated in the boundaries set forth in the 1972 Agreement received water taps along County Road 17, Hwy 550 and Lowe Subdivision.

**WHEREAS**, BSWUA has issued 70 of its allowed 70 domestic taps and the parties agree to increase the number of available taps and to identify the exact location of the future taps so the area the City services with domestic water will not increase any further.

**WHEREAS**, the parties desire to continue the 1972 Agreement with the modifications set forth below.

**NOW, THEREFORE**, the parties hereto agree, for good and valuable consideration, the receipt and sufficiency of which is hereby confessed and acknowledged, as follows:

1. Paragraph 9 of the 1972 Agreement is amended to reflect that the 1993 Addendum added a new 6” pipeline in addition to the two ¾” BSWUA taps. The number of domestic taps to be served is increased from seventy (70) to eighty-nine (89) in number. The second paragraph is deleted entirely.

2. Paragraph 12 of the 1972 Agreement is amended to read, investment fees and charges for water delivered shall be in accordance with Ouray Municipal Code, Section 9-4-A-4 and 9-10-D-2 as amended from time to time.
  
3. Paragraph 15 of the 1972 Agreement is amended to require BSWUA to deliver to the City on December 1 of each year a revised list of waters users, including name, mailing address, and property address for each tap. As water users are added or removed, BSWUA shall promptly notify the City so invoicing to BSWUA can be updated.
  
4. Paragraph 19 of the 1972 Agreement is amended by the addition of certain real properties which may be served by the Corporation as reflected on the attached Exhibit A. The additional lots to be served by City water totals 18 in number where one tap serves one single-family residence. These additional 18 taps are for the specific real properties identified in Exhibit A, in addition to the 70 taps already issued and accounted for under the 1972 Agreement.
  
5. A new paragraph 21 is added to read, other than as specifically provided herein, the terms and conditions of the 1972 Agreement, as amended by the 1993 Addendum, remain in full force and effect.

**BACHELOR SWITCH WATER USERS' ASSOCIATION**

\_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY OF OURAY**

\_\_\_\_\_ Date: \_\_\_\_\_

Ethan Funk, Mayor

Attest:

\_\_\_\_\_  
Melisa Drake, Clerk

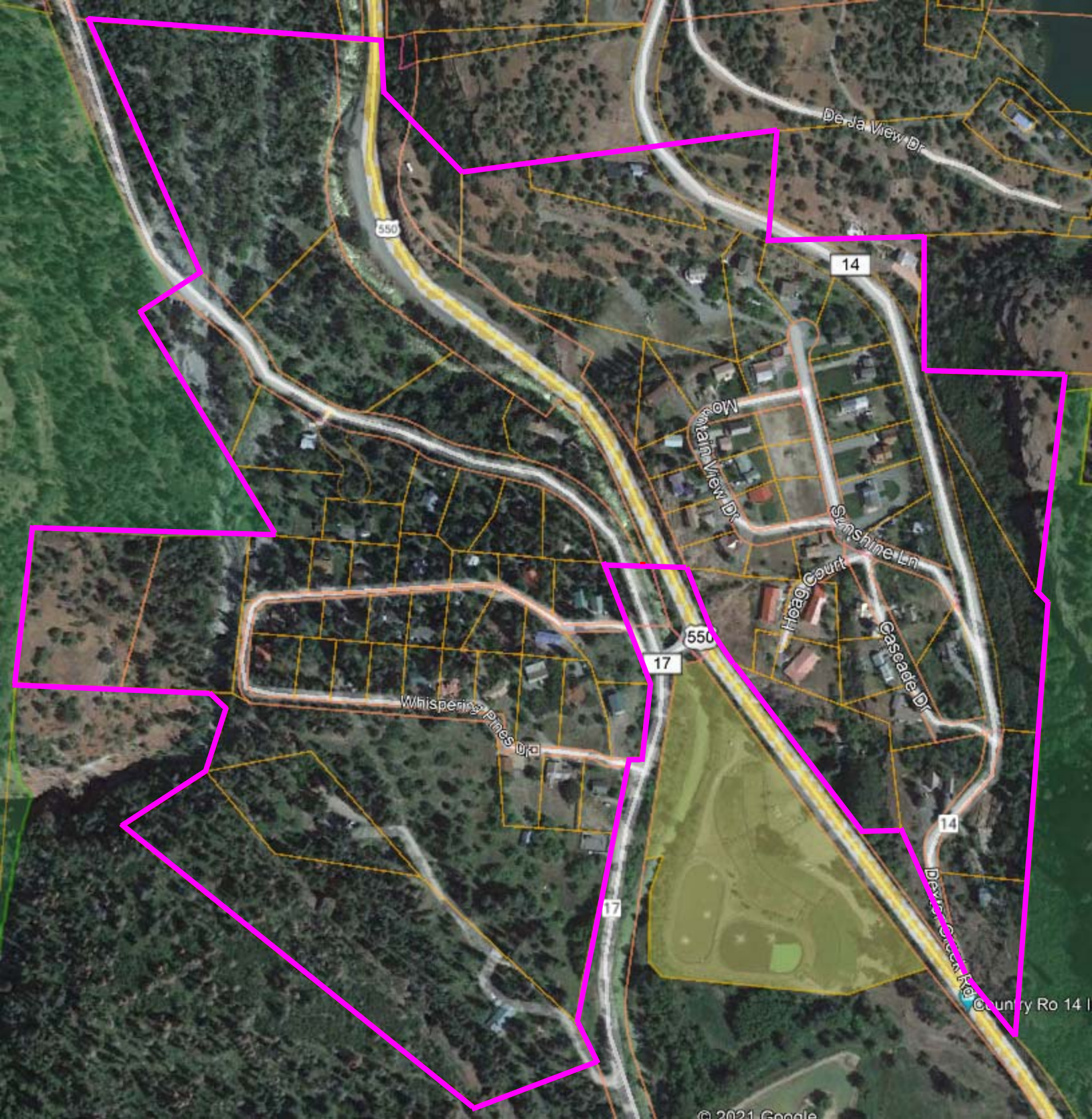
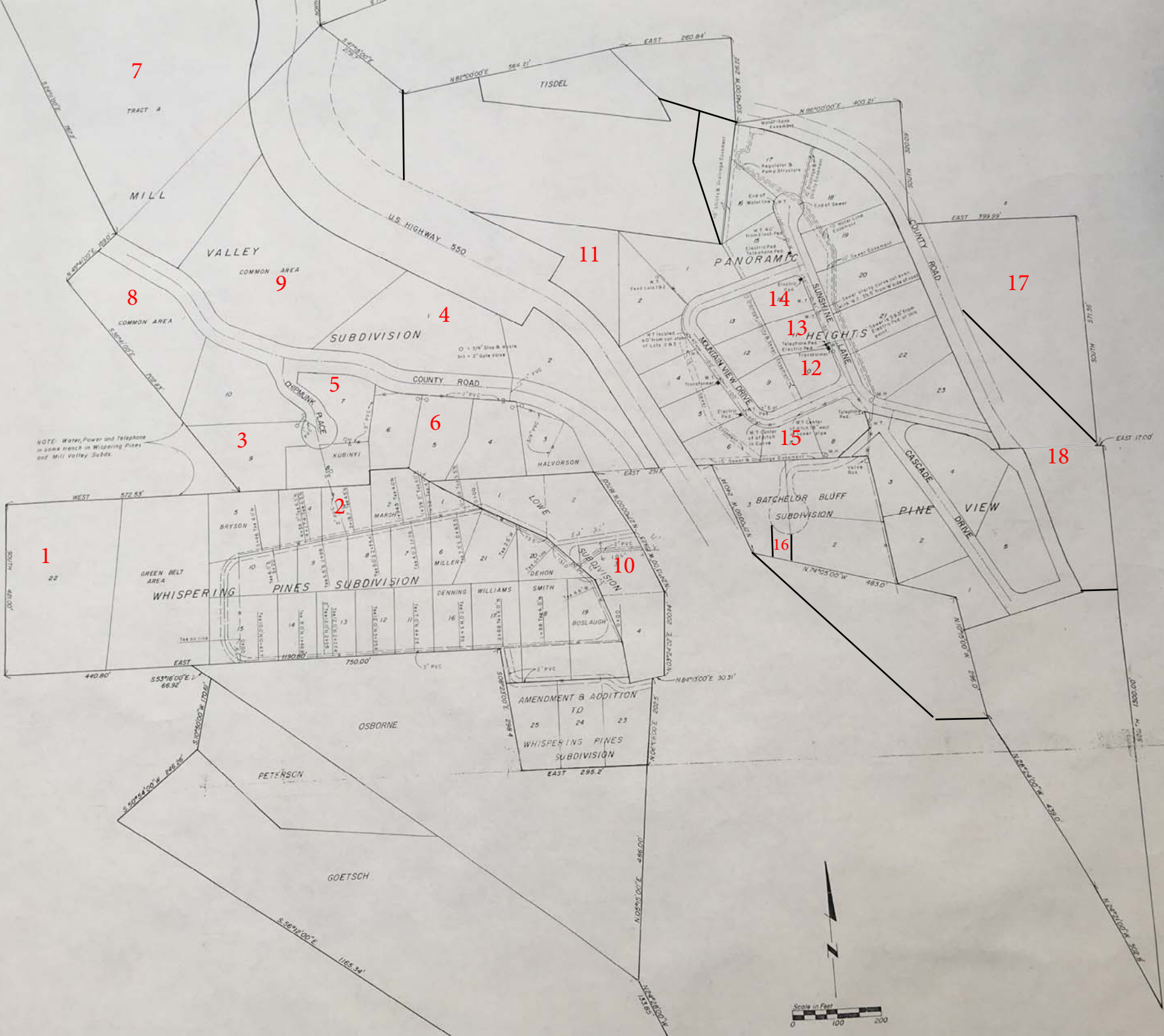


EXHIBIT A

**Updated BSWUA SERVICE AREA**  
Shown on Ouray County Assessor's GIS Base Map



7

TRACT A

MILL

8

COMMON AREA

VALLEY

COMMON AREA

9

SUBDIVISION

4

COUNTY ROAD

5

OPENLINK PIKE

3

6

KUBINYI

5

HALVORSON

11

PANORAMIC

14

13

HEIGHTS

12

15

17

18

NOTE: Water, Power and Telephone in some tracts in Whispering Pines and Mill Valley Subds.

1

GREEN BELT AREA

WHISPERING PINES SUBDIVISION

PINES SUBDIVISION

LOWE SUBDIVISION

10

BATCHELOR BLUFF SUBDIVISION

16

PINE VIEW

AMENDMENT & ADDITION TO WHISPERING PINES SUBDIVISION

OSBORNE

PETERSON

GOETSCH



## **Lots without taps in BSWUA Service Area (April 19, 2022)**

### **Refer to Attached Maps 1 and 2**

- 1 Lot 22 Whispering Pines
- 2 Lot 3 Whispering Pines
- 3 Lot 9 Mill Valley
- 4 Lot 1 Mill Valley
- 5 Lot 7 Mill Valley
- 6 Lot 5 Mill Valley
- 7 Tract A Mill Valley
- 8 Common Area 1 Mill Valley
- 9 Common Area 2 Mill Valley
- 10 Lot 3 Lowes Subdivision
- 11 15722 Highway 550
- 12 Lot 10 Panoramic Heights
- 13 Lot 11 Panoramic Heights
- 14 Lot 14 Panoramic Heights
- 15 Lot 7 Panoramic Heights
- 16 Lot 4 Bachelor Bluff
- 17 Parcel No. 451724100015
- 18 Parcel No. 451724100008

# Ouray Municipal Code

## Chapter 9 Water and Sewer Systems

### 9-4 Water and Sewer System Investment and Tap Fees

#### A. General Provisions - Water and Sewer Investment Fees

4. Investment fees imposed upon property located outside City limits shall be twice the charges specified in accordance with this section.

## Chapter 9 Water and Sewer Systems

### 9-10 Water and Sewer Use Rates

#### D. Special Charges

2. All water user rates for users outside of the City limits shall be classified according to the above contained and set forth classifications, but the rates therefor shall be twice the rates applicable to users inside the City limits.

**CITY OF OURAY**  
**First Addendum to Professional Service Agreement**

**THIS FIRST ADDENDUM** is entered effective this 6th day of September 2022 by and between the **CITY OF OURAY**, a Colorado home rule municipal corporation (the City); and **TANGRAM DESIGN, LLC**, a Colorado limited liability company with its principal place of business located at 878 Santa Fe Drive, Unit 1, Denver, CO 80204, (the Contractor).

**WHEREAS**, on March 21, 2022, City and Contractor entered a certain Professional Services Agreement (PSA) for wayfinding services and such PSA and Exhibits A and B are incorporated herein by reference.

**WHEREAS**, the City and Contractor now desire to expand the scope of services to include branding services.

**NOW THEREFORE**, in consideration of the mutual representations, promises and conditions contained herein, the parties agree as follows.

1. Paragraph 1 of the PSA is amended to add the following sentence at the end:

In addition to the services under Exhibit A, Contractor agrees to provide additional services for branding in accordance with the Proposal for Additional Services attached hereto as **Exhibit C**.

2. A new Paragraph 3.5 of the PSA is added as follows

3.5 FEES FOR ADDITIONAL SERVICES. In consideration of the additional services to be performed pursuant Exhibit C, the City will pay the Contractor a sum not to exceed Thirty-Thousand Dollars (\$30,000.00). Any reimbursable expenses, including, but not limited to, travel, printing, mailing, or subscriptions will be the responsibility of the City so long as it approves the additional cost in writing prior to Contractor incurring the cost.

3. All other PSA paragraphs being 2 and 4 through 27, remain unchanged

**IN WITNESS WHEREOF**, the City and the Contractor have signed this agreement effective the day and year first written above.

*Signatures on Following Page*

CITY OF OURAY:

---

Ethan Funk, Mayor

Attest:

---

Melissa M. Drake, Clerk

CONTRACTOR:

---

George Lim, owner

**EXHIBIT A**

Scope of Contractor Services

See Next Page





## EXHIBIT C to Addendum to PSA

August 29, 2022

Kailey Rhoten  
Tourism and Destination Marketing Director  
City of Ouray  
P.O. Box 468  
1230 Main Street  
Ouray, CO 81427

### **Re: Proposal for the Request of Additional Services of Developing a New Visit Ouray Logo**

Kailey,

Please see below Tangram Design's proposal for the **Development and Design of a New Visit Ouray Logo**

#### **SCOPE OF WORK:**

##### **Tangram Design will Develop and Design a New Visit Ouray Logo by doing the following:**

- Tangram Design will review all past and current images and logo marks for the City of Ouray.
- Tangram Design will review all studies, materials and surveys related to the branding of the City of Ouray
- Tangram Design will perform an on-site review of the physical conditions of the city and destinations as it may relate to the branding and logo design.
- Tangram will conduct a community engagement meeting on the branding and logo design (In person or electronic survey)
- Deliverables
  1. Logo Refinement
  2. Color Study
  3. Tagline Exploration
  4. Logo Usage Guidelines
  5. Visual Identity and Graphic Elements

Sincerely,

George Lim  
Owner

Tangram Design, LLC  
878 Santa Fe Dr. Unit 1  
Denver, Colorado 80204 USA  
(720) 270-1215  
george@tangramdesignllc.com

# Project Budget



The below chart provides work hours, hourly rates, and total cost per each task. The hourly rate is based on an average sum of the principle and staff loaded rates combined. Project scope and prices may be subject to change if the scope of work is altered.

TASK	WORK HOURS	HOURLY RATE	TOTAL COST
<b>Development and Design Of a New Logo</b>			
1 Research / Review of Materials	20	\$112	\$2,240
1 Logo refinement	80	\$112	\$8,960
2 Color Study	20	\$112	\$2,240
3 Tagline Exploration	24	\$112	\$2,600
4 Logo Usage Guidelines	40	\$112	\$4,480
5 Visual Identity and Graphic Elements	40	\$112	\$4,480
<b>Fee Total</b>			<b>\$25,000</b>

REIMBURSABLE EXPENSES FOR ALL TASKS	RATE	TOTAL COST
Airfare (For two trips / two people)	500	\$2,000
Car Rental (3 days)	100	\$300
Hotel (6 nights)	200	\$1,200
Meals and Incidentals	59	\$354
Parking	15	\$46
Expenses: Communications, Internal Office Printing, Mailing, Subscriptions and Apps		\$1,200
<b>Expenses Total</b>		<b>\$5,000</b>
<b>Total Cost</b>		<b>\$30,000</b>

**CITY OF OURAY**  
**Professional Service Agreement**

THIS AGREEMENT is entered into effective this 21st day of March 2022 by and between: The **CITY OF OURAY**, a Colorado home rule municipal corporation (the City); and **TANGRAM DESIGN, LLC**, a Colorado limited liability company with its principal place of business located at 878 Santa Fe Drive, Unit 1, Denver, CO 80204, (the Contractor).

NOW THEREFORE, in consideration of the mutual representations, promises and conditions contained herein, the parties agree as follows.

1. SCOPE OF CONTRACTOR SERVICES. The Contractor agrees to provide services to design a master wayfinding program in accordance with the Scope of Contractor Services attached and incorporated as **Exhibit A**.
2. TERM OF AGREEMENT. The term of this agreement shall begin on the effective date above and continue to the completion of the services described in Exhibit A and incorporated herein, upon termination of this agreement by either party, or if the services are not completed, this agreement expires on March 21, 2023 at which time the City and the Contractor will either negotiate a new agreement to complete the services, extend this agreement or their relationship under this agreement will terminate. Additional terms specific to Contractor are attached as **Exhibit B** and incorporated herein.
3. FEES FOR SERVICES. In consideration of the services to be performed pursuant to this agreement the City will pay the Contractor a sum not to exceed of Fifty-Eight Thousand Six Hundred Thirty-Six Dollars (\$58,636.00). Any external costs including, but not limited to, equipment rental, photography and/or artwork licenses, prototype production costs, fabrication and installation cost and fees, music licenses and online application access or hosting fees, will be the responsibility of the City so long as it approves the additional cost in writing prior to Contractor incurring the cost.
4. PAYMENT FOR SERVICES. The Contractor shall submit a detailed invoice to the City describing the professional services rendered. The invoice shall document the hours spent on the project identifying by work category and subcategory the work performed for the period, the hours worked by employee, and the hourly rate charged for that work. The City shall have access to backup payroll documentation identifying individual employee, date, and hours worked. The City shall pay the invoice within thirty (30) days of receipt unless the work or the documentation therefore is unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation.
5. SUBSTANTIVE CHANGES. If the City requests or instructs Changes that amount to a revision of at least 15% of the time required to produce the deliverables, and or the value or scope of the Services, Contractor shall be entitled to submit a new and separate agreement to the City for written approval. Work shall not begin on the revised services until a fully signed revised agreement and, if required.
6. CITY REPRESENTATIVE. City designates the City Administrator as its representative and authorizes him to make all necessary and proper decisions with reference to this agreement.

All requests for contract interpretations, changes, clarifications, or instructions shall be directed to the City representative.

7. INDEPENDENT CONTRACTOR. The services to be performed by the Contractor are those of an independent contractor and not as an employee of City. Nothing in this agreement shall constitute or be construed as a creation of a partnership or joint venture between the City and the Contractor, or their successors or assigns. No agent or employee of the Contractor shall be or shall be deemed to be the employee or agent of the City. City is interested only in the results obtained under this agreement; the manner and means of conducting the work are under the sole control of the Contractor. None of the benefits provided by the City to its employees, including, but not limited to, worker compensation insurance and unemployment compensation insurance, are available from the City to the employees of the Contractor. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, and subcontractors during the performance of this agreement. The Contractor will pay all federal and state income tax on any moneys paid pursuant to this agreement.
  
8. INSURANCE. The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance as called for in this agreement. Insurance shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained during the term of this agreement. Each shall be primary insurance and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Contractor. The Contractor shall provide the City with certificates of insurance, or other acceptable evidence, showing the required coverages. The City reserves the right to request and receive a certified copy of any policy.
  - a. The Contractor shall procure and maintain the minimum insurance coverages listed below.
    - i. Workers' compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee of the Contractor engaged in the performance of work under this agreement.
    - ii. Professional liability errors and omissions or general liability coverage, as appropriate, with minimum limit of One Million Dollars (\$1,000,000.00).
  - b. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types.
  - c. Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this contract, or at its discretion the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by the Contractor upon demand, or the City may offset the cost of the premiums against any monies due to the Contractor.

- d. The Contractor shall be responsible for any deductible under any policy required above.
9. GOVERNMENTAL IMMUNITY. The Contractor understands and acknowledges that the City relies on and does not waive or intend to waive by any portion of this agreement any provision of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*
10. INDEMNIFICATION. To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against liability for damage, including attorney fees and costs, arising out of death or bodily injury to persons or damage to property, caused by the negligence or fault of the Contractor or any third party under the control or supervision of the Contractor, but not for any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the Contractor or the Contractor's agents, representatives, subcontractors, or suppliers.
11. EMPLOYMENT OF WORKER WITHOUT AUTHORIZATION. Pursuant to COLO. REV. STAT. § 8-17.5-101, *et seq.*, the Contractor certifies the following:
- a. Contractor shall not knowingly employ or contract with a worker without authorization to perform work under this Contract.
  - b. Contractor will not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under this Contract.
  - c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either (a) the E-Verify Program, (the electronic employment verification program jointly administered by the U.S. Department of Homeland Security and the Social Security Administration, or its successor program) or (b) the Department Program (the employment verification program established pursuant to C.R.S. § 8-17.5-102(5)(c).
  - d. The Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
  - e. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with a worker without authorization, the Contractor shall be required to: (a) notify the Subcontractor and the City within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and (b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice, the subcontractor does not stop employing or contracting with a worker without authorization; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.

- f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment in the course of an investigation that the Department undertakes pursuant to C.R.S. § 8-17.5-102(5).
  - g. If the Contractor violates a worker without authorization provisions, the City may terminate this Contract for a breach of contract. If this Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the City. The City will notify the Office of the Secretary of State if the Contractor violates these provisions, and the City terminates this Contract for that reason.
  - h. The Contractor shall notify the City of participation in the Department Program and shall within twenty (20) days after hiring an employee who is newly hired for employment to perform work under this Contract affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 USC § 1324a, and not altered or falsified the identification documents for such employee. Contractor shall provide a written, notarized copy of the affirmation to the City.
12. ASSIGNMENT. The Contractor shall neither assign any responsibilities nor delegate any duties arising under this agreement without the prior written consent of the City.
13. PAYMENTS BY CITY. Any payments of money by the City pursuant to this agreement shall be subject to the annual appropriations of money.
14. LEGAL COMPLIANCE. The Contractor shall comply with all laws, ordinances, rules, and regulations relating to the performance of this agreement, use of public places and safety of persons and property.
15. ACCREDITATION/PROMOTIONS. All displays or publications of the deliverables shall bear accreditation and/or copyright notice in contractor's name in the form, size and location as incorporated by contractor in the deliverables, so long as it is reasonable to do so. Contractor retains the right to reproduce, publish and display the deliverables in contractor's portfolios and websites, and in galleries design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the deliverables in connection with such uses. Either party, subject to the other's reasonable approval, may describe its role in relation to the project and, if applicable, the services provided to the other party on its website and in other promotional materials, and, if not expressly objected to, include a link to the other party's website. City shall have the right to use all deliverables in any way it chooses so long as accreditation is given and full payment under this agreement is received, and this right shall not expire.
16. NO SOLICITATION. During the term of this Agreement, and for a period of six (6) months after expiration or termination of this Agreement, the City agrees not to solicit, recruit, engage or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire or any other kind of basis, any director, officers, employee, design agent and affiliate of Contractor whether or not said person has been assigned to perform tasks under this Agreement. In the event such employment, consultation or work-for-hire event occurs, City agrees that Contractor shall be entitled to an agency commission to be the greater of, either (a) 25 percent of said person's

starting salary with City, or (b) 25 percent of fees paid to said person if engaged by City as an independent contractor. In the event of (a) above, payment of the commission will be due within 30 days of the employment starting date. In the event of (b) above, payment will be due at the end of any month during which the independent contractor performed services for City. Contractor, in the event of nonpayment and in connection with this section, shall be entitled to seek all remedies under law and equity.

17. **NO EXCLUSIVITY.** The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties. City is free to engage others to perform services of the same or similar nature to those provided by Contractor, and Contractor shall be entitled to offer and provide design services to others, solicit, and otherwise advertise the services offered by Contractor.
18. **LIMITATION OF LIABILITY.** The services and the work product of contractor are sold "as is." in all circumstances, the maximum liability of either party or its directors, officers, employees, agents, or affiliates, for damages for any causes whatsoever, and the parties maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the sums paid under this agreement. In no event shall either party be liable for any lost data or content, lost profits, business interruption, or for any indirect, incidental, special, consequential, exemplary, or punitive damages arising out of or relating to the materials and the services provided by contractor, even if the party has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.
19. **FURTHER ASSURANCES.** Each party agrees to take such actions and sign such documents, certificates and instruments reasonably requested by the other party to complete the transactions contemplated by this agreement and to enable the requesting party to enjoy the full benefits conferred upon such party by this agreement.
20. **ENTIRE AGREEMENT.** This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding. This contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed on this agreement. Each person signing the contract warrants that they have authority to bind the City or Contractor.
21. **BINDING EFFECT.** This agreement shall inure to the benefit of and be binding on the parties, their heirs, executors, administrators, assignees, and successors.
22. **SEVERABILITY.** If any part, term, or provision of this contract is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the part, term or provision held to be invalid.
23. **GOVERNING LAW.** This agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance. The courts of the State of Colorado shall have exclusive jurisdiction to resolve any disputes arising out of this agreement and venue shall be in Ouray County, Colorado.
24. **WAIVER.** No waiver of any breach of this agreement shall be held to be a waiver of any other

or subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

25. COUNTERPARTS. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
26. FACSIMILE SIGNATURES. For the convenience of the parties, signatures to this agreement may be provided through facsimile transmission. The signature of a party to this agreement supplied by facsimile transmission shall be as binding as an original.
27. PRONOUNS. Wherever in this agreement, words, including pronouns, are used in the masculine, they shall be read and construed in the feminine or neuter whenever they would so apply, and wherever in this agreement, words, including pronouns, are used in the singular or plural, they shall be read and construed in the plural or singular, respectively, wherever they would so apply.

IN WITNESS WHEREOF, the City and the Contractor have signed this agreement effective the day and year first written above.

*Signatures on Following Page*

CITY OF OURAY:



Ethan Funk, Mayor

Attest:



Melissa M. Drake, City Clerk

CONTRACTOR:



George Lim, Owner



## Exhibit A-Scope of Services for Wayfinding Project

# Tangram Design Professional Services Agreement

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This AGREEMENT is made as of the 21<sup>ST</sup> day of MARCH in the year of 2022 between the following parties, for services in connection with the Project identified herein.

### DESIGNER

Tangram Design, LLC  
878 Santa Fe Drive, Unit 1  
Denver, CO 80204  
(303) 777-8878

### CLIENT

City of Ouray  
320 6th Avenue  
P.O. Box 468  
Ouray, CO 81427  
(970) 325-7211

### PROJECT

City of Ouray Wayfinding Program

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This Agreement for design services is between **Tangram Design, LLC** ("Designer"), and the **City of Ouray**, for the performance of the services described herein for the not to exceed amount of **\$58,636**. By their execution, the parties hereto have agreed to all of the terms and conditions of this Agreement effective as of the last date of signature, and each signatory represents that it has the full authority to enter into this Agreement and to bind her/his respective party.

### Project Scope (Per the RFP):

Design a new Wayfinding Program for the **City of Ouray**. Tangram to develop a master wayfinding signage plan complete with analysis, system design, documentation specifications and implementation for various forms of signage. The plan should define the types and design of the signs, where they should be located based on the completion of a traffic and parking assessment while using other determinating factors, when the signs should be used (seasonal) and necessary information to ease and direct traffic and pedestrian traffic. The Program should consider all modes of transportation and outline a phased implementation strategy for the project.

### The City of Ouray Wayfinding Program Goals include:

- Increase and encourage visitors and resident discovery and exploration of the city.
- Conduct research on current traffic and parking patterns to determine the wayfinding Program needs and discuss any potential changes to traffic and parking patterns.
- Allow easy deciphering of directions to increase a person's ability to traverse the city, while minimize sign clutter.
- Incorporate inclusive and universal design into the entire Wayfinding Program.
- Welcome and guide the traveling public to and form City amenities.
- Develop design standards for wayfinding that are reflective of the City of Ouray's identity.
- Wayfinding installations should be able to be easily updated by City staff. Recommendation that clarify roles and responsibilities for the managing of the wayfinding signage content and information.
- Condense sign clutter to contribute to beautifying the City streetscapes and limit sidewalk clutter.

All work above will be completed in a twelve month schedule after receiving a Notice To Proceed (NTP) from the client.

**The City of Ouray Wayfinding program should consider the following types of wayfinding signage:**

**Gateway / Welcome Signage**

**Vehicular Signage**

**Parking Signage**

**Pedestrian Signage**

**Destination Identity / Marker Signage**

**Consider:**

**Uncompahgre River Walk and Perimeter Trail Wayfinding**

**21st Century Wayfinding Signage Components**

**City Amentities directly adjacent to municipalities i.e. Ice Park, Via Farrata, Trails, Parking**



## Exhibit B-Additional Terms and Conditions to Wayfinding Project PSA

This Agreement for design services is between **Tangram Design, LLC** ("Designer"), and the **City of Ouray** (City), for the performance of the services described in the proposal sent to the Client on January 21, 2022 (in the Project Approach section of the submission). The parties therefore agree as follows:

### Basic Terms and Conditions

#### 1. DEFINITIONS

As used herein and throughout this Agreement:

**1.1 Agreement** means the entire content of this document, which comprises this Basic Terms and Conditions document, Supplement 1, Attachment A: Project Approach, Attachment B: Project Schedule and Attachment C: Fee Proposal.

**1.2 Client Content** means all materials, information, photography, writings and other creative content provided by Client for use in the preparation of and/or incorporation in the Deliverables.

**1.3 Copyrights** means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under U.S. Copyright Law.

**1.4 Deliverables** means the services and work product specified in the Proposal to be delivered by Designer to Client, in the form and media specified in the Proposal.

**1.5 Designer Tools** means all design tools developed and/or utilized by Designer in performing the Services.

**1.6 Final Art** means all creative content developed or created by Designer, or commissioned by Designer, exclusively for the Project and incorporated into and delivered as part of the Final Deliverables, including and by way of example, not limitation, any and all visual designs, visual elements, graphic design, illustration, photography, animation, sounds, typographic treatments and text, modifications to Client Content, and Designer's selection, arrangement and coordination of such elements together with Client Content and/or Third Party Materials.

**1.7 Final Deliverables** means the final versions of Deliverables provided by Designer and accepted by Client.

**1.8 Preliminary Works** means all artwork including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and documents developed by Designer and which may or may not be shown and or delivered to Client for consideration but do not form part of the Final Art.

**1.9 Project** means the scope and purpose of the Client's identified usage of the work product as described in the Proposal.

**1.10 Services** means all services and the work product to be provided to Client by Designer as described and otherwise further defined in the Proposal.

**1.11 Third Party Materials** means proprietary third party materials which are incorporated into the Final Deliverables.

**1.12 Trademarks** means trade names, words, symbols, designs, logos or other devices or designs used in the Final Deliverables to designate the origin or source of the goods or services of Client.

#### 2. PROPOSAL

The terms of the Proposal shall be effective for 30 days after presentation to Client. In the event this Agreement is not executed by Client within the time identified, the Proposal, together with any related terms and conditions and deliverables, may be subject to amendment, change or substitution.



### 3. FEES AND CHARGES

**3.1 Fees.** In consideration of the Services to be performed by Designer, Client shall pay to Designer fees in the amounts and according to the payment schedule set forth in the Proposal, and all applicable sales, use or value added taxes, even if calculated or assessed subsequent to the payment schedule.

**3.2 Expenses.** If not identified in the proposal, Client shall pay Designer's expenses incurred in connection with this Agreement as follows: (a) incidental and out-of-pocket expenses including costs for postage, shipping, overnight courier, typesetting, blueprints, models, presentation materials and photocopies, computer applications and subscriptions. (b) travel expenses including transportation, meals, and lodging, incurred by Designer with Client's prior approval. parking fees and tolls, and taxi cost and, if applicable, a mileage reimbursement at \$.58.5 per mile.

**3.3 Additional Costs.** Any and all outside costs including, but not limited to, equipment rental, photography and/or artwork licenses, prototype production costs, fabrication and installation cost and fees, music licenses and online application access or hosting fees, will be billed to Client.

**3.4 Invoices.** All invoices are payable within 30 days of receipt. A monthly service charge of 1.5% [or the greatest amount allowed by state law] is payable on all overdue balances. Payments will be credited first to late payment charges and next to the unpaid balance. Client shall be responsible for all collection or legal fees necessitated by lateness or default in payment. Designer reserves the right to withhold delivery and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under this Agreement are conditioned upon receipt of payment in full which shall be inclusive of any and all outstanding Additional Costs, Taxes, Expenses, and Fees, Charges, or the costs of Changes.

### 4. CHANGES

**4.1 General Changes.** Unless otherwise provided in the

Proposal, and except as otherwise provided for herein, Client shall pay additional charges for changes requested by Client which are outside the scope of the Services on a time and materials basis, at Designer's standard hourly rate of Designer's Hourly Rate per hour. Such charges shall be in addition to all other amounts payable under the Proposal, despite any maximum budget, contract price or final price identified therein. Designer may extend or modify any delivery schedule or deadlines in the Proposal and Deliverables as may be required by such Changes. Any changes, and compensation owed for changes, shall not be valid unless approved in writing by the City prior to Designer performing any changes in the work.

**4.2 Substantive Changes.** If Client requests or instructs Changes that amount to a revision of at least 15% of the time required to produce the Deliverables, and or the value or scope of the Services, Designer shall be entitled to submit a new and separate Proposal to Client for written approval. Work shall not begin on the revised services until a fully signed revised Proposal and, if required, any additional retainer fees are received by Designer.

**4.3 Timing.** Designer will prioritize performance of the Services as may be necessary or as identified in the Proposal, and will undertake commercially reasonable efforts to perform the Services within the time(s) identified in the Proposal. Client agrees to review Deliverables within the time identified for such reviews and to promptly either, (i) approve the Deliverables in writing or (ii) provide written comments and/or corrections sufficient to identify the Client's concerns, objections or corrections to Designer. The Designer shall be entitled to request written clarification of any concern, objection or correction. Client acknowledges and agrees that Designer's ability to meet any and all schedules is entirely dependent upon Client's prompt performance of its obligations to provide materials and written approvals and/or instructions pursuant to the Proposal and that any delays in Client's performance or Changes in the Services or Deliverables requested by Client may delay delivery of the Deliverables. Any such delay caused by Client shall not constitute a breach of any term, condition or Designer's obligations under this Agreement.



**4.4 Testing and Acceptance.** Designer will exercise commercially reasonable efforts to test Deliverables requiring testing and to make all necessary corrections prior to providing Deliverables to Client. Client, within 5 business days of receipt of each Deliverable, shall notify Designer, in writing, of any failure of such Deliverable to comply with the specifications set forth in the Proposal, or of any other objections, corrections, changes or amendments Client wishes made to such Deliverable. Any such written notice shall be sufficient to identify with clarity any objection, correction or change or amendment, and Designer will undertake to make the same in a commercially timely manner. Any and all objections, corrections, changes or amendments shall be subject to the terms and conditions of this Agreement. In the absence of such notice from Client, the Deliverable shall be deemed accepted.

## 5. CLIENT RESPONSIBILITIES

Client acknowledges that it shall be responsible for performing the following in a reasonable and timely manner:

- (a) coordination of any decision-making with parties other than the Designer;
- (b) provision of Client Content in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Proposal; and
- (c) final proofreading and in the event that Client has approved Deliverables but errors, such as, by way of example, not limitation, typographic errors or misspellings, remain in the finished product, Client shall incur the cost of correcting such errors.

## 6. ACCREDITATION/PROMOTIONS

All displays or publications of the Deliverables shall bear accreditation and/or copyright notice in Designer's name in the form, size and location as incorporated by Designer in the Deliverables. Designer retains the right to reproduce, publish and display the Deliverables in Designer's portfolios and websites, and in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or

professional advancement, and to be credited with authorship of the Deliverables in connection with such uses. Either party, subject to the other's reasonable approval, may describe its role in relation to the Project and, if applicable, the services provided to the other party on its website and in other promotional materials, and, if not expressly objected to, include a link to the other party's website.

## 7. CONFIDENTIAL INFORMATION

Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party, including without limitation Preliminary Works ("Confidential Information"). Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under the Proposal except as may be required by a court or governmental authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

## 8. RELATIONSHIP OF THE PARTIES

**8.1 Independent Contractor.** Designer is an independent contractor, not an employee of Client or any company affiliated with Client. Designer shall provide the Services under the general direction of Client, but Designer shall determine, in Designer's sole discretion, the manner and means by which the Services are accomplished. This Agreement does not create a partnership or joint venture and neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. Designer and the work product or Deliverables prepared by Designer shall not be deemed a work for hire as that term is defined under Copyright Law. All rights, if any, granted to Client are contractual in nature and are wholly defined by the express written agreement of the parties and the various terms and conditions of this Agreement.



**8.2 Designer Agents.** Designer shall be permitted to engage and/or use third party designers or other service providers as independent contractors in connection with the Services (“Design Agents”). Notwithstanding, Designer shall remain fully responsible for such Design Agents’ compliance with the various terms and conditions of this Agreement.

**8.3 No Solicitation.** During the term of this Agreement, and for a period of six (6) months after expiration or termination of this Agreement, Client agrees not to solicit, recruit, engage or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire or any other kind of basis, any Designer, employee or Design Agent of Designer, whether or not said person has been assigned to perform tasks under this Agreement. In the event such employment, consultation or work-for-hire event occurs, Client agrees that Designer shall be entitled to an agency commission to be the greater of, either (a) 25 percent of said person’s starting salary with Client, or (b) 25 percent of fees paid to said person if engaged by Client as an independent contractor. In the event of (a) above, payment of the commission will be due within 30 days of the employment starting date. In the event of (b) above, payment will be due at the end of any month during which the independent contractor performed services for Client. Designer, in the event of nonpayment and in connection with this section, shall be entitled to seek all remedies under law and equity.

**8.4 No Exclusivity.** The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by Designer, and Designer shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Designer.

## 9. WARRANTIES AND REPRESENTATIONS

**9.1 By Client.** Client represents, warrants and covenants to Designer that:

(a) Client owns all right, title, and interest in, or otherwise has full right and authority to permit the use of the Client Content,

(b) to the best of Client’s knowledge, the Client Content does not infringe the rights of any third party, and use of the Client Content as well as any Trademarks in connection with the Project does not and will not violate the rights of any third parties,

(c) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and

(d) Client shall comply with all laws and regulations as they relate to the Services and Deliverables.

## 9.2 By Designer

(a) Designer hereby represents, warrants and covenants to Client that Designer will provide the Services identified in the Agreement in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services.

(b) Designer further represents, warrants and covenants to Client that (i) except for Third Party Materials and Client Content, the Final Deliverables shall be the original work of Designer and/or its independent contractors, (ii) in the event that the Final Deliverables include the work of independent contractors commissioned for the Project by Designer, Designer shall have secure agreements from such contractors granting all necessary rights, title, and interest in and to the Final Deliverables sufficient for Designer to grant the intellectual property rights provided in this Agreement, and (iii) to the best of Designer’s knowledge, the Final Art provided by Designer and Designer’s subcontractors does not infringe the rights of any party, and use of same in connection with the Project will not violate the rights of any third parties. In the event Client or third parties modify or otherwise use the Deliverables outside of the scope or for any purpose not identified in the Proposal or this Agreement or contrary to the terms and conditions noted herein, all representations and warranties of Designer shall be void.



(c) Except for the express representations and warranties stated in this agreement, designer makes no warranties whatsoever, designer explicitly disclaims any other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose or compliance with laws or government rules or regulations applicable to the project.

## 10. INDEMNIFICATION/LIABILITY

**10.1 By Client.** Client agrees to indemnify, save and hold harmless Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of any breach of Client's responsibilities or obligations, representations or warranties under this Agreement. Under such circumstances Designer shall promptly notify Client in writing of any claim or suit;

(a) Client has sole control of the defense and all related settlement negotiations; and

(b) Designer provides Client with commercially reasonable assistance, information and authority necessary to perform Client's obligations under this section.

**10.2 By Designer.** Subject to the terms, conditions, express representations and warranties provided in this Agreement, Designer agrees to indemnify, save and hold harmless Client from any and all damages, liabilities, costs, losses or expenses arising out of any finding of fact which is inconsistent with Designer's representations and warranties made herein, except in the event any such claims, damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or misconduct of Client provided that:

(a) Client promptly notifies Designer in writing of the claim;

(b) Designer shall have sole control of the defense and all related settlement negotiations; and

(c) Client shall provide Designer with the assistance, information and authority necessary to perform Designer's obligations under this section. Notwithstanding the foregoing, Designer shall have

no obligation to defend or otherwise indemnify Client for any claim or adverse finding of fact arising out of or due to Client Content, any unauthorized content, improper or illegal use, or the failure to update or maintain any Deliverables provided by Designer.

**10.3 Limitation of Liability.** The services and the work product of designer are sold "as is." In all circumstances, the maximum liability of designer, its directors, officers, employees, design agents and affiliates ("Designer Parties"), to client for damages for any and all causes whatsoever, and client's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the sums paid under this Agreement to the designer. In no event shall designer be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by designer, even if designer has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.

## 11. TERM AND TERMINATION

**11.1** This Agreement shall commence upon the Effective Date and shall remain effective until the Services are completed and delivered.

**11.2** This Agreement may be terminated at any time by either party effective immediately upon notice, or the mutual agreement of the parties, or if any party (a) becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors; or (b) breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within 10 days from receipt of written notice of such breach.

**11.3** In the event of termination, Designer shall be compensated for the Services performed through the date of termination in the amount of a prorated portion of the fees due and Client shall pay all Expenses, fees, out of pockets together with any Additional Costs incurred through and up to, the date of cancellation.



**11.4** In the event of termination by Client and upon full payment of compensation as provided herein, Designer grants to Client such right and title as provided for in Schedule A of this Agreement with respect to those Deliverables provided to, and accepted by Client as of the date of termination.

**11.5** Upon expiration or termination of this Agreement: (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (b) other than as provided herein, all rights and obligations of each party under this Agreement, exclusive of the Services, shall survive.

## **12. GENERAL**

**12.1 Modification/Waiver.** This Agreement may be modified by the parties. Any modification of this Agreement must be in writing, except that Designer's invoices may include, and Client shall pay, expenses or costs that Client authorizes by electronic mail in cases of extreme time sensitivity. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.

**12.2 Notices.** All notices to be given hereunder shall be transmitted in writing either by electronic mail with return confirmation of receipt or by certified or registered mail, return receipt requested, and shall be sent to the addresses identified below, unless notification of change of address is given in writing. Notice shall be effective upon receipt or in the case of email, upon confirmation of receipt.

**12.3 No Assignment.** Neither party may assign, whether in writing or orally, or encumber its rights or obligations under this Agreement or permit the same to be transferred, assigned or encumbered by operation of law or otherwise, without the prior written consent of the other party.

**12.4 Force Majeure.** Designer shall not be deemed in breach of this Agreement if Designer is unable to complete the Services or any portion thereof by reason of fire, earthquake, labor dispute, act of God or public enemy, death, illness or incapacity of Designer or any local, state, federal, national or international law, governmental order or regulation or any other event beyond Designer's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, Designer shall give notice to Client of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of the Services.

**12.5 Governing Law and Dispute Resolution.** The formation, construction, performance and enforcement of this Agreement shall be in accordance with the laws of the United States and the state of New Jersey without regard to its conflict of law provisions or the conflict of law provisions of any other jurisdiction. In the event of a dispute arising out of this Agreement, the parties agree to attempt to resolve any dispute by negotiation between the parties. If they are unable to resolve the dispute, either party may commence mediation and/or binding arbitration through the American Arbitration Association, or other forum mutually agreed to by the parties. The prevailing party in any dispute resolved by binding arbitration or litigation shall be entitled to recover its attorneys' fees and costs. In all other circumstances, the parties specifically consent to the local, state and federal courts located in the state of Colorado. The parties hereby waive any jurisdictional or venue defenses available to them and further consent to service of process by mail. Client acknowledges that Designer will have no adequate remedy at law in the event Client uses the deliverables in any way not permitted hereunder, and hereby agrees that Designer shall be entitled to seek equitable relief by way of temporary and permanent injunction, and such other and further relief at law or equity as any arbitrator or court of competent jurisdiction may deem just and proper, in addition to any and all other remedies provided for herein.



**12.6 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect and the invalid or unenforceable provision shall be replaced by a valid or enforceable provision.

**12.7 Headings.** The numbering and captions of the various sections are solely for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of the provisions of this Agreement nor shall such headings otherwise be given any legal effect.

**12.8 Integration.** This Agreement comprises the entire understanding of the parties hereto on the subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understandings and discussions between the parties relating to the subject matter of this Agreement. In the event of a conflict between the Proposal and any other Agreement documents, the terms of the Proposal shall

control. This Agreement comprises this Basic Terms and Conditions document, Supplement 1, Attachment A: Project Approach, Attachment B: Project Schedule and Attachment C: Fee Proposal.

By their execution, the parties hereto have agreed to all of the terms and conditions of this Agreement effective as of the last date of signature, and each signatory represents that it has the full authority to enter into this Agreement and to bind her/his respective party to all of the terms and conditions herein.

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## Supplement 1: Environmental Graphic Design-Specific Terms and Conditions

### 1. PHOTOGRAPHS OF THE PROJECT

Designer shall have the right to document, photograph or otherwise record all completed designs or installations of the

**DESIGNER:**



Signature

George Lim

Print Name

Owner

Title

Date

3 / 22 / 2022

**CLIENT:**



Signature

Ethan Funk

Print Name

Mayor

Title

Date

22 March 2022



Project, and to reproduce, publish and display such documentation, photographs or records for Designer's promotional purposes in accordance with Section 6 of the Basic Terms and Conditions of this Agreement.

## 2. ADDITIONAL CLIENT RESPONSIBILITIES

Client acknowledges that Client shall be responsible for performing the following in a reasonable and timely manner:

- (a) Communication of administrative or operational decisions if they affect the design or production of Deliverables, and coordination of required public approvals and meetings;
- (b) Provision of accurate and complete information and materials requested by Designer such as, by way of example, not limitation, site plans, building plans and elevations, utility locations, color/material samples and all applicable codes, rules and regulation information;
- (c) Provision of approved naming, nomenclature; securing approvals and correct copy from third parties such as, by way of example, not limitation, end users or donors as may be necessary;
- (d) Final proofreading and written approval of all project documents including, by way of example, not limitation, artwork, message schedules, sign location plans and design drawings before their release for fabrication or installation. In the event that Client has approved work containing errors or omissions, such as, by way of example, not limitation, typographic errors or misspellings, Client shall incur the cost of correcting such errors;
- (e) Arranging for the documentation, permissions, licensing and implementation of all electrical, structural or mechanical elements needed to support, house or power signage; coordination of sign manufacture and installation with other trades; and
- (f) Bid solicitation and contract negotiation; sourcing, establishment of final pricing and contract terms directly with fabricators or vendors.

## 3. ENGINEERING

The Services shall include the selection and specifications for materials and construction details as described in the Proposal. However, Client acknowledges and agrees (that Designer is not a licensed engineer or architect, and) that responsibility for the interpretation of design drawings and) the design and engineering of all work performed under this Agreement ("Engineering") is the sole responsibility of Client and/or its architect, engineer or fabricator.

## 4. IMPLEMENTATION

Client expressly acknowledges and agrees that the estimates provided in the Proposal, at any time during the project for implementation charges such as, including, but not limited to, fabrication or installation are for planning purposes only. Such estimates represent the best judgment of Designer or its consultants at the time of the Proposal, but shall not be considered a representation or guarantee that project bids or costs will not vary. Client shall contract and pay those parties directly responsible for implementation services such as fabrication or installation ("Implementation"). Designer shall not be responsible for the quality or timeliness of the third-party Implementation services, irrespective of whether Designer assists or advises Client in evaluating, selecting or monitoring the provider of such services.

## 5. COMPLIANCE WITH LAWS

Designer shall use commercially reasonable efforts to ensure that all Final Deliverables shall be designed to comply with the applicable rules and regulations such as the Americans with Disabilities Act ("ADA") and Federal Highway Association (FHWA). Designer shall use commercially reasonable efforts to ensure the suitability and conformance of the Final Deliverables.

### **13-6 Sidewalk Construction, Maintenance and Civil Liability**

A. All City sidewalks on City property or easements shall be designed and constructed in accordance with standards and specifications approved by the City. All City sidewalks shall be located and sized in accordance with City requirements and standards. Any person constructing or replacing a City sidewalk shall obtain a permit from the City to do so pursuant to Section 13-3-F.

B. The owner, tenant or party actually in possession of property abutting any City sidewalk shall be jointly and severally responsible to maintain, repair and replace the abutting sidewalk to keep it in good repair, safe condition and consistent with City standards and specifications for sidewalks. They shall also be jointly and severally responsible to remove all accumulations of snow and ice from and to correct any other dangerous conditions upon or with respect to City sidewalks abutting their property.

C. The City may, as it deems necessary or appropriate, order the construction or repair to any sidewalk. In the event the owner of the abutting property fails or refuses to make such construction or repairs in accordance with City standards and specifications, the City may cause the appropriate construction or repair of the sidewalk to be done and assess the costs thereof against the abutting property and its owner.

D. In the event the owner, occupant and party in possession of abutting property fail to remove snow and ice, or correct any dangerous conditions upon any abutting City sidewalk, the City may cause such snow and ice to be removed, or condition to be corrected and assess the costs thereof to the abutting property and its owner.

E. The costs the City may recover for work caused to be done by the City under this Section shall include all costs of construction, replacement, maintenance, or repair, including costs attributable to the use of City equipment and personnel, any out-of-pocket costs the City incurs, reasonable attorney's fees incurred by the City related to the work or the collection of the assessment and any other costs of collecting assessments or amounts due. All such costs shall be a lien against the abutting property which may be foreclosed by the City in any lawful manner. Such costs may also be certified to the County for collection similar to the collection of taxes, or may be collected in any other lawful manner. Prior thereto, the City shall notify the owner of record of the property and allow a hearing with a City representative concerning any amount proposed to be certified to the County for collection.

F. The failure to maintain and construct sidewalks in accordance with the requirements of this section is hereby declared to be a nuisance, which may be abated by the City in any lawful manner.

G. There is hereby created a right of action against the owners of property abutting City sidewalks on account of their failure to remove snow, ice, debris, or obstructions from abutting sidewalks, to maintain the abutting sidewalks in a safe condition, or to correct any dangerous condition of such abutting sidewalks. The owners of the abutting property shall be civilly liable for the violation of any provisions of this section to any one injured as a result thereby and shall be civilly liable to hold harmless, defend, and indemnify the City, its officers and employees on account of any claim made or adjudged against the City, its officers or employees on account of their failure to comply with the provisions of this Section.

H. It shall be unlawful to violate any of the provisions of this Section.

## 2-14 Community Economic and Development Committee

A. At its first meeting in January, City Council shall appoint a minimum of five (5) and a maximum of nine (9) members to the Community Economic and Development Committee (CEDC) for three (3) year staggered terms. The CEDC shall not have an even number of members. One (1) member shall be from City management, four (4) members shall be residents of the City of Ouray, and a maximum of three (3) members shall be residents or business owners in the area served by the City of Ouray telephone prefix.

B. The CEDC shall be solely an advisory committee and its function as a City committee shall be limited to making recommendations to City Council and the City Administrator. Such Committee shall have no authority to enter into contracts binding upon the City, to authorize any expenditures binding upon the City, or to otherwise take any action as a City committee. The scope of recommendations to City Council and the City Administrator shall be in the following areas.

1. Creation and development of the Community Plan.
2. Development and implementation of tools to evaluate the strengths and weaknesses of current economic development conditions.
3. Creation and implementation of an Economic Development Plan and economic development incentives in line with the values and guidelines of the Community Plan and broad community input.
4. Collaborative regional economic development efforts with the Town of Ridgway, Ouray County, and Region 10.
5. Business expansion and retention planning and related concerns expressed by the Ouray business community.
6. Community planning document revisions and updates, including ordinances that affect the business community.

C. Members may be removed by City Council for malfeasance, any act in violation of C.R.S. §§ [24-18-101](#) et seq., or for substantial failure to attend scheduled meetings.

(Source: Ordinance No. 9, 2020; Ordinance No. 3, 2018; Ordinance No. 2, 2014)



## **Future Agenda Items/Work Sessions**

- Energy Code Adoption
- 2018 International Code Adoption (IBC/IRC/IEBC/IMC/IFC/IECC/Property Maintenance February of 2023 Adopted by July 1, 2023)
- (Non-Land Use) Code Revisions
- Fee Schedule
- Workforce & Attainable Housing Charter Modification
- Nose-to-nose School Bus Parking on 4<sup>th</sup> Street
- EQR Utility Rate Review (Moved until WTP Bond Completed)
- Alcohol – Entertainment/Consumption District on Main Street (In discussions)
- Restaurant Dining on City Streets